

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2024, by and between the Successor Agency to the Redevelopment Agency of the City of Merced, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "Agency") and Provost & Pritchard Consulting Group, a California Corporation, whose address of record is 455 W Fir Ave, Clovis CA 93611, (hereinafter referred to as "Consultant").

WHEREAS, Agency is undertaking a project that has been redirected back to the Agency from the Designated Local Authority and is seeking consultant assistance; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide consulting services in connection with said project; and Consultant has actually provided consulting services on said project since 2007.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the Agency, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with Agency and the results of the work shall be monitored by the Executive Director or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the Agency and the Consultant may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the day first above written and end on June 30, 2025.

4. **COMPENSATION.** Payment by the Agency to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Consultant's services rendered under this Agreement, Agency shall pay Consultant the not to exceed sum of \$393,000.00.

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the Agency after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the Agency, and Consultant hereby agrees to deliver the same to the Agency upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the Agency and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Agency for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the Agency.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the Agency. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the Agency, Consultant shall indemnify, protect, defend, and hold harmless the Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the Agency), save and hold Agency, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement; Consultant shall indemnify, protect, defend (with counsel selected by the Agency) save and hold Agency, its officers, employees and agents harmless from any and all claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the Agency, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the Agency or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Agency of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. **Workers' Compensation Insurance.** Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the Agency.

b. **General Liability.**

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The Agency, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by Agency or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the Agency naming the Agency, City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the Agency within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The Agency, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by Agency or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by Agency, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the Agency prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to Agency prior to the effective date of such cancellation—including cancellation for

nonpayment of premium. In addition to any other remedies Agency may have, Agency reserves the right to withhold payment if Consultant's insurance policies are not current.

11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a "public works" the Consultant agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Consultant further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Consultant from the Department of Industrial Relations. These wage rate determinations are to be posted by the Consultant at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Consultant agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a "public works" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the Agency.

13. TERMINATION FOR CONVENIENCE OF AGENCY. The Agency may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be

deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

14. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the Agency for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse Agency for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the Agency in connection therewith.

15. WAIVER. In the event that either Agency or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the Agency are not binding upon the Agency unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

17. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

18. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

19. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

20. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

21. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

22. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

SUCCESSOR AGENCY
CITY OF MERCED

BY: _____
D. Scott McBride
Executive Director

ATTEST:
D. SCOTT MCBRIDE, SECRETARY

BY: _____
Assistant/Deputy Secretary

APPROVED AS TO FORM:
CRAIG J. CORNWELL, GENERAL COUNSEL

BY: Craig Cornwell 12-20-23
General Counsel Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT

BY: David Norman
(Signature)

David Norman
(Typed Name)

Its: Director of Operations
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. 942187078

ADDRESS: 445 W. Fir Ave
Cloris CA 93611

TELEPHONE: (559) 25 449-2700

FAX: _____

E-MAIL: dnorman@ppeng.com

PROVOST & PRITCHARD CONSULTING GROUP

455 W Fir Ave • Clovis, CA 93611 • (559) 449-2700
www.provostandpritchard.com

December 15, 2023

Ms. Sierra Omlin

Mr. Frank Quintero

Successor Agency to the Redevelopment Agency of the City of Merced

678 W 18th Street

Merced, CA, 95340

Subject: R Street TPH, Free Product Gasoline - Removal System design, installation and Operational costs Near Monitoring Well 6AR

Dear Mr. Frank Quintero:

Thank you for the opportunity to submit this scope of services and fee for continues services on the R Street TPH project. This proposal discusses our understanding of the project, recommends a scope of services together with associated fees.

PROJECT UNDERSTANDING

We understand that the City of Merced has become the Successor Agency to the Redevelopment Agency of the City of Merced for the historic gasoline release cleanup project, from the gasoline stations located at the former Exxon and Pacific Pride UST site, located at 1415 and 1455 R Street, Merced, CA. This project had been a city of Merced the Redevelopment Agency projects until the Governor of California dissolved redevelopment agencies statewide in 2012. At that time Kosmont Company was retained by the State of California Department of Finance to manage this project acting as the Designated Local Authority's (DLA) real-estate management team, among other projects and real estate transaction, as a result of AB 26. As of Late September of 2023, the DLA was beginning to sunset and the City of Merced will take the project back over as the Successor Agency to the Redevelopment Agency of the City of Merced. Provost & Pritchard has been the project consultant for the city and the DLA since 2007.

Costs to conduct the required work are allocated through the State using a Recognized Obligation Payment Schedule (ROPS) process.

The following scope and fee estimated are based on recent requirements from the Regional Water Quality Control Board's (RWQCB) to design and conduct the removal of the free product after the evaluation of the free-product (floating) gasoline is completed (See previous proposal dated October 5th 2023) on groundwater near a down gradient monitoring well 6AR located in R Street.

SCOPE OF SERVICES

In response to a RWQCB letter dated August 29th, 2023, and to meet the RWQCB's requirements for free product removal, Provost & Pritchard will produce a design of two systems, using QED Genie Skimmers or similar products, anticipated to be installed on the north and south sides of R Street in the general vicinity of well 6AR. The design and workplan will be submitted for approval by the city and the Regional Water Quality

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Control Board (RWQCB). Once approved the two systems will be installed and operated for 6 months. If additional removal is necessary additional funding will be requested in a future ROPS request. Our proposed scope of work for this proposal is segregated into several phases, described below.

PHASE FPC: (FREE PRODUCT RECOVERY)

This phase will include the following key tasks:

- Prepare Workplan and system designs to be approved by the City and the RWQCB
- Secure permitting including encroachment permits.
- Siting and drilling two (2) 4-inch PVC product recovery wells and up to 4 additional groundwater monitoring wells (per RWQCB requirements).
- Site, construct and install the product removal systems.
- Operated product recovery system for 6 months. Includes recovered product disposal.

PROFESSIONAL FEES

Provost & Pritchard Consulting Group will perform the services in this Phase on a time and materials basis, in accordance with our Standard 2024 Fee Schedule in effect at the time services are rendered. (Attached) These fees will be invoiced monthly as they are accrued, and our total fees and reimbursable expenses will not exceed our estimate of \$ 393,000 for the ROPS 2024 -25a period (July 1 to December 31) without additional authorization as detailed below.

ESTIMATED FEE – FREE PRODUCT REMOVAL	
PHASE	ESTIMATED FEE
Phase FPR	
Work plans, Health and Safety plans, Traffic control plans, permitting and RWQCB responses	\$20,000
Extraction wells and additional Monitoring wells), Free Product Systems installation and 6 moths O&M and disposal.	\$295,000
Reporting	\$30,000
Project Management	\$48,000
Total Estimated Fee:	\$393,000*

*The line items shown above are estimates and are not intended to limit billings for any given Task. Required task effort may vary up or down from the line-item estimates shown, however total billings will not exceed the total shown without additional authorization. If the scope changes materially from that described above, as a result of any agency's decision, we will prepare a revised estimate of our fees for your approval before we proceed.

ASSUMPTIONS

- Successor Agency to the Redevelopment Agency of the City of Merced will waive cost of encroachment permits traffic control plan approvals.
- Successor Agency to the Redevelopment Agency of the City of Merced will assist Provost & Pritchard with private property access as needed.
- The removal plan is not yet finalized, if the RWQCB request any variation from the proposed plan and detail here or in the December 15, 2023, Successor Agency Project Update memorandum additional scope and cost changes will be required and requested for approval.
- System(s) removal costs will be included in a future ROPS.

Sincerely Yours,
Provost & Pritchard Consulting Group

David Norman
Director of Operations