



CITY OF MENDOTA

"Cantaloupe Center Of The World"

ROLANDO CASTRO
Mayor

VICTOR MARTINEZ
Mayor Pro Tempore

JESSE MENDOZA

OSCAR ROSALES

ROBERT SILVA

AGENDA MENDOTA CITY COUNCIL

Special City Council Meeting
CITY COUNCIL CHAMBERS

643 QUINCE STREET

January 30, 2018

12:00 PM

VINCE DiMAGGIO
City Manager

JOHN KINSEY
City Attorney

The Mendota City Council welcomes you to its meetings; Regular meetings are scheduled for the 2nd and 4th Tuesday of every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Council may discuss and/or take action on any or all of the items listed on this agenda. **Please turn your cell phones on vibrate/off while in the council chambers.**

Any public writings distributed by the City of Mendota to at least a majority of the City Council regarding any item on this regular meeting agenda will be made available at the front counter at City Hall located at 643 Quince Street Mendota, CA 93640, during normal business hours 8 AM – 5 PM.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

FINALIZE THE AGENDA

1. Adjustments to Agenda.
2. Adoption of final Agenda.
- 3.

CITIZENS ORAL AND WRITTEN PRESENTATIONS

At this time members of the public may address the City Council only on matters listed on the agenda involving matters within the jurisdiction of the City Council. Please complete a "request to speak" form and limit your comments to THREE (3) MINUTES. Please give the completed form to City Clerk prior to the start of the meeting. All speakers shall observe proper decorum. The Mendota Municipal Code prohibits the use of boisterous, slanderous, or profane language. All speakers must step to the podium, state their names and addresses for the record. Please watch the time.

BUSINESS

1. Proposed adoption of **Resolution No. 18-10**, authorizing the City Manager to execute the contract proposal for engineering, surveying and planning services for the reconstruction and replacement of the Mowry Bridge over the Mendota Pool Project.
 - a. *Receive report from City Manager DiMaggio*
 - b. *Inquiries from Council to staff*
 - c. *Mayor opens floor to receive any comment from the public*
 - d. *Council take action as appropriate*

ADJOURNMENT

CERTIFICATION OF POSTING

I, Celeste Cabrera, Deputy City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council special meeting of January 30, 2018, was posted on the outside bulletin board located at City Hall, 643 Quince Street on Monday, January 29, 2018 at 11:30 a.m.



Celeste Cabrera, Deputy City Clerk

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: VINCE DIMAGGIO, CITY MANAGER
SUBJECT: CONSIDERATION OF A CONTRACT WITH PROVOST & PRITCHARD FOR
CONSULTANT SERVICES FOR APPLICATION FOR FEDERAL FUNDS FOR DESIGN
AND REPLACEMENT OF THE MOWRY BRIDGE
DATE: JANUARY 30, 2018

ISSUE

Should the City Council approve the attached resolution authorizing the City Manager to execute a contract with Provost & Pritchard engineers for preparation of an application for federal funds for the replacement of the Mowry Bridge?

BACKGROUND

The City maintains three groundwater wells on the BB Ranch across the Mendota Slough as the City's source of potable water. The wells are accessed from a bridge that spans the Slough. The bridge not only provides access to the well sites, but also carries the City's main water line – a 20" pipe that is physically attached to the side of the bridge.

The bridge was originally constructed with wooden beams (similar to telephone poles), which have severely degraded over the years through rot and damage from beavers. In 2016, the bridge was officially closed to traffic from BB Ranch in an effort to limit the City's liability in the event the bridge failed. This closure is a technical violation of the agreement with BB Ranch, however, Mr. Bill Ward, owner of BB Ranch, has continued to work cooperatively with the City to find a solution to either replace or repair the bridge.

As part of the federal Bureau of Reclamation's (BOR) Reach IIB project, which seeks to realign the Mendota Slough and install fish ladders for the reintroduction of salmon into the San Joaquin River, an opportunity has arisen to apply to federal grant funding to replace the bridge. The BOR needs a structurally sound bridge to move heavy construction equipment to the far side of the Slough bank over the 10-15 life of the Reach IIB project. While the City would technically be the applicant for the funding, the application would be supported by the BOR in furtherance of the Reach IIB project implementation.

This is a rapidly evolving situation as the federal funds in which staff has been directed by the BOR to pursue has a deadline of March 15. Between now and the grant deadline, a full array of engineering schematics and design work is required to be developed and submitted in support of the application.

FISCAL IMPACT

In order to meet the March deadline, the required bridge design and associated engineering work comes at a premium. Provost & Pritchard are acting as the primary consultant with subconsultants under the main contract.

The cost of the design, engineering, and grant submittal is listed as \$134,800. Because this is a task directly related to a capital improvement, the City is able to use Water Enterprise Fund impact fees for the contract expenses. Presently, the City has over \$900,000 in water impact fees funds. No General Fund monies will be used for this task.

However, it is important for the Council to know that while the BOR has strongly encouraged us to apply and will actively support the application, there is a chance that the City will not receive the federal funding, and as such, would receive no benefit for the funds expended. Nevertheless, the opportunity before the City represents the best (and to date, the only) viable solution for the replacement of the Mowry Bridge.

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to execute a contract with Provost & Pritchard for services pertaining to preparation of a federal grant application and the design and engineering of a new Mowry Bridge.



286 W. Cromwell Avenue
Fresno, CA 93711-6162
Tel: (559) 449-2700
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January 29, 2018

Vince DiMaggio, City Manager
City of Mendota
643 Quince Street
Mendota, CA 93640

**RE: Proposal for Engineering, Surveying and Planning Services
Reconstruction and Replacement of the Mowry Bridge
Over the Mendota Pool, Mendota, CA**

Dear Vince:

In response to the grant opportunity presented to the City by the California State Lands Commission (CSLC) in connection with the reconstruction of Reach 2-B of the San Joaquin River, Provost and Pritchard Consulting Group (P&P) is pleased to present this proposal for comprehensive services to prepare the preliminary bridge plans and the accompanying grant application to replace the existing wooden bridge over the Mendota Pool, which has been closed for more than a year due to extreme deterioration of the bridge piers. The new bridge which would have to meet the design requirements of CSLC under the terms of the grant program under consideration, is envisioned to be a pre-cast concrete channel supported by concrete piers, giving it a design life of 75 years.

We understand that this project has a very tight schedule, with final deliverables due to the US Bureau of Reclamation (BOR) by March 15, 2018. Should the BOR grant the funding to reconstruct the bridge, we would then bring you an additional agreement for final design, bidding and construction administration services, which are not included here.

This proposal includes the preliminary design of the bridge replacement, to the 35-percent level. It also includes necessary topographic surveying, environmental clearance and grant preparation services to prepare a complete grant application package in accordance with BOR grant requirements. The structural engineering engineering will be performed by our subconsultant Cornerstone Structural Engineering Group (CSEG). We understand from CSLC that they believe the chances of the City receiving funding are very high, but of course we cannot guarantee what BOR will do.

The services we propose to include are listed and described below, along with our assumptions and the associated fees for P&P and our subconsultant.

Topographical Surveying

In order to locate the bridge and have information to design both the new structure and the transitions to the east and west ends of the bridge, we need precise location and elevation information. Accordingly, we propose the following tasks:

- Establish control points that will be used throughout the project for both design and construction.

G:\Mendota_City of-3336\33361802-Mowry Bridge Reconstruction\PM\Proposal and Fees\180126 Mowry Bridge Grant and Prelim Des Proposal rev.docx

- Locate the existing bridge, including elevations of the bridge deck and location of each existing bridge pile.
- Topographic survey of the existing ground at both ends of the bridge, and for a 300-foot distance in every direction to allow for design of graded transitions to the new bridge, whether it is on the existing alignment or adjacent to the old bridge, either upstream or downstream.
- Take measurements of the bottom of the Mendota Pool along the alignment of the existing bridge, to create a profile of the Pool for use during design.

We propose to complete the Field Survey Phase for the lump sum of **\$5,200**.

Grant Application and Environmental Planning Services

This phase includes preparation of the forms and narratives needed for the BOR grant application, as supplied to the City by CSLC, as detailed below:

- Prepare narrative description of the project, including design requirements, and how environment clearance is expected to be achieved using CSLC's existing CEQA and NEPA documents. Describe benefits to the City, and additional benefits to CSLC and BOR during the Reach 2B Reconstruction, from constructing the bridge proposed on an early schedule.
- Prepare cost estimates for the engineering and other professional fees needed to take the project from the 35% level through construction completion. All of these estimates will be in the form of "cost plus," using the forms, overhead multipliers and profit percentages for each planned staff member, as required by federal procurement regulations.
- The City will prepare the cost estimates for City employees, on the necessary federal forms, for their respective roles in the project and will provide the completed forms to P&P for inclusion in the grant application.
- Incorporate the 35-percent plans and construction cost estimate prepared in the following phase with these deliverables into a complete grant application package. Review with CSLC and BOR staff prior to due date, as allowed by CSLC and BOR staff. Make changes in the final deliverables as recommended by CSLC and BOR.
- Present the package to the Mendota City Council at their regular meeting on March 13. Prepare a resolution for Council approval, approving the grant application and authorizing the City Manager to sign all necessary documents. This meeting date is essential in order to meet the grant due date.
- Deliver the complete grant application to BOR by the due date.

In addition, this phase includes the environmental planning services necessary to provide assurance that the CSLC environmental documents are sufficient to serve for the environmental clearance of the bridge and related work, as detailed below:

- P&P will review CSLC's EIR/S with particular emphasis on the scope of bridge work included in the project description.
- Any differences between the project described in the environmental documents and the project developed under this scope will be identified and brought to the attention of CSLC and the City. Some differences may not make any difference for environmental purposes, however some could affect expected construction impacts.

- If necessary, a plan of action for additional environmental work will be developed and will be included in the proposed work scope for the grant application. This task is anticipated to be a very brief description of the supplemental work that will be required. No supplemental environmental analysis or environmental documents are proposed at this time.

We propose to complete the Grant Application and Environmental Planning Phase for the lump sum of **\$13,700**.

Preliminary Design

This phase includes preparation of the preliminary plans for the bridge and transition approach roads, including supporting geotechnical investigation and a table of contents for the required technical specifications, as detailed below:

- Meet with City staff to discuss the design parameters received from BOR, the conceptual designs prepared in 2015 and information gathered in the topographical survey.
- One unusual design parameter, that the City should be aware of up front, is that CSLC has required that all structures for the San Joaquin River Reach 2B Restoration Project are to be designed to accommodate three feet (3.0 feet) of freeboard and two-and-a-half feet (2.5 feet) of additional subsidence without losing any functionality. For this project, that means the bridge deck will be three to four feet higher than the existing bridge. It will be a much more obvious structure. This requirement would apply no matter the source of bridge funding; it is not coming from the grant requirements but from the BOR design guidelines.
- The outcome of the meeting will be to determine a design direction and preferred conceptual designs. Either one or two designs may be considered at this point, though one will be eliminated along the way and only one design will be presented to BOR in the grant application. Decision points will include types of structure; whether the new bridge will be on the same alignment as the old one, or to one side or the other; location of the raw water line on the new bridge; and generally how the roadway transitions to the new bridge will be constructed. These outcomes will be documented and will be the basis of design for the 35-percent plans. Once the preferred alternative has been selected, no substantial changes can be accommodated within the available schedule.
- No geotechnical engineering will be performed at this time, due to the tight schedule and the uncertainty of environmental clearance for subsurface investigations at this time.
- Geotechnical parameters necessary for bridge design will be assumed based on other geotechnical work performed nearby. Such assumptions are not sufficient for final design. A complete geotechnical report including deep borings to support design of the bridge columns will be required during the final design phase. The team will design in a manner believed to be conservative enough to account for the uncertainty.
- P&P will prepare 35-percent drawings for the east and west transitions to the bridge, based on the alignment and elevation selected for the preferred alternative. These plans will also illustrate necessary realignment of the City's raw water line east and west of the new bridge. Neither these plans nor the CSEG bridge plans described below will include detail plans for the new construction; those are deferred to final design. Design tasks will include the following:
 - Setup alignment to control structural plans (three to five sheets)
 - Grading Plans (four sheets)

- Design of approaches including vertical and horizontal curves (four sheets)
- Alignment and location of metal beam guard rails if needed (two sheets)
- Cover sheet
- Coordination between civil and structural plans
- Table of Contents of Civil technical specifications
- Prepare Preliminary Engineer's Opinion of Probable Construction Costs (PEOPCC) for the work shown on these sheets, and combine with the PEOPCC prepared by CSEG for the bridge structure into an overall PEOPCC for the proposed project, for inclusion in the grant application.), The PEOPCC will include a contingency designed to help assure the requested grant funds are sufficient to get the project completed
- Participation in up to five meetings with the City and/or design team to review and comment on conceptual design and critical design issues.
- CSEG will prepare 35-percent design drawings and supporting documentation illustrating the selected design alternative. Tasks will include:
 - Provide structural input and recommended structural alternatives on issues related to subsidence, site topography, construction staging, etc.
 - Prepare Conceptual (35-percent) Bridge General Plan, including Plan, Elevation and Typical Section for up to two proposed bridge alternatives
 - Prepare Preliminary Engineer's Opinion of Probable Construction Costs for up to two bridge alternatives. The PEOPCC will include a contingency appropriate to the preliminary state of the design and the remaining uncertainties including lack of geotechnical engineering.
 - Provide recommendation for structural system for the bridge superstructure
 - Provide recommendation for structural system for the bridge substructure
 - Constructability considerations including access for construction equipment, cranes, etc.
 - List of critical design issues required for the final design of the bridge
 - Prepare brief Type Selection Memorandum discussing the items above.
 - Participation in up to five meetings with the City and/or design team to review and comment on conceptual design and critical design issues.
- P&P and CSEG staff will meet with City staff and review the 35-percent plans for conformance with the City's direction given at the initial design meeting. Plans will be corrected as required, within the intent of the initial directions. Changes in City design direction may or may not be able to be accommodated within the available schedule, and will be considered as additional services if there is time available to make such changes.
- CSEG will prepare the PEOPCC for the bridge structure, and will provide it to P&P for combination with the rest of the PEOPCC.
- Provide necessary hard copies of the PEOPCC and the 35-percent plans for inclusion in the grant application package.

P&P fees for the Preliminary Design Phase will be the lump sum of \$40,900. CSEG's fee for their work will be \$75,000 plus markup. The total for this phase will therefore be **\$115,900**.

The total amount of this contract, including all subconsultant fees, will be **\$134,800**.

Schedule:

Once we are authorized to proceed, we will move forward with the above scopes. All deliverable are due to be delivered to BOR by March 15, 2018, assuming this proposal is approved and we are released to work by the end of January, 2018.

Assumptions:

- Grant application consists of the documents received from Cristian Gonzalez on January 19, 2018.
- Utility research and coordination is not included in this scope of work.
- Geotechnical investigation and engineering is not included in this scope of work.
- Final Design, including Plans and specifications for bidding purposes, are not included.
- No bidding services are included.
- No construction administration or inspection services are included.
- All structural and grading calculations performed under this scope will be preliminary, based on early design assumptions, and will be subject to change during final design.
- All necessary construction permits will be secured during the final design phase, and such work is not included here.
- Preliminary cost opinions will be based on industry standard guidelines, Caltrans estimating charts, and recent experience with similar projects, using an appropriate contingency to account for the incomplete design and attending uncertainty. Detailed quantities and bid-level estimates are deferred to final design.

Please sign and date below, and on the attached Consultant Services Agreement. The signed documents will be our notice to proceed. We look forward to working on this exciting project.

Client: City of Mendota

By:

Name/Title: Vince DiMaggio,
City Manager

Date Signed:

Provost & Pritchard Engineering Group, Inc.
dba Provost & Pritchard Consulting Group

By:



Name/Title: Matthew W. Kemp, PE, PLS
C66088

Date Signed: January 29, 2018

Client: City of Mendota

By:

Name/Title:

Date Signed:

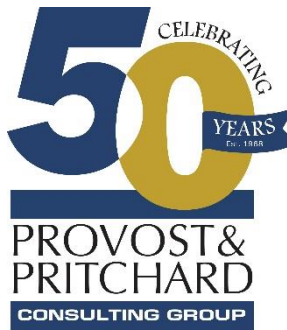
Provost & Pritchard Engineering Group, Inc.
dba Provost & Pritchard Consulting Group

By:



Name/Title: David McGlasson, PE,
PLS Principal in Charge

Date Signed: January 29, 2018



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 Fresno, CA 93711-6162
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CONSULTANT SERVICES AGREEMENT

CSA No: _____

Client	<u>City of Mendota</u>	Proposal No.	<u>333618002</u>
	<u>Vince DiMaggio, City</u>		
Attention	<u>Manager</u>	Telephone	<u>559-655-3291</u>
Bill To	<u>City of Mendota</u>	Fax	_____
Billing Address	<u>643 Quince Street</u>	E-Mail	<u>vincedimaggio@cityofmendota.com</u>
City, Zip Code	<u>Mendota, CA 93640</u>		
	<u>Reconstruction and</u>		
	<u>Replacement of the Mowry</u>		
	<u>Bridge Over the Mendota</u>		
Project Title	<u>Pool.</u>	Location	<u>Mendota, CA</u>

Description of Services:

See attached Proposal "Proposal for Engineering, Surveying and Planning Services Reconstruction and Replacement of the Mowry Bridge Over the Mendota Pool, Mendota, CA", dated January 26, 2018.

The provisions set forth below and on the following paragraphs 1 through 42 are incorporated into and made a part of this Agreement. In signing, the Client acknowledges that they have read and approved all such terms and hires Provost & Pritchard Engineering Group, Inc., dba Provost & Pritchard Consulting Group, (Consultant) to perform the above described services.

TERMS AND CONDITIONS

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

1. In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. The Consultant makes no warranty, express or implied, as to its professional services rendered under this Agreement.
2. Client acknowledges that Consultant is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.
3. Client agrees that if Client requests services not specified in the scope of services described in this agreement, Client will pay for all such additional services as extra services, in accordance with Consultant's billing rates utilized for this contract.

DOCUMENTS

4. Client acknowledges that all reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by Consultant (collectively Work Product) are instruments of service which shall remain the property of Consultant and may be used by Consultant without the consent of Client. Consultant shall retain all common law, statutory law and other rights, including copyrights. Consultant grants Client a perpetual, royalty-free fully paid-up, nonexclusive and irrevocable license to copy, reproduce perform, dispose of, use and re-use the Work Product in connection with the Project, in whole or in part, and to authorize others to do so for the benefit of Client. Client acknowledges that its right to utilize Work Product pursuant to this agreement will continue only

so long as Client is not in default, pursuant to the terms and conditions of this agreement, and Client has performed all its obligations under this agreement.

5. Client agrees not to reuse Work Product, in whole or in part, for any project other than the project that is the subject of this agreement. Client further agrees to waive all claims against Consultant resulting in any way from any unauthorized changes or unauthorized reuse of the Work Product for any other project by anyone on Client's behalf. Client agrees not to use or permit any other person to use versions of Work Product which are not final and which are not signed and stamped or sealed by Consultant. Client shall be responsible for any such use of non-final Work Product. Client hereby waives any claim for liability against Consultant for use of non-final Work Product. If a reviewing agency requires that check prints be submitted with a stamp or seal, those shall not be considered final for purposes of this paragraph.
6. In the event Client (1) makes, agrees to, authorizes, or permits changes in Work Product, or (2) makes, agrees to, authorizes, or permits construction of such unauthorized changes, which changes are not consented to in writing by Consultant, or (3) does not follow recommendations prepared by Consultant pursuant to this agreement, resulting in unauthorized changes to the project, Client acknowledges that the unauthorized changes and their effects are not the responsibility of Consultant. Client agrees to release Consultant from all liability arising from such unauthorized changes, and further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants from and against all claims, demands, damages or costs, including attorneys' fees, arising from such changes.
7. Under no circumstances shall delivery of Work Product for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's unauthorized use or reuse of the Work Product.
8. The Client is aware that differences may exist between electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Consultant and electronic files, the signed sealed hard-copy documents shall govern.

LIMITATIONS

9. Consultant makes no representations concerning soils or geological conditions unless specifically included in writing in this agreement, or by amendments to this agreement. If Consultant recommends that Client retain the services of a Geotechnical Engineer and Client chooses to not do so, Consultant shall not be responsible for any liability that may arise out of the making of or failure to make soils or geological surveys, subsurface soils or geological tests, or general soils or geological testing.
10. Client acknowledges that, unless specifically stated to the contrary in the proposal's description of services to be provided, Consultant's scope of services for this project does not include any services related in any way to asbestos and/or hazardous or toxic materials. Should Consultant or any other party encounter such materials on the job site, or should it in any other way become known that such materials are present or may be present on the job site or any adjacent or nearby areas which may affect Consultant's services, Consultant may, at its option, suspend or terminate work on the project until such time as Client retains a qualified contractor to abate and/or remove the asbestos and/or hazardous or toxic materials and warrant that the job site is free from any hazard which may result from the existence of such materials.

INDEMNIFICATION

11. To the fullest extent allowed by law, Consultant will indemnify and hold harmless, but shall have no duty to defend Client, its officers, directors, employees and agents (collectively, the "Client Indemnitees") from, for and against any and all claims, demands, damages, losses, expenses, liabilities and penalties arising out of or relating to the Project, but only to the extent caused by the negligent or other wrongful acts or omissions of Consultant, its subconsultants, or any person or entity for whose acts or omissions any of them are responsible, or by the failure of any such party to perform as required by this Agreement. To the fullest extent allowed by law, Client will indemnify and hold harmless, but shall have no duty to defend Consultant and its officers, directors, employees and agents from, for and against any and all claims, demands, damages, losses, expenses, liabilities and penalties arising out of or relating to the Project, but only to the extent caused by the negligent or other wrongful acts or omissions of Client or any person or entity for whose acts or omissions it is responsible, or by the failure of any such party to perform as required by this Agreement. The obligations and rights of this Section are in addition to other obligations and rights of indemnity provided under this Agreement or applicable law.

FINANCIAL

12. All fees and other charges due Consultant will be billed monthly and shall be due at the time of billing unless specified otherwise in this agreement. If Client fails to pay Consultant within sixty (60) days after invoices are rendered, Consultant shall have the right in its sole discretion to consider such default in payment a material breach of this entire agreement, and, upon written notice, Consultant's duties, obligations and responsibilities under this agreement may be suspended or terminated for cause pursuant to Sections 26 through 31. In such event, Client shall promptly pay Consultant for all outstanding fees and charges due Consultant at the time of suspension or termination including all costs and expenses incurred in the performance of services up to suspension or termination.
13. Consultant shall not be liable to Client for any costs or damages that may result from the termination or suspension of services under this agreement due to Client's failure to pay Consultant invoices in accordance with the terms of this paragraph. In the event that Consultant agrees to resume terminated or suspended services after receiving full payment of all late invoices, Client agrees that time schedules and fees, as applicable, related to the services will be equitably adjusted to reflect any delays or additional costs caused by the termination or suspension of services.
14. In all cases where the proposal calls for payment of a retainer, that payment shall be made by Client to Consultant prior to commencement of services under this agreement. Upon receipt of retainer payment, the Consultant shall commence services as provided for under this Agreement. Unless otherwise provided for in the project proposal, such retainer shall be held by Consultant throughout the duration of the contract, and shall be applied to the final project invoice, and to any other outstanding AR, including late payment charges, on the project. Any amount of said retainer in excess of the final invoice and other outstanding AR shall be returned to the Client within 30 days of issuance of the final project invoice.
15. Client agrees that all billings from Consultant to Client will be considered correct and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event of a dispute over any billing or portion of billing, Client agrees to pay the undisputed portion of any billings in accordance with the payment terms set forth in Section 18.
16. Client agrees to pay a monthly late payment charge, which will be the lesser of one and one half percent (1-1/2%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing thirty (30) days after the date of the billing. Client acknowledges that payments applied first to unpaid late payment charges and then to unpaid balances of invoices.
17. In the event Consultant's fee schedule changes due to any increase of costs such as the granting of wage increases and/or other employee benefits to field or office employees or any taxes or fees imposed by local, state, or federal government on consultants' fees during the lifetime of this agreement, the new fee schedule shall apply to all subsequent work on time-and-materials contracts.
18. If payment for Consultant's services is to be made on behalf of Client by a third party lender, Client agrees that Consultant shall not be required to indemnify the third party lender, in the form of an endorsement or otherwise, as a condition to receiving payment for services. Client agrees to reimburse Consultant for all collection agency fees, legal fees, court costs, reasonable consultant staff costs and other expenses paid or incurred by Consultant in the event that collection efforts become necessary to enforce payment of any unpaid billings due to Consultant in connection with the services provided in this agreement.

LIMITATION OF LIABILITY

19. **Notwithstanding any other provisions of this Agreement to the contrary, the aggregate liability of the Consultant under this Agreement, whether for breach of contract, tort, strict liability or any other legal theory, will not exceed the total amount of Consultant's compensation for performing services under this Agreement or \$50,000, whichever is greater, however this limitation of Consultant's liability does not apply to third-party claims, or to the Client's reasonable attorneys' fees and expert witnesses' fees and litigation expenses arising out of or related to such third-party claims for which Consultant is liable.**

DISPUTE RESOLUTION

20. In an effort to resolve any conflicts or disputes that arise regarding performance under this agreement by either party, Client and Consultant agree that all such disputes shall be submitted to nonbinding mediation, using a mutually agreed upon mediation services experienced in the resolution of construction disputes. Unless the parties mutually agree otherwise, such mediation shall be a pre-

condition to the initiation of any litigation. The parties further agree to include a similar mediation provision in their agreements with other independent contractors and consultants retained for the project and require them to similarly agree to these dispute resolution procedures. This provision shall not be interpreted to restrict the right of either party to file an action in a court of law, in the County of Fresno, State of California, having appropriate jurisdiction or to preclude or limit the Consultant's right to record, perfect or to enforce any applicable lien or Stop Notice rights.

CONSTRUCTION PROJECTS

21. If the scope of services contained in this agreement does not include construction phase services for this project, Client agrees that such construction phase services will be provided by Client or by others. Client assumes all responsibility for interpretation of the contract documents and for construction observation and supervision and waives any claim against Consultant that may in any way be connected thereto. In addition, Client agrees to indemnify and hold Consultant harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from the modification, clarification, interpretation, adjustments or changes made to the contract documents to reflect changed field or other conditions, except for claims arising from the negligence or other wrongful acts of Consultant, its employees, its subconsultants, or any other person or entity for which Consultant is responsible.
22. Client agrees to include provisions in its contract with the construction contractor to the effect that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or its employees or subconsultants at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.
23. Client agrees to require its contractor and subcontractors to review the plans, specifications and documents prepared by Consultant prior to the commencement of construction phase work. If the contractor and/or subcontractors believe there are deficiencies, conflicts, errors, omissions, code violations, or other deficiencies in the plans, specifications and documents prepared by Consultant, contractors shall notify Client so those deficiencies may be corrected or otherwise addressed by Consultant prior to the commencement of construction phase work.
24. If, during the construction phase of the project, Client discovers or becomes aware of changed field or other conditions which necessitate clarifications, modifications or other changes to the plans, specifications, estimates or other documents prepared by Consultant, Client agrees to notify Consultant and, at Client's option, retain Consultant to prepare the necessary changes or modifications before construction activities proceed. Further, Client agrees to require a provision in its construction contracts for the project which requires the contractor to promptly notify Client of any changed field or other conditions so that Client may in turn notify Consultant pursuant to the provisions of this paragraph.
25. If, due to the Consultant's error, omission or negligence, a required item or component of the Project is omitted from the Consultant's construction documents, the Consultant shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. The Consultant will not be responsible for any cost or expense that enhances the value of the Project.

SUSPENSION AND TERMINATION

26. If the Project or the Consultant's services are suspended by the Client for more than thirty (30) consecutive calendar days, the Consultant shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the Client shall compensate the Consultant for expenses incurred as a result of the suspension and resumption of its services, and the Consultant's schedule and fees for the remainder of the Project shall be equitably adjusted.
27. If the Consultant's services are suspended for more than ninety (90) days, consecutive or in the aggregate, the Consultant may terminate this Agreement upon giving not less than five (5) calendar days' written notice to the Client.

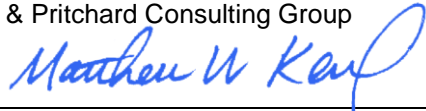
28. If the Client is in breach of the payment terms or otherwise is in material breach of this Agreement, the Consultant may suspend performance of services upon five (5) calendar days' notice to the Client. The Consultant shall have no liability to the Client, and the Client agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the Client. Upon receipt of payment in full of all outstanding sums due from the Client, or curing of such other breach that caused the Consultant to suspend services, the Consultant shall resume services, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.
29. Client acknowledges Consultant has the right to complete all services included in this agreement. In the event this agreement is terminated before the completion of all services, unless Consultant is responsible for such early termination, Client agrees to release Consultant from all liability for services not performed or completed by Consultant and from liability for any third-party reliance, use, interpretation or extrapolation of Consultant's work product. In the event all or any portion of the services by Consultant are suspended, abandoned, or otherwise terminated, Client shall pay Consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein, if any. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by Client as extra services pursuant to Section 26. Client acknowledges if project services are terminated for the convenience of Client, Consultant is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to Section 28.
30. The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Consultant not less than seven (7) calendar days' written notice.
31. In the event of termination of this Agreement by either party, Consultant shall invoice Client for all outstanding services and expenses reasonably incurred by the Consultant in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination. The Client shall within thirty (30) calendar days of termination pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement.

OTHER

32. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and Consultant.
33. This agreement shall not be assigned by either Client or Consultant without the prior written consent of the other.
34. Consultant's or Client's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant. Consultant's or Client's waiver of any breach of this agreement shall not constitute the waiver of any other breach of the Agreement.
35. Client and Consultant agree that if any term or provision of this Agreement is determined to be illegal, in conflict with any law. void or otherwise unenforceable, and if the essential terms and provisions of this Agreement remain unaffected, then the validity of the remaining terms and provisions will not be affected and the offending provision will be given the fullest meaning and effect allowed by law.
36. This agreement shall be governed by and construed in accordance with the laws of the State of California.
37. Within the limits of the approved scope and fee, Consultant may engage the services of any subconsultants when, in the Consultant's sole opinion, it is appropriate to do so. Such subconsultants may include testing laboratories, geotechnical engineers and other specialized consulting services deemed necessary by the Consultant to carry out the scope of the Consultant's services.
38. Consultant shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this agreement if Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against Client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with final order or judgment issued by the Bankruptcy Court.
39. This agreement shall not be construed to alter, affect or waive any design professional's lien, mechanic's lien or stop notice right, which Consultant may have for the performance of services pursuant to this agreement. Client agrees to provide to Consultant the current name and address of

the record owner of the property upon which the project is to be located. Client also agrees to provide Consultant with the name and address of any and all lenders who may loan money on the project and who are entitled to receive a preliminary notice.

40. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. Client agrees that it is the responsibility of Client to maintain in good standing all governmental approvals or permits and to timely apply for any necessary extensions thereof.
41. Consultant and Client each agree to waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with paragraphs 26 through 31, except for termination expenses provided for in said paragraph 31. Client further agrees that to the fullest extent permitted by law, Consultant shall not be liable to Client for any special, indirect or consequential damages whatsoever, whether caused by Consultant's negligence, errors, omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever, including but not limited to, loss of use of equipment or facility, and loss of profits or revenue.
42. This Agreement is the entire Agreement between the Client and the Consultant. It supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by both the Client and the Consultant.

Client	<u>City of Mendota</u>	Provost & Pritchard Engineering Group, Inc., dba Provost & Pritchard Consulting Group
By	_____	By 
Name/Title	_____	Name/Title Matthew W. Kemp, PE, PLS C66088
Date Signed	_____	Date Signed <u>01/29/2018</u>

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA AUTHORIZING
THE CITY MANAGER TO EXECUTE THE
CONTRACT PROPOSAL FOR ENGINEERING,
SURVEYING AND PLANNING SERVICES FOR
THE RECONSTRUCTION AND REPLACEMENT
OF THE MOWRY BRIDGE OVER THE MENDOTA
POOL PROJECT**

RESOLUTION NO. 18-10

WHEREAS, the City of Mendota owns the Mowry Bridge, that provides access to the City's domestic wells and supports a 20" water transmission line, which has been closed due to its current dilapidated condition and the city's inability to fund a replacement or reconstruction; and

WHEREAS, the City was informed that part of the River Restoration Project (Reach IIB) includes construction in the area near the Mowry Bridge and that access to the Mowry Bridge is needed in order to conduct construction activities; and

WHEREAS, on January 12, 2018 members of staff met with representatives from the River Restoration Project and the United States Bureau of Reclamation to discuss an offer from the Bureau to assist in funding the reconstruction and replacement of the Mowry Bridge herein referred to as the "Project"; and

WHEREAS, in order to qualify for funding the City must submit a grant application by March, 2018 that would include preliminary engineering, surveying and planning services for the Project; and

WHEREAS, the City requested and received a proposal from the City's Engineering consultant, Provost and Pritchard, in the amount of \$134,800 for engineering, surveying and planning for the Project; and

WHEREAS, City staff has reviewed the proposal in the amount of \$134,800; and

WHEREAS, City will have to pay for the work initially and await reimbursement from the grant for the "Project"; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mendota that the Council hereby approves the contract proposal and authorizes the City Manager to execute all necessary contract documents.

Rolando Castro, Mayor

ATTEST:

I, Matt Flood, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a special meeting of said Council, held at the Mendota City Hall on the 30th day of January, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Matt Flood, City Clerk