

SUBJECT: AWARD OF CONTRACT – AIRPORT CONSULTANT AGREEMENT

SOURCE: Public Works Department - Engineering Division

COMMENT: On July 17, 2014, staff received one proposal in response to the City's "Call for Consultant Services." The lone proposal was received from Tartaglia Engineering of Atascadero, California. Tartaglia Engineering is currently the City's Airport Consultant. Airport and Engineering staff are pleased with Tartaglia Engineering's past efforts and understanding of Federal Aviation Administration (FAA) rules and requirements.

The Consultant Service Agreement, if it is awarded, identifies three phases of work that will be required of the consultant. Typical tasks for each phase are summarized below:

**Phase 1** – Perform special studies to determine scope and feasibility of various projects associated with and outside the Ten Year Capital Improvement Project list, locate and apply for grants offered by the FAA and other aviation related entities to fund selected construction projects.

**Phase 2** – Provide design services leading to the full development of plans and specifications for selected construction projects noted in the Ten Year Capital Project list and other construction projects that the City identifies as necessary for the orderly development of the Airport.

**Phase 3** – Provide construction management and engineering support, field surveying, inspection, contract administration, change orders and preparation of project "close-out" documents.

The consultant's fee will be determined on a "task by task" basis negotiated by the City's Airport Management team consisting of the Finance Director, Airport Operations Manager and the Public Works Director. Funding for the service agreement is from the Airport Operating Fund.

RECOMMENDATION: That the City Council:

1. Award the Airport Constant Service Agreement to Tartaglia Engineering of Atascadero, CA; and
2. Authorize the Mayor to execute the Consultant Service Agreement.

ATTACHMENT: Consultant Service Agreement (CSA)

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Dir Bgr Appropriated/Funded MY CM [Signature]

Item No. 10

**CONSULTANT SERVICE AGREEMENT (CSA)**  
**PORTERVILLE MUNICIPAL AIRPORT IMPROVEMENTS**

**THIS AGREEMENT**, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **City of Porterville**, hereinafter referred to as “City,” and \_\_\_\_\_, hereinafter referred to as “Engineer.”

**WITNESSETH**

**WHEREAS**, City is authorized and empowered to employ engineering consultants and specialists in the performance of its duties and functions; and

**WHEREAS**, based on the successful completion of the Consultant Selection Process in accordance with FAA requirements and guidelines, City is authorized to employ an engineering consultant for a period of up to five years from the date of this agreement; and

**WHEREAS**, City, through this CSA, has the desire to secure one firm for the duration of this agreement through multiple Authorizations of Service (AOS), with each AOS being project specific; and

**WHEREAS**, Engineer represents it is qualified and willing to provide such services pursuant to terms and conditions of this Agreement:

**NOW, THEREFORE, BE IT AGREED**, by and between City and Engineer as follows:

**I. AUTHORIZATION OF SERVICE (AOS)**

- A. Engineer agrees to prepare and provide AOS documentation when requested by City.
- B. Each AOS will include the following exhibits, at a minimum:
  - Exhibit A: A detailed scope of the proposed project or undertaking, jointly prepared by and agreed upon by Engineer and City representatives.
  - Exhibit B: A detailed scope of services prepared by Engineer reflecting all tasks necessary to complete the project or undertaking.
  - Exhibit C. A detailed cost breakdown reflecting Engineer’s individual fee to perform all tasks, and the total, not-to-exceed amount for all contracted services.
  - Exhibit D. A fee schedule reflecting the unit costs for services, supplies, and incidentals and sufficient additional information for City to perform an Independent Cost Estimate (ICE) for the work, consistent with the requirements of FAA Advisory Circular

150/5100-14D, Architectural, Engineering, and Planning  
Consultant Services for Airport Grants Projects.

- Exhibit E. A proposed project schedule and identified Time for Performance.
- Exhibit F. A list of professional sub-consultants Engineer intends on using in the completion of all tasks.
- C. All consulting work will be AOS specific.
- D. Multiple AOS's can be initiated throughout the duration of this CSA, concurrent or sequential.
- E. The Engineer agrees to perform all work necessary to complete, in a manner satisfactory to City, those tasks described in the Exhibit "B" of each AOS, attached hereto and incorporated herein by this reference as if set forth in full.
- F. Incidental work related to any project not provided for in Exhibit "B" of any AOS may be needed during the performance of this Agreement. Engineer agrees to provide any and all additional services as authorized by City, at the rates identified in attached Exhibit "D," Fee Schedule.

No additional services shall be rendered by Engineer under any AOS unless Engineer, prior to performance of said services, advised City of the additional work in writing and said services shall first be authorized in writing by City. The return to Engineer of a signed copy of said change order shall constitute approval by City for the performance of such additional services.

## II. TIME SCHEDULE

Phase One as described in Exhibit "A" of each AOS shall commence immediately upon execution of this Agreement.

Phase Two services as described in Exhibit "B" of each AOS shall not commence until such time as City shall determine that the Project shall proceed to said Phase and shall so notify Engineer in writing.

Exhibit "E" shall include an overall time for performance for each AOS.

## III. COMPENSATION

### A. TOTAL COMPENSATION

For services performed pursuant to this Agreement and each AOS, City agrees to pay and Engineer agrees to accept, as payment in full, a total not-to-exceed sum

amount identified in Exhibit "C" of each AOS. The compensation for the project is further identified in Exhibit "C" attached hereto.

B. PAYMENT OF MONTHLY COMPENSATION

Engineer shall be reimbursed monthly no later than twenty (20) days following submission of a written, verified billing to City. Said billing shall include the percentage of each task completed to date and since the date of the preceding billing, if any.

IV. STANDARD PRACTICES

Engineer shall ascertain the standard practices of the Federal Aviation Administration (FAA) and City and any other affected agencies and shall utilize the said practices throughout this project.

V. TERMINATION

This CSA and any individual AOS may be terminated by City at any time by written notice to Engineer. However, City shall be obligated to compensate Engineer for all work that has been accomplished until receipt of such written notice. Engineer shall be required to deliver copies of all finished and unfinished documents prepared for the project as requested by City.

VI. OWNERSHIP OF DOCUMENTS

It is agreed and understood that all original documents, such as, tracings, plans, specifications, maps, basic survey notes and sketches, charts, computations, and other data prepared or obtained under the terms of this Agreement, are the property of the City of Porterville.

All plans and specifications shall be computer generated, with electronic files made available to City. City shall refrain from performing any revisions, alterations, changes, or modifications to electronic files prepared and provided by Engineer, without prior authorization from Engineer.

Engineer agrees that all records and documents as required herein will be retained and made available upon request to representatives of the City, the FAA and the Comptroller General of the United States for a minimum period of three years following completion of this Agreement or receipt of final payment, whichever is later.

VII. SUBCONTRACTING

Exhibit "F" of each AOS shall identify subcontractors designated to support the work of the Engineer in completing the tasks of each AOS. The exhibit shall identify the scope of services to be provided by each subcontractor, the name and office location of the subcontractor, and the subcontractor's primary point of contact. Other than subcontractors identified in Exhibit "F" of each AOS, Engineer shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without prior written approval of City.

VIII. SUCCESSORS AND ASSIGNS

This CSA and each AOS shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties. Engineer shall not assign, delegate or transfer the rights and duties under this Agreement or any part thereof, without the prior written consent of City.

IX. INDEPENDENT CONTRACTOR

In the performance of the services herein provided for, Engineer shall be, and is, an independent contractor and is not an agent or employee of City. Engineer has and shall retain the right to exercise full control and supervision of all persons assisting the Engineer in the performance of said services hereunder. Engineer shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding and all other regulations governing such matters.

X. DISPUTE

Any dispute not resolvable by informal arbitration between the parties to this Agreement shall be adjudicated in a Court of Law under the laws of the State of California. This Agreement is deemed executed and performed in Tulare County, California. In the event legal action is filed, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs, including expert witness fees.

XI. INSURANCE AND INDEMNIFICATION REQUIREMENTS

With respect to performance of work under this Agreement, Engineer shall maintain insurance as described below:

1. Workers' compensation insurance with statutory limits, and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per accident.

2. Commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
  3. Commercial automobile liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
  4. Professional liability insurance (errors and omissions) with not less than One Million Dollars (\$1,000,000) in coverage.
- A. As respects acts, errors or omissions in the performance of professional services, Engineer agrees to indemnify and hold harmless City, its officers, employees, and City designated volunteers from and against any and all claims, demands, defense costs, liability or consequential damages of any kind or nature arising directly out of Engineer's negligent acts, errors or omissions in the performance of his/her professional services under the terms of this contract.
- As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, Engineer agrees to indemnify, defend (at City's option), and hold harmless City, its employees, agents, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature caused in whole or in part by any negligent act or omission of the Engineer, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of City.
- B. Upon City's request, Engineer shall deliver to City insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Also, within thirty (30) days of City's request, Engineer shall provide to City endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by City, it shall be Engineer's responsibility to see that City receives documentation acceptable to City which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. Also, City has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.
- C. In addition to any other remedies City may have if Engineer fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
2. Order Engineer to stop work under this Agreement and/or withhold any payment(s) which become due to Engineer hereunder until Engineer demonstrates compliance with the requirements hereof.
3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Engineer's failure to maintain insurance or secure appropriate endorsements. Nothing herein contained shall be construed as limiting in any way the extent to which Engineer may be held responsible for payments of damages to persons or property resulting from Engineer or its subcontractor's performance of the work covered under this Agreement.

#### XII. COVENANT AGAINST CONTINGENT FEES

Engineer hereby certifies, as expressed by the Certification of the Engineer attached hereto and marked Exhibit "CSA-A," that it retains no person to solicit work on a contingent fee basis and that only full-time, permanent employees of \_\_\_\_\_ solicit work for the firm.

#### XIII. FEDERAL AVIATION ADMINISTRATION (FAA) ENGINEERING CONSULTANT CONTRACTUAL REQUIREMENTS

Federal Aviation Administration Engineering Consultant Contractual Requirements, hereinafter referred to as "FAA Requirements," set forth requirements relative to Federally-assisted programs of the Department of Transportation.

The FAA Requirements are attached to this Agreement as Exhibit "CSA-B" and are incorporated by this reference and made a part of this Agreement.

#### XIV. EXTENT OF AGREEMENT

This Agreement, together with Exhibits "CSA-A", "CSA-B", and Exhibits "A," "B," "C," "D," "E," and "F", of each AOS constitute the entire Agreement between City and Engineer and supersedes all prior written or oral understandings. This Agreement and said attachments may be amended, supplemented, modified or canceled only by a duly written instrument.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

**CITY OF PORTERVILLE**

**ENGINEER**

\_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



EXHIBIT "CSA-A"

AIRPORT IMPROVEMENT PROGRAM PROJECTS  
3-06-0190

STATE OF CALIFORNIA

CERTIFICATION OF ENGINEER

I hereby certify that I am the Owner and duly authorized representative of the firm \_\_\_\_\_, whose address is \_\_\_\_\_, and that neither I, nor the above firm I here represent, has:

- A. Employed or retained for a commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract;
- B. Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; or
- C. Paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Federal Aviation Administration of the United States Department of Transportation, in connection with this contract involving participation of Airport Improvement Program (AIP) funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Engineer

## EXHIBIT "CSA-B"

### FAA CONSULTANT CONTRACTUAL REQUIREMENTS TITLE VI ASSURANCES

During the performance of this contract, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agree as follows:

1. **Compliance with Regulations.** The contractor shall comply with the regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and Regulations relative to nondiscrimination on the grounds of race, color or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:
  - a. withholding of payments to the contractor under the contract until the contractor complies, and/or
  - b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include the provisions of Paragraphs 1 through 5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### DISADVANTAGED BUSINESS ENTERPRISE (DBE) ASSURANCES

1. Policy. It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.
2. DBE Obligation. The contractor agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.