

MID-KAWEAH GROUNDWATER SUSTAINABILITY AGENCY BOARD

SUMMARY MINUTES

July 14, 2020 – 3:00 p.m.

Conducted via Teleconference
Per Executive Order N-29-20

MEMBERS PRESENT: Dennis Mederos, Dave Martin, Steve Nelsen, David Bixler, G. Collins, Howard Stroman

STAFF PRESENT: Aaron Fukuda, Valerie Kincaid, Kathy Artis, Rob Hunt, Trisha Whitfield, Leslie Caviglia, Andrew Munn, Roxanne Yoder

OTHERS PRESENT: Beth Holmes (TID Assessor), Blake Wilbur (MKGSA Advisory Comm. Chair), Tim Leo, Derrick Williams, Mark Larson, Richard Garcia, Cam Tredennick

1. CALL TO ORDER

Chair Mederos opened the meeting at 3:03 p.m.

2. **PUBLIC COMMENT** – The public may comment on any subject within the jurisdiction of the Board, including items on the agenda. Speakers will be allowed three minutes unless otherwise extended by the Board Chair. The Board cannot legally discuss or take official action on items presented under public comment.

Chair Mederos called for comments from any members of the public present at the meeting. None were forthcoming.

3. GENERAL BUSINESS

- a. Approval of Minutes of Regular Meeting on June 9, 2020

It was moved by Director Nelsen, seconded by Director Bixler, and unanimously carried to approve the minutes as presented.

- b. Financial Reports*

- i. Financial Statements – Year-to-Date

K. Artis provided the report for the Board's review and consideration. She pointed out highlights in the balance sheet, profit and loss statement, and list of recent transactions. Following the report, it was moved by Director Bixler, seconded by Director Stroman, and unanimously carried to accept the report as presented.

- c. Legal Counsel Report
 - V. Kincaid advised that she had no update.
- d. MKGSA GSP Review Status
 - i. Public Comments on GSP*
 - A. Fukuda provided an update to the Board advising that eight comment letters have been received and provided an overview of the proposed review process.
- e. MKGSA Consultant
 - i. Montgomery & Associates – Task Order No. 2: Assistance on GSP Comments*
 - A. Fukuda provided an update to the Board on the Task Order for time and materials in the amount of \$19,000. He noted that a revision to the 2020-21 budget is necessary to include this amount. It was moved by Director Nelson, seconded by Director Collins and unanimously carried to approve the item as presented.
 - ii. Public Relations / Outreach – Stantec*
 - A. Fukuda provided an updated to the Board on the Public Relations Outreach at a cost not to exceed \$10,000. No action was required.
 - iii. Other Consulting Needs
 - 1. Engineering
 - A. Fukuda provided a brief update on the draft agreement with Provost and Pritchard advising it should be ready for the August meeting. No action was required.
- f. Kaweah Subbasin Coordination
 - i. Well Videoing Service
 - A. Fukuda provide an update to the Board on the completed data transfer from GEI, the water budget and annual plan work, on the Prop 68 Grant, the well video pilot program, the July 21 RCIS meeting, the Tulare Irrigation District Water Marketing Grant, the USBR Contract, the CVSALTS Program as well as the bi-weekly Stanford SkyTEM meetings. No action was required.
- g. Groundwater Resources Association MKGSA Presentation
 - A. Fukuda provided an updated to the Board. No action was required.

4. STAFF UPDATE, DISCUSSION AND RECEIVE DIRECTION, IF NECESSARY, REGARDING COVID-19

5. BOARD/STAFF UPDATES, FUTURE AGENDA ITEMS OR OTHER TOPICS OF INTEREST

6. CLOSED SESSION

Chair Mederos advised that closed session was not necessary.

- a. Gov't Code §54956.9 – Anticipated Litigation: One Case

7. ADJOURNMENT Next Regular Meeting – August 11, 2020

Chair Mederos adjourned the meeting at 3:56_ p.m.

Groundwater Sustainability Agency
Board Chair

Attest:

Groundwater Sustainability Agency
Board Secretary

Mid-Kaweah GSA
Agenda Item Report

August 11, 2020

Agenda Item Wording: Fiscal – Financial Statements Year To Date

Report Author: Kathi Artis – Tulare ID

Background Discussion:

The GSA's financial policies require a financial overview and Profit & Loss Statement through the end of the previous month are to be provided to the Board of Directors at each Board meeting.

Attachments:

Balance Sheet as of July 31, 2020

Profit & Loss Statement for period July 1, 2020 through July 31, 2020

Transaction Detail by Account for checking and money market accounts for period July 1, 2020 through July 31, 2020

Mid-Kaweah Groundwater Sustainability Agency

Balance Sheet

08/03/20

As of July 31, 2020

Cash Basis

	<u>Jul 31, 20</u>
ASSETS	
Current Assets	
Checking/Savings	
Checking	1,312.04
Money Market	159,269.28
Total Checking/Savings	<u>160,581.32</u>
Total Current Assets	<u>160,581.32</u>
TOTAL ASSETS	<u>160,581.32</u>
LIABILITIES & EQUITY	
Equity	
Retained Earnings	183,897.75
Net Income	-23,316.43
Total Equity	<u>160,581.32</u>
TOTAL LIABILITIES & EQUITY	<u>160,581.32</u>

Mid-Kaweah Groundwater Sustainability Agency

Profit & Loss

July 1, 2020 through July 31, 2020

	July 1, 2020 - July 31, 2020	2020-2021 Budget	Variance
Ordinary Income/Expense			
Income			
Call For Funds	-	338,594.00	(338,594.00)
Prop 1 GSP Grant	-	150,000.00	(150,000.00)
Prop 1 GSP Grant Disbursements	-		-
Total Income	-	488,594.00	(488,594.00)
Expense			
Net Reimbursements To/From Other GSAs	-	279,000.00	(279,000.00)
Annual Monitoring Report	-	-	-
Audit Expense	-	4,100.00	(4,100.00)
Conference & Meetings	-	-	-
Consulting Fees			
Montgomery & Associates	3,120.00	200,000.00	(196,880.00)
Paul Hendrix	300.00	-	300.00
Consulting Fees-GEI-Sub-Basin Coordination	10,312.38	-	10,312.38
Total Consulting Fees	13,732.38	200,000.00	(186,267.62)
Flight Lines	-	-	-
Insurance	-	5,000.00	(5,000.00)
Legal	3,990.00	50,000.00	(46,010.00)
Membership Dues	-	-	-
Office Expense	405.54	2,700.00	(2,294.46)
Payroll, Benefits and Travel Expenses	5,211.73	165,000.00	(159,788.27)
Rent	-	-	-
Total Expense	23,339.65	705,800.00	(682,460.35)
Net Ordinary Income/(Loss)	(23,339.65)	(217,206.00)	193,866.35
Other Income/Expense			
Other Income			
Interest Income	23.22	300.00	(276.78)
Total Other Income	23.22	300.00	(276.78)
Net Other Income	23.22	300.00	(276.78)
Net Income/(Loss)	(23,316.43)	(216,906.00)	193,589.57

Mid-Kaweah Groundwater Sustainability Agency Transactions by Account

As of July 31, 2020

Type	Date	Num	Name	Description	Account	Receipts	Disbursements
Checking							
	07/22/2020			Service Charge	Office Expense		(16.18)
Transfer	07/31/2020			Funds Transfer	Money Market	23,000.00	
Check	07/31/2020	1190	Tulare Irrigation District	Payroll Expenses for Aaron - June	Payroll Expenses		(5,211.73)
				O'Laughlin & Paris - April 2020	Legal		(3,990.00)
				Paul Hendrix	Consulting Fees		(300.00)
				Montgomery & Associates	Consulting Fees		(3,120.00)
				WIX.com and Go Daddy .com Domain renewal	Office Expense		(389.36)
Check	07/31/2020	1191	GEI Consultants	Consulting Fees - June 2020	Sub-Basin Coordination		(10,312.38)
Total Checking						23,000.00	(23,339.65)
Money Market							
Transfer	07/31/2020			Funds Transfer	Checking		(23,000.00)
Deposit	07/31/2020			Interest	Interest Income	23.22	
Total Money Market						23.22	(23,000.00)
						23,023.22	(46,339.65)



CUTTONE & MASTRO
CERTIFIED PUBLIC ACCOUNTANTS

August 3, 2020

Mid-Kaweah Groundwater Subbasin Joint Powers Authority
6826 Avenue 240
Tulare, CA 93274

We are pleased to confirm our understanding of the services we are to provide Mid-Kaweah Groundwater Subbasin Joint Powers Authority for the year ended June 30, 2020. We will audit the financial statements of the governmental activities including the related notes to the financial statements, which collectively comprise the basic financial statements of Mid-Kaweah Groundwater Sub basin Joint Powers Authority as of and for the year ended June 30, 2020. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement Mid-Kaweah Groundwater Subbasin Joint Powers Authority's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to Mid-Kaweah Groundwater Subbasin Joint Powers Authority's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis.
2. Budget Comparison Schedules

Audit Objective

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. We will issue a written report upon completion of our audit of Mid-Kaweah Groundwater Subbasin Joint Powers Authority's financial statements. Our report will be addressed to management and the governing board of Mid-Kaweah Groundwater Subbasin Joint Powers Authority. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or may withdraw from this engagement.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Audit Procedures—Internal Control

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of Mid-Kaweah Groundwater Subbasin Joint Powers Authority's compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Other Services

We will also assist in preparing the financial statements of Mid-Kaweah Groundwater Subbasin Joint Powers Authority in conformity with U.S. generally accepted accounting principles based on information provided by you. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statement services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities

Management is responsible for designing, implementing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including monitoring ongoing activities; for the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws and regulations.

You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to [include the audited financial statements with any presentation of the supplementary information that includes our report thereon or make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon]. Your responsibilities include acknowledging to us in the representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

You agree to assume all management responsibilities for financial statement preparation services and any other nonattest services we provide; oversee the services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

Engagement Administration, Fees, and Other

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

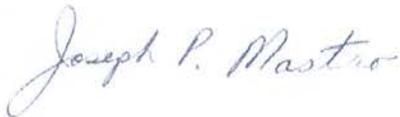
The audit documentation for this engagement is the property of Cuttone & Mastro CPA's and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the State Controller or its designee. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Cuttone & Mastro CPA's personnel.

Joseph P. Mastro is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

We estimate that our fee for the audit and other services will range from \$3,500 to \$5,500. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the engagement. If significant additional time is necessary, we will keep you informed of any problems we encounter and our fees will be adjusted accordingly. Our fees for these services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, typing, postage, travel, copies, telephone, etc.) Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit.

We appreciate the opportunity to be of service to Mid-Kaweah Groundwater Subbasin Joint Powers Authority and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Respectfully yours,



Joseph P. Mastro
of Cuttone & Mastro CPA's

RESPONSE:

This letter correctly sets forth the understanding of Mid-Kaweah Groundwater Subbasin Joint Powers Authority.

Management Signature:

Title:

Date:

Mid-Kaweah GSA

Agenda Item Report

August 4, 2020

Agenda Item 3.f.i.: Provost & Pritchard Master Consulting Services Agreement for Technical Support

Staff Recommendation:

It is recommended that the MKGSA Board approve the Provost & Pritchard Master Consulting Services Agreement for Technical Support.

Background:

The MKGSA is in the process of identifying a team of consultants to assist with the implementation of the MKGSA GSP. A necessary component of the consulting team is an engineer with local experience in the design of water management facilities and water management activities. Provost & Pritchard has a long history in Tulare County, working for clients in the water resources arena. Specifically, the Tulare Irrigation District has used Provost & Pritchard on many notable projects, which include construction projects and water resources investigations. Lastly, Provost & Pritchard is familiar with SGMA and SGMA compliance within the Kaweah Subbasin, as they are currently consultants for the East Kaweah GSA and are helping the three GSAs on many subbasin level items.

The MKGSA Staff believes that the services of Provost and Pritchard will be vital in analyzing our water budget, water allocation framework, and other engineering aspects associated with SGMA implementation. Although the individual needs have not been identified, we believe that in the near future, we will be requesting Provost & Prichard to begin assisting with water budget discussions and other technical issues.

Our point of contact for this contract will be Matt Klinchuch. Mr. Klinchuch is very familiar with SGMA, the Kaweah Subbasin, and Tulare Irrigation District.

This contract has been developed as a Time and Materials contract not to exceed \$50,000 for the Fiscal Year 2020-2021. As we need assistance on engineering activities, Provost and Pritchard will develop individual Task Orders that will be approved by the Board.

Recommended Motion:

I move to approve the Provost & Prichard Master Consulting Services Agreement for Technical Support.

Attachment:

Provost & Pritchard Master Consulting Services Agreement for Technical Support

August 5, 2020

Aaron Fukuda
Mid-Kaweah Groundwater Sustainability Agency
6826 Avenue 240
Tulare, CA 93274

**Subject: Master Consulting Services Agreement for Technical Support
Tulare County, California**

Dear Mr. Fukuda:

Thank you for the opportunity to submit this proposal to provide our technical support services for the Mid-Kaweah Groundwater Sustainability Agency. This proposal discusses our understanding of the project, recommends a scope of services together with associated fees, deliverables and approximate schedules, sets forth our assumptions and discusses other services that may be of interest as the project proceeds.

Project Understanding

We understand that the Mid-Kaweah Groundwater Sustainability Agency (**Agency**) would like to hire a consultant for technical assistance. During project development there may be additional tasks (i.e. design work, analyses, reports.) that may be required. At the appropriate time, we will work to develop additional scope and budgets via task orders, as required. The intent of this proposal is to establish a Master Services Agreement that can be amended as needs arise.

Scope of Services

The current scope for this proposal is described below.

Phase CS: Consulting Services

The scope under this phase is anticipated to include the following:

1. Analysis, hydrologic and hydrogeologic evaluations and reports, and design work specific to projects and efforts described in the Groundwater Sustainability Plan.
2. Coordination with the Agency, consultant(s), State representatives, and other Groundwater Sustainability Agencies.

Professional Fees (Time & Materials)

Provost & Pritchard will perform the services on a time and materials basis, in accordance with our Standard Fee Schedule in effect at the time services are rendered. A \$50,000 budget is proposed for assisting the Agency over the next 11 months. These fees will be invoiced monthly as they are accrued. Reimbursable expenses will be invoiced in addition to professional fees and are included in the estimated budget. As the technical assistance progresses, we can work with the Agency to develop task orders to modify scope and budget. If it appears we will exceed the budget, we will notify you in writing and not work beyond the budget without authorization.

Schedule

Once we receive an executed copy of this Proposal together with the signed Master Services Agreement, and are authorized to proceed, we can begin to assist the Agency. It is understood the Master Services Agreement will terminate on June 30, 2021, corresponding with the end of the Agency fiscal year. This initial agreement may be extended beyond June 30, 2021, pending approvals from Agency Staff and Board.

Assumptions

- This proposal is based on the understanding that it is a Master Services Agreement (20-324) and that tasks and deliverables outside of ongoing Consulting Services will be handled through agreed upon amendments directing scope and budget for the specific tasks needed.

Additional Services

Provost & Pritchard offers a full range of consulting services to our clients. A variety of services can be provided by Provost & Pritchard or in partnership with subconsultants upon your request and approval of a scope and budget amendment.

Terms and Conditions

If this proposal is acceptable, please sign this proposal and the attached Master Services Agreement, and return a copy to our office. These documents will serve as our Notice to Proceed. This proposal is valid for 30 days from the date above.

Sincerely Yours,

Provost & Pritchard Consulting Group



Matt Klinchuch, RCE 83357
Senior Engineer



Donald Ikemiya, RCE 56630
Vice President

Terms and Conditions Accepted

By Mid-Kaweah Groundwater Sustainability Agency

Signature

Printed Name

Title

Date



286 W. Cromwell Avenue
Fresno, CA 93711-6162
(559)449-2700
FAX (559)449-2715
www.ppeng.com

CONSULTANT SERVICES AGREEMENT

CSA No: **20-324**

Client	<u>Mid-Kaweah Groundwater Sustainability Agency</u>	Proposal No.	<u>20-324</u>
Attention	<u>Aaron Fukuda Mid-Kaweah Groundwater Sustainability Agency</u>	Telephone	<u>(559) 686-2166</u>
Bill To	<u>6826 Avenue 240</u>	Fax	<u></u>
Billing Address	<u>Tulare, CA 93274</u>	E-Mail	<u></u>
City, Zip Code	<u>Master Services Agreement for Technical Support</u>	Location	<u>Tulare County California</u>
Project Title			

Description of Services: Under this Master Services Agreement, requested scope of services with corresponding budget and schedule are to be approved through Task Orders from the Mid-Kaweah GSA.

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 Mid-Kaweah Groundwater Sustainability Agency

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

By _____

By 

Name/Title _____

Name/Title Donald Ikemiya, RCE 56630 Vice President

Date Signed _____

Date Signed August 5, 2020

Mid-Kaweah GSA

Agenda Item Report

August 5, 2020

Agenda Item 3.g.i.1.: Kaweah Delta Water Conservation District Consultant Services Cost-Sharing Agreement

Staff Recommendation:

It is recommended that the MKGSA Board approve the Kaweah Delta Water Conservation District Consultant Services Cost-Sharing Agreement

Background:

Since 2010 the Kaweah Delta Water Conservation District (KDWCD) has retained the consultant Davids Engineer to conduct evapotranspiration (ET) evaluations via satellite imagery to estimate the amount of groundwater that is pumped in the KDWCD and the Kaweah Subbasin. This method and the estimates were used by GEI during the development of the MKGSA GSP, specifically to develop the Water Budget and the Water Allocation Framework.

The method has been shown to be a reasonably accurate representation of pumping on a larger scale (not the field scale) and can be done quickly. Also, the costs associated with this method is reasonably affordable, in the realm of \$20,000 per year.

Moving into the implementation of the MKGSA GSP, we envision that the Davids Engineering ET calculations will be used to estimate pumping and be reported to DWR, which is required by SGMA. KDWCD approached the GSAs in the Kaweah Subbasin about cost-sharing in the annual calculations, as they have been paying the costs up to this point. The MKGSA would be responsible for 25% of the cost, which is estimated to be approximately \$5,000 per year.

Recommended Motion:

I move to approve the Kaweah Delta Water Conservation District Consultant Services Cost-Sharing Agreement.

Attachment:

Kaweah Delta Water Conservation District Consultant Services Cost-Sharing Agreement

KAWEAH DELTA WATER CONSERVATION DISTRICT CONSULTANT SERVICES - COST-SHARING AGREEMENT

This Cost Sharing Agreement ("Agreement") is made and entered into this _____ day of _____, 2020 (Effective Date) between the undersigned with respect to the following facts:

RECITALS

A. Since 2010, Kaweah Delta Water Conservation District ("KDWCD") has retained consultant services for the development of evapotranspiration and applied water estimates using remote sensing. The purpose for this project was the delivery of annual estimates of crop water demands within the Kaweah Groundwater Subbasin.

B. KDWCD and the other undersigned parties (collectively referred to as "Parties" and individually as "Party") hereby agree to share the consultant costs for the continued development and delivery of evaporation and applied water estimates within the Kaweah Groundwater Subbasin pursuant to the below terms.

AGREEMENT

The Parties agree as follows:

1. Scope of Services: KDWCD will serve as contract manager for consultant services to produce annual estimates of evapotranspiration and applied water to croplands within the Kaweah Groundwater Subbasin. Annual reports and data sets will occur on a calendar year basis for delivery to all parties at the beginning of the following calendar year. Upon review and acceptance of the reports and data sets, KDWCD will deliver the same to the Parties at the physical or email addresses listed in the signature blocks to this agreement unless they notify KDWCD of an alternate recipient of the data.

2. Cost Sharing: Costs incurred by KDWCD in providing the annual scope of services described herein will be tracked and recorded for the period that coincides with consultant services incurred to provide an annual report and data set. Each Party agrees to pay a percentage share of the consultant costs incurred by KDWCD according to the allocations set forth on Exhibit A. KDWCD will send invoices to each Party for their percentage share after delivery of the annual reports and data sets and each Party agrees to pay its respective invoice received from KDWCD within 30 calendar days of the invoice date.

3. Indemnification: Each Party hereby agrees to defend, indemnify, and hold free and harmless ("Indemnifying Party") any other Party from and against any and all liability, expense – including defense costs and legal fees – and claims for damages of any nature whatsoever, arising from or connected with Indemnifying Party's activities under this Agreement.

4. Notices: Any notice required to be given under this Agreement may be given via first-class mail, addressed and delivered as set forth below in the signature blocks for each Party, or by email. Email communication shall be considered written communication for all purposes of this Agreement.

5. Counterparts: This Agreement may be executed in counterparts and such counterparts shall constitute one and the same instrument. Two (2) duplicate originals of this Agreement shall be executed in full, each of which shall be deemed an original. One original shall be delivered to KDWCD.

6. Authority: Each Party represents to the other that it has the authority to enter into this Agreement, and that the individual signing this Agreement on behalf of the Party has the authority to execute this Agreement and to bind the Party to the terms and conditions of this Agreement.

7. Termination: Any Party may terminate its participation in this agreement upon 30 day's written notice given to all other Parties. Post-termination, the costs that would otherwise be attributable to the terminating party under this agreement shall be allocated equally among the non-terminating parties. Termination will not absolve the terminating party from responsibility to pay for annual reports and data sets already received by that party.

8. General: This Agreement (a) is the final and complete expression of the agreement between the Parties regarding its subject matter and may not be contradicted by evidence of any prior or contemporaneous oral or written agreement or representation, (b) may not be amended, nor may any of its provisions be waived, except by an instrument in writing signed by all Parties hereto, (c) will be construed according to the laws of the State of California, and (d) has been jointly negotiated and drafted, and Civil Code section 1654 will not apply in its interpretation. Nothing in this Agreement is intended to or may be construed to (a) establish a partnership, joint venture, business association or other entity between or among the Parties, or (b) make any Party the agent of any other Party. No Party to this Agreement may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party. The Parties shall take such further action and execute and deliver such additional documents as may be reasonably required to effectuate the terms and conditions of this Agreement.

The parties have entered into this Agreement as of the Effective Date set forth above.

Kaweah Delta Water Conservation District

By: _____

Address: _____

Title: _____

Address: _____

Date: _____

Email: _____

Greater Kaweah Groundwater Sustainability Agency

By: _____ Address: _____
Title: _____ Address: _____
Date: _____ Email: _____

Mid-Kaweah Groundwater Sustainability Agency

By: _____ Address: _____
Title: _____ Address: _____
Date: _____ Email: _____

East-Kaweah Groundwater Sustainability Agency

By: _____ Address: _____
Title: _____ Address: _____
Date: _____ Email: _____

EXHIBIT A

Cost-sharing

Kaweah Delta Water Conservation District	25%
Greater Kaweah Groundwater Sustainability Agency	25%
Mid-Kaweah Groundwater Sustainability Agency	25%
East-Kaweah Groundwater Sustainability Agency	25%
Total	100%