

AGREEMENT NO._____

ON-CALL CONSULTANT AGREEMENT

This **CONSULTANT AGREEMENT** is made and entered into on _____ ("Effective Date"), by and between the **CITY OF BAKERSFIELD**, a municipal corporation ("CITY"), and **PROVOST & PRITCHARD ENGINEERING GROUP, INC. dba PROVOST & PRITCHARD CONSULTING GROUP**, a California Corporation authorized to do business in California ("CONSULTANT").

R E C I T A L S

WHEREAS, CITY issued a Request for Qualifications ("Request/RFQ") attached here to as **Exhibit A** and incorporated herein by reference for On-Call Engineering and Technical Support services for the Water Resources Department; and

WHEREAS, after reviewing the Request dated May 9, 2023, and being satisfied that it understands the requirements, DESIGN CONSULTANT has submitted a Statement of Qualifications ("SOQ") and a Rate Schedule in response to the Request, said SOQ and Rate Schedule are incorporated herein by reference and said Rate Schedule is attached here to as **Exhibit B**; and

WHEREAS, DESIGN CONSULTANT represents that it is experienced in the fields of design and engineering in the field of water resources as required by the Request and that all of its officers, partners, and/or principals are licensed professionals in engineering, design, or similar professional areas with the appropriate professional degrees; and

WHEREAS, DESIGN CONSULTANT also represents that it has an adequate number of properly licensed and experienced employees on its staff to accomplish the Scope of Work, as defined below, and that it is competent to undertake the Scope of Work; and

WHEREAS, CONSULTANT acknowledges it is required and represents it does currently have errors and omissions insurance which will protect CITY in the event of professional errors or omissions by CONSULTANT; and

WHEREAS, based on these representations and all other representations made by DESIGN CONSULTANT to CITY, CITY desires to retain DESIGN CONSULTANT to perform the Scope of Work.

NOW, THEREFORE, incorporating the foregoing recitals herein, CITY and

CONSULTANT mutually agree as follows:

1. **SCOPE OF WORK.** In exchange for the Compensation (defined below), CONSULTANT must competently and thoroughly provide engineering services on an on-call basis for CITY identified projects during CITY's Fiscal Years 2023-2024 and Fiscal Year 2024-2025. The Scope of Work shall be in accordance with CITY's RFQ; CITY's Request for Proposal for a specific project, which is yet to be prepared; and CONSULTANT's Proposal prepared for a specific project, which is yet to be prepared. CITY's yet to be prepared Request for Proposal(s) and CONSULTANT's yet to be prepared Proposal(s) are incorporated herein by reference as though fully set forth.

CONSULTANT's services shall include all the procedures necessary to properly complete the task CONSULTANT has been called upon to perform, whether specifically included in the Scope of Work or not.

2. **COMPENSATION/PAYMENT PROCEDURE.** Compensation for all work, services, or products called for under this Agreement shall consist of payments in the amounts outlined in CONSULTANT's Proposal(s) for specific projects; said payments shall be paid in accordance with CONSULTANT's Rate Schedule. In no case shall CONSULTANT receive more than **Two Hundred Thousand Dollars (\$200,000.00)** for all work performed under this Agreement.

CITY will pay CONSULTANT within 30 days after CONSULTANT submits an itemized invoice for the portions of the Scope of Work completed and that invoice is approved by CITY. The Compensation will be the total amount paid to CONSULTANT for performing the Scope of Work and includes, but is not limited to, all out-of-pocket costs and taxes. CITY will pay no other compensation to CONSULTANT unless otherwise agreed to in writing by the parties.

3. **TERM.** Unless terminated sooner as set forth herein, this Agreement shall terminate on June 30, 2025.
4. **TERMINATION FOR CAUSE.** If at any time CITY becomes dissatisfied with the CONSULTANT's performance under this Agreement, CITY may terminate this Agreement after providing CONSULTANT with ten-days written notice.
5. **STARTING WORK.** CONSULTANT shall not begin work until authorized to do so in writing by CITY. No work will be authorized before the Effective Date.
6. **TIME FOR COMPLETION.** CONSULTANT shall complete all assigned tasks as set forth in the CITY's Request for Proposal for a specific project.

7. CONTRACT ADMINISTRATOR.

CITY's Contract Administrator is:

Sameena Gill, Civil Engineer III
City of Bakersfield
Water Resources Department
1000 Buena Vista Road
Bakersfield, California 93311
Telephone: (661) 326-3715
Email: sgill@bakersfieldcity.us

CONSULTANT's Project Manager shall be designated as:

Jeff Eklund
Provost & Pritchard Engineering Group, Inc. dba Provost & Pritchard
Consulting Group
1800 30th Street, Suite 280
Bakersfield, CA 93301
Telephone: (661) 616-5900
Email: jeklund@ppeng.com

The Contract Administrator and the Project Manager shall be the primary contact persons for CITY and CONSULTANT, respectively.

- 8. COMPLIANCE WITH ALL LAWS.** CONSULTANT shall, at CONSULTANT's sole cost, comply with all applicable requirements of Municipal, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force including, without limitation, obtaining a City of Bakersfield business tax certificate (Bakersfield Municipal Code Chapter 5.02) where required.

- 9. INDEPENDENT CONTRACTOR.** This Agreement calls for CONSULTANT's performance of the Scope of Work as an independent contractor. CONSULTANT is not an agent or employee of CITY for any purpose and is not entitled to any of the benefits provided by CITY to its employees. This Agreement shall not be construed as forming a partnership or any other association with CONSULTANT other than that of an independent contractor.

10. **DIRECTION.** CONSULTANT retains the right to control or direct the manner in which the services described herein are performed.
11. **EQUIPMENT.** CONSULTANT will supply all equipment, tools, materials and supplies necessary to perform the services under this Agreement.
12. **KEY PERSONNEL.** At the request of CITY, CONSULTANT shall name all key personnel to be assigned to perform the Scope of Work. All key personnel shall be properly licensed and experienced for the work to be performed under this Agreement. CONSULTANT shall provide background for each of the key personnel including, without limitation, resumes and work experience performing work similar to the Scope of Work. CITY reserves the right to approve key personnel. Once the key personnel are approved, CONSULTANT shall not change such personnel without CITY's written approval.
13. **LICENSES.** CONSULTANT shall, at CONSULTANT's sole cost and expense, have at the time of bidding or proposal submission and shall keep in full force and effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for CONSULTANT to practice its profession in the State of California and perform the Scope of Work. CONSULTANT must also ensure that all employees or subcontractors assigned to perform any portion of the Scope of Work are properly licensed. If CONSULTANT is a corporation, at least one officer or key employee shall hold the required licenses or professional degrees. If CONSULTANT is a partnership, at least one partner shall hold the required licenses or professional degrees. CONSULTANT must provide proof that the requirements of this section are met when requested by CITY.
14. **CONFLICTS OF INTEREST.** CONSULTANT hereby represents that both corporately and individually the firm and its employees and subconsultants:
- 14.1 Do not have, and will not have, financial interest in either the success or failure of any project which is dependent upon CONSULTANT's performance of the Scope of Work; and
- 14.2 Are not currently, and will not be, employed by or under contract to any contractor who may be awarded the contract to construct the Project.
15. **SB 854 COMPLIANCE.** To the extent Labor Code Section 1771.1 applies to this Agreement, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, be subject to the requirements of Section 4104 of the Public Contractor Code, or engage in the performance of any contractor for public work, as defined in this chapter, unless currently

registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contractor is awarded. The prime contractor is required to post job site notices in compliance with Title 8 California Code of Regulations Section 16451. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

16. **ACCEPTANCE OF WORK.** CITY's acceptance of work or payment for work shall not constitute a waiver of any portion or any provision of this Agreement.

17. **NO WAIVER OF DEFAULT.** The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

18. **INSURANCE.**

18.1 **Types and Limits of Insurance.** In addition to any other insurance or security required under this Agreement, CONSULTANT must procure and maintain, for the duration of this Agreement, the types and limits of insurance below ("Basic Insurance Requirements").

18.1.1 **Professional liability insurance,** providing coverage on claims made basis for errors and omissions with limits of not less than \$1,000,000 per occurrence.

18.1.2 **Automobile liability insurance,** providing coverage for owned, non-owned, and hired autos on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than \$1,000,000 per occurrence.

18.1.3 **Commercial general liability insurance,** unless otherwise approved by CITY's Risk Manager, providing coverage on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than \$1,000,000 per occurrence. The policy must:

18.1.3.1 Provide contractual liability coverage for the

terms of this Agreement;

18.1.3.2 Provide products and completed operations coverage;

18.1.3.3 Provide premises, operations, and mobile equipment coverage; and

18.1.3.4 Contain an additional insured endorsement in favor of CITY and its mayor, council, officers, agents, employees, and designated volunteers.

18.1.4 **Workers' compensation insurance** with limits of not less than \$1,000,000 per occurrence. In accordance with the provisions of Labor Code Section 3700, every contractor will be required to secure the payment of compensation to his employees. Pursuant to Labor Code Section 1861, CONSULTANT must submit to CITY the following certification before beginning any work on the improvements:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contractor.

By executing this Agreement, CONSULTANT is submitting the certification required above.

The policy must contain a waiver of subrogation in favor of CITY and its mayor, council, officers, agents, employees, and designated volunteers.

18.2 General Provisions Applying to All Insurance Types.

18.2.1 All policies required of CONSULTANT must be written on a first-dollar coverage basis, or contain a deductible provision. Subject to CITY's advance approval, CONSULTANT may utilize a self-insured retention in any or all of the policies provided, but the policy or policies may not contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured or by any means

including other insurance or which is intended to defeat the intent or protection of an additional insured.

- 18.2.2** Except for professional liability insurance, all policies required of CONSULTANT must be primary insurance as to CITY and its mayor, council, officers, agents, employees, or designated volunteers and any insurance or self-insurance maintained by CITY and its mayor, council, officers, agents, employees, and designated volunteers must be excess of CONSULTANT's insurance and must not contribute with it.
- 18.2.3** The insurance required above, except for workers' compensation insurance, must be placed with insurers with a Best's rating as approved by CITY's Risk Manager, but in no event less than A-:VII. Any deductibles, self-insured retentions, or insurance in lesser amounts, or lack of certain types of insurance otherwise required by this Agreement, or insurance rated below Best's A-:VII, must be declared prior to execution of this Agreement and approved by CITY in writing.
- 18.2.4** The insurance required in this section must be maintained until the Scope of Work is satisfactorily completed as evidenced by CITY's written acceptance. All policies must provide that there will be continuing liability thereon, notwithstanding any recovery on any policy.
- 18.2.5** Full compensation for all premiums which the CONSULTANT is required to pay to satisfy the Basic Insurance Requirements shall be considered as included in the prices paid for the performance of the Scope of Work, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.
- 18.2.6** It is further understood and agreed by CONSULTANT that its liability to CITY will not in any way be limited to or affected by the amount of insurance obtained and carried by CONSULTANT in connection with this Agreement.
- 18.2.7** Unless otherwise approved by CITY, if any part of the Scope of Work is subcontracted, the Basic Insurance Requirements must be provided by, or on behalf of, all subcontractor even if CITY has approved lesser insurance requirements for CONSULTANT, and all subcontractor must agree in writing to

be bound by the provisions of this section.

19. THIRD PARTY CLAIMS. In the case of public works contracts CITY will timely notify CONSULTANT of third party claims relating to this contract. CITY shall be allowed to recover from CONSULTANT, and CONSULTANT shall pay on demand, all costs of notification.

20. INDEMNITY.

20.1 CONSULTANT shall indemnify, defend, and hold harmless CITY and CITY's officers, agents and employees against any and all liability, claims, actions, causes of action or demands whatsoever against them, arising from CONSULTANT's negligence, fraud, willful misconduct, criminal conduct, errors and omissions, or breaches of contract, or any of them, before administrative or judicial tribunals of any kind whatsoever, arising out of, connected with, or caused by CONSULTANT or CONSULTANT's employees, agents, independent contractors, companies, or subcontractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for CITY's sole active negligence or willful misconduct.

20.2 To the extent Civil Code Section 2782.8 is applicable to this Agreement, the CONSULTANT shall indemnify, defend and hold harmless CITY and CITY's officers, agents and employees against any and all liability, claims, actions, causes of action or demands, against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, that only arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs. The duty to indemnify, including the duty and the cost to defend, is limited as provided in this section. This section shall not be waived or modified by contractual agreement, act, or omission of the parties.

21. ASSIGNMENT. Neither this Agreement nor any rights, interests, duties, liabilities, obligations or responsibilities arising out of, concerning or related in any way to this Agreement (including, but not limited to, accounts, actions, causes of action, claims, damages, demands, liabilities, losses,

obligations, or reckonings of any kind or nature whatsoever, for compensatory or exemplary and punitive damages, or declaratory, equitable or injunctive relief, whether based on contract, equity, tort or other theories of recovery provided for by the common or statutory law) may be assigned or transferred by any party. Any such assignment is prohibited, and shall be unenforceable and otherwise null and void without the need for further action by the non-assigning party or parties.

- 22. CONFIDENTIALITY.** During the term of this Agreement, CONSULTANT may have disclosed to it information of a legal and confidential nature, and such information could severely damage CITY if disclosed to outside parties. Except as otherwise required by law, when informed that information is confidential, CONSULTANT will not disclose to any person, directly or indirectly, either during the term of this Agreement or at any time thereafter, any such information or use such information other than as necessary in the course of this Agreement. All documents CONSULTANT prepares and confidential information given to CONSULTANT under this Agreement are the exclusive property of CITY. Under no circumstances shall any such information or documents be removed from CITY without CITY's prior written consent.
- 23. ACCOUNTING RECORDS.** CONSULTANT shall maintain accurate accounting records and other written documentation pertaining to all costs incurred in performance of this Agreement. Such records and documentation shall be kept at CONSULTANT's office during the term of this Agreement, and for a period of three years from the date of the final payment hereunder, and made available to CITY representatives upon request at any time during regular business hours.
- 24. BINDING EFFECT.** The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the Agreement and their heirs, administrators, executors, personal representatives, successors and assigns.
- 25. CORPORATE AUTHORITY.** Each individual signing this Agreement on behalf of entities represents and warrants that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.
- 26. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be considered as an original and be effective as such.
- 27. EXECUTION.** This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this

Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

28. **EXHIBITS.** In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.
29. **FURTHER ASSURANCES.** Each party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.
30. **GOVERNING LAW.** The laws of the State of California will govern the validity of this Agreement and its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in Kern County, California.
31. **INTERPRETATION.** Whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
32. **MERGER AND MODIFICATION.** This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved by the City Council and signed by all the parties.
33. **NEWS RELEASES/INTERVIEWS.** All news releases, media interviews, testimony at hearings and public comments relating to this Agreement by CONSULTANT shall be prohibited unless authorized by CITY.
34. **NON-INTEREST.** No CITY officer or employee shall hold any interest in this Agreement (California Government Code section 1090).
35. **NOTICES.** All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

**CITY: CITY OF BAKERSFIELD
WATER RESOURCES DEPARTMENT
1000 Buena Vista Road**

Bakersfield, California 93311

CONSULTANT: PROVOST & PRITCHARD CONSULTING GROUP
1800 30TH Street, Suite 280
Bakersfield, California 93301

- 36. RESOURCE ALLOCATION.** All CITY obligations under the terms of this Agreement are subject to the appropriation and allocation of resources by the City Council.
- 37. TITLE TO DOCUMENTS.** All documents, plans, and drawings, maps, photographs, and other papers, or copies thereof prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation, become CITY property.
- 38. TAX NUMBERS.**

CONSULTANT's Federal Tax ID Number 94-2187078

CONSULTANT is a corporation? Yes ☒ No ☐
(Please check one.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

"CITY"
CITY OF BAKERSFIELD

"CONSULTANT"
PROVOST & PRITCHARD CONSULTING GROUP

By: _____
KAREN GOH
Mayor

By: Jeffrey Eklund
Print Name: Jeffrey Eklund
Title: Director of Operations

APPROVED AS TO CONTENT:
WATER RESOURCES DEPARTMENT

By: _____
DANIEL R. MALDONADO
Assistant Water Resources Director

APPROVED AS TO FORM:
VIRGINIA GENNARO
City Attorney

By: _____
MATTHEW COLLOM
Deputy City Attorney I

Insurance: _____

COUNTERSIGNED:

By: _____
RANDY MCKEEGAN
Finance Director

Attachments: Exhibit "A" – RFQ
Exhibit "B" – Consultant's Rate Schedule