

TO: James L. App, City Manager
FROM: Joseph M. Deakin, Public Works Director
SUBJECT: Project Design & Construction Management Services – Airport Construction Project
DATE: July 1, 2003

NEEDS: For the City Council to consider approving an Agreement with Tartaglia Engineering for various Airport infrastructure design and construction management services.

- FACTS:**
1. In October 1999, the City selected Tartaglia Engineering to provide engineering design services for a number of Airport infrastructure improvement projects.
 2. FAA guidelines allow for consultants selected to remain valid for five-years, the City has continued to utilize Tartaglia Engineering under that guideline since 1999.
 3. The current Airport Capital Improvement Plan (ACIP) was recommended by the Airport Advisory Committee, approved by the City Council on December 3, 2002, submitted to the FAA on December 12, 2002, and is now being implemented, as approved.
 4. The Four-Year Capital Improvement Plan (CIP) approved by the City Council on June 3, 2003, included Airport Improvement Projects, including:
 - Reconstruct Taxiway D \$205,000
 - Slurry Seal Parking Apron \$40,000
 - Slurry Seal Runway 13-31 \$108,100
 - Slurry Seal Taxiway A-E \$95,000
 - Parking Apron Improvements \$350,000
 5. The Federal Aviation Administration (FAA) verbally requested the City submit plans and specifications for the next airport construction project in the ACIP. The projects include slurry sealing in three areas: taxiways, parking aprons, and Runway 13-31.

**ANALYSIS
AND**

CONCLUSION: The FAA is now using a fast-track process for grant projects, requiring airport owners to complete the project design before applying for the project grant. The first step is to provide plans and specifications for the FAA's approval, a task requiring engineering design assistance. With FAA approval of the plans, the proposed/potential project will go out to bid. Upon receipt of actual bid amounts, the FAA will forward a grant allocation letter to the City for City Council approval, grant acceptance, and authorization to award the construction contract.

Because of the FAA's fast track procedure, the City needs to obligate funds to design the project before the grant from the FAA is certain. The City, for this particular project, will need to contract with Tartaglia Engineering for the design not-to-exceed amount of \$67,200. Once the design is done, the project will be bid in accordance with City bid practices, and once the low bidder is confirmed, the FAA will be requested to provide all grant funding (for the design, the construction and the construction management costs). The grant funding from the FAA remains at 90% of project costs, the total project is estimated at \$798,100. The City Council may approve the agreement and direct staff to proceed only with the first phase of work (the design) for the not-to-exceed amount of \$67,200. The remaining contract with Tartaglia, under Phase II (construction management) could then be authorized only after grant funds are secured.

The City's approved CIP included Airport Improvement Projects, including the five projects that will be combined in this project design. The City CIP assumed grant funding of 90%, indicating an expense in FY04 for the five projects of \$79,800 out of the Airport Enterprise Fund. This design project will not exceed the approved City allocation, ultimately, after the FAA grant is made, the City's contribution is still estimated at \$79,800. Should the Caltrans Division of Aeronautics continue the grant funding provided in past years, the City may be able to garner another 5% of project costs from that grant source as well, reducing the ultimate City obligation to an estimated \$39,900.

POLICY

REFERENCE: Airport Capital Improvement Plan; Public Contract Code

FISCAL

IMPACT: The City's approved CIP included an anticipated expense of \$798,100 for the projects to be designed, with an expectation of 90% grant funding and 10% City funding (City expense of up to \$79,800). The design fee requested is less than the City approved obligation for these projects, therefore, the fiscal impact is within the approved budget allocation.

OPTIONS:

- a. Approve Resolution No. 03-xx directing the City Manager to enter a Professional Services Agreement with Tartaglia Engineering to provide design and construction management services for projects in the Airport Capital Improvement Plan (ACIP), and authorizing a notice-to-proceed with Tartaglia Engineering for the Phase I work not-to-exceed \$67,200.
- b. Amend, modify or reject the above option.

Attachments: (2)

- 1) Professional Services Agreement
- 2) Resolution

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
DIRECTING THE CITY MANAGER TO ENTER A PROFESSIONAL SERVICES AGREEMENT
WITH TARTAGLIA ENGINEERING TO PROVIDE DESIGN AND CONSTRUCTION
MANAGEMENT SERVICES FOR THE NEXT CONSTRUCTION PROJECT IN THE AIRPORT
CAPITAL IMPROVEMENT PLAN

WHEREAS, in October 1999, the City, in accordance with City Policy and FAA mandate, selected Tartaglia Engineering to provide engineering services for a number of Airport infrastructure improvement projects; and

WHEREAS, FAA guidelines allow the selection process to remain valid for a period of five (5) years and the City has continued to use Tartaglia Engineering's services under that premise; and

WHEREAS, the City has received a verbal request from the Federal Aviation Administration (FAA) to submit plans and specifications for the next airport construction project in the airport Capital Improvement Plan (ACIP); and

WHEREAS, this project combines five approved City four-year Capital Improvement Program projects: reconstruction of Taxiway D, slurry sealing of parking apron, slurry sealing of Runway 13-31, Slurry sealing of Taxiway A-E and parking apron improvements; and

WHEREAS, the actual scope of the construction project and grant amount is dependent upon bid prices received and federal funding availability at the time, however, the current project estimate is \$798,000.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY

SECTION 1. The City Council of the City of El Paso de Robles does hereby direct the City Manager to enter a Professional Services Agreement with Tartaglia Engineering to provide design and construction management services for the next construction project in the Airport Capital Improvement Plan, and issue the Notice to Proceed for Phase I (design) for a not-to-exceed amount of \$67,200.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 1st day of July 2003 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

**PUBLIC WORKS DEPARTMENT
1000 Spring Street
Paso Robles, CA 93446**

**AGREEMENT FOR PROFESSIONAL SERVICES TO PROVIDE DESIGN
AND CONSTRUCTION MANAGEMENT SERVICES FOR PROJECTS IN
THE AIRPORT CAPITAL IMPROVEMENT PLAN**

Provide preliminary engineering, engineering design, construction contract document preparation, and construction contract administration services, including inspection for FAA funded AIP 3-06-0184-15: Rehabilitation of Taxiway D, and Slurry Seal and Stripe Runway 13-31, and Taxiway's A, B, C, D, E, and F. The construction effort is to be split into two separate construction contracts.

THIS AGREEMENT (hereinafter referred to as "Agreement") is made by and between the City of El Paso de Robles, a public body, corporate and politic, (herein "CITY") and Tartaglia Engineering, having a principal place of business at Atascadero, CA, (herein "Consultant"), wherein Consultant agrees to provide the City and City agrees to accept the services specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. CONTRACT ADMINISTRATOR. Ditas Esperanza, Capital Projects Engineer, at telephone number (805) 237-3861 will, administer this Agreement on behalf of City (herein "Contract Administrator"). John A. Smith, at telephone number (805) 466-5660, is the authorized representative for Consultant. Changes in designated representatives shall be made only after advance written notices to the other party.

2. NOTICES. Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first-class mail, postage prepaid, or otherwise delivered as follows:

CITY: City of El Paso de Robles
Public Works Department
Attn: Ditas Esperanza
1000 Spring Street
Paso Robles, CA 93446
Facsimile: (805) 237-3904

CONSULTANT: Tartaglia Engineering
Attn: John A. Smith
P.O. Box 1930
Atascadero, CA 93423
Facsimile: (805) 466-5471

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. EXHIBITS. Attached to this Agreement are the following Exhibits. Said Exhibits shall be initialed by Consultant. Said Exhibits are incorporated herein by reference:

- Exhibit A. Description of Scope of Services (the Project) to be performed by Consultant, including a timeline for submittals and Project completion.
- Exhibit B. A listing of hourly rates of Consultant's personnel, Consultant's agents and contractors applicable to providing services under this Agreement, and a definition of reimbursable costs with a maximum limit for reimbursable costs.
- Exhibit C. Proposal from Earth Systems Pacific, subconsultant to Tartaglia Engineering.
- Exhibit D. Compensation Summary for all services described in Exhibit "A."
- Exhibit E. Certification of Consultant
- Exhibit F. FAA Consultant Contractual Requirements
- Exhibit G. Engineering Agreement Cost Basis

4. SCOPE OF SERVICES.

- A. Consultant shall provide the services, and make submittals to City in accordance with Exhibit "A," subject to the direction of the City Contract Administrator, as provided from time to time.
- B. Consultant's services shall conform to City's original or mutually agreed upon revised schedule and budget for the Project.

5. TERM. Consultant shall commence performance within 10 days of City's Notice to Proceed, and end performance upon completion, as provided in Exhibit "A," unless otherwise directed by CITY or unless earlier terminated.

6. COMPENSATION OF CONSULTANT.

- A. The Consultant will be paid for services provided to City at lump sum rates and on a time and material basis in accordance with the schedule set forth in Exhibit "D" with further breakdown included in Exhibit "G."
- B. Payment of undisputed amounts is due within 60 days of receipt of invoices. Invoices shall reflect the phase to which the request for payment is being invoiced in accordance with the "Scope of Service" (Exhibit "A") and the percentage of completion of each phase.
- C. The contract budget, as stated in Exhibit "B" shall not be exceeded without the written authorization of the City's Contract Administrator.
- D. Consultant shall be reimbursed at cost for reimbursable costs as provided in Exhibit "B."
- E. Payment to Consultant shall be considered as full compensation of all personnel, materials, supplies, and equipment used in carrying out the services as stated in Exhibit "A."

F. City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to:

1. Require Consultant to correct such work or billings; or
2. Seek any other legal remedy.

7. ADDITIONAL SERVICES. Should services be requested by Consultant which are considered to be beyond the Scope of Services (Exhibit "A"), the Consultant shall provide a written request for consideration of Additional Services to the City Contract Administrator. The City Contract Administrator will make due consideration of the request for Additional Services. Consultant shall not provide Additional Services until Consultant has received written approval from the City Contractor Administrator to perform same. Should the Consultant elect to proceed prior to receiving written approval by the City or Additional Services, the Consultant does so at Consultant's own risk.

8. INDEPENDENT CONTRACTOR. Consultant, its agents and contractors, are independent contractors, responsible for all methods and means used in performing the Consultant's services under this agreement, and are not employees, agents or partners of CITY.

9. PERFORMANCE STANDARDS.

A. Compliance with laws.

(1) Consultant shall (and shall cause its agents and contractors), at its sole cost and expense, to comply with all City, County, State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the Project and this Agreement. Any corrections to Consultant's instruments of professional service which become necessary as a result of the Consultant's failure to comply with these requirements shall be made at the Consultant's expense.

(2) Should the requirements referenced in subparagraph 1 above change after the date of design or drawing preparation, Consultant shall be responsible for notifying City of such change in requirements. Consultant will bring the instruments of professional service into conformance with the newly issued requirements at the written direction of City. Consultant's costs for providing services pursuant to this paragraph shall be submitted to City as Additional Services.

B. Standard of Performance. Consultant represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Consultant shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Consultant is engaged. All products of whatsoever nature which Consultant delivers to City pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Consultant's profession. Consultant shall correct or revise any errors or omissions at the Contract Administrator's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Consultant without additional compensation throughout the term of this Agreement.

C. Professional Seal. Consultant shall have documents stamped by registered professionals, at Consultant's cost, for the disciplines covered by Consultant's instruments of professional service when required by prevailing law, usual and customary professional practice, by City, or by any governmental agency having jurisdiction over the Project.

10. TAXES. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant

11. CONFLICT OF INTEREST. Consultant covenants that neither it, nor any officer or principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Contract Administrator. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of this Agreement.

The Consultant understands and agrees that by entering into this contract, it may be required to file a statement of economic interests, as required by the City's Conflict of Interest Code and the provisions of the Political Reform Act (Government Code § 81000 et seq.).

12. RESPONSIBILITIES OF CITY. City shall provide all information requested by Consultant that is necessary in performing the services provided herein.

13. OWNERSHIP OF DOCUMENTS. All drawings, specifications, data, and other instruments of professional service prepared by Consultant during the performance of this Agreement shall become the property of City. However, Consultant shall not be liable for City's use of documents and instruments of professional service if used for other than the Project or Scope of Services contemplated by this Agreement.

14. PREVAILING WAGE. Consultant and Consultant's sub-Consultants, to the extent required by the California Labor Code, must at least meet the latest prevailing wage rates in payments to workmen and other professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies are on file at the City's Public Works Department office.

15. RECORDS, AUDIT AND REVIEW. Consultant shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. City shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice.

16. INDEMNIFICATION. Except as otherwise provided in subparagraphs (b) and (c) below, Consultant shall defend, indemnify and save harmless the City, its officers and employees, from any and all claims, demands, damages, costs, expenses, judgments, attorney fees or any liability arising out of this contract or attempted performance of the provisions hereof predicated upon theories set forth below in subparagraph (a) below:

G. The theories referred to above are theories based on any of the following committed by the Consultant, or its agents, employees, or other independent Consultants directly responsible to Consultant;

1. Violation of statute, ordinance or regulation.

2. Professional malpractice.
3. Willful, intentional or other wrongful acts, or failures to act.
4. Negligence or recklessness.
5. Furnishing of defective or dangerous products.
6. Completed operations.
7. Prevailing Wage claims.
8. Employment of unauthorized aliens.
9. Premises liability.
10. Design defects.
11. Violation of civil rights.
12. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board, or any other California public entity responsible for collecting payroll taxes, that the Consultant is not an independent contractor.

H. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims resulting from the sole or active negligence or willful misconduct of the City, provided however, this exception shall not apply to claims, demands, damages, costs, expenses, judgments, or attorney fees arising from any design defects.

I. Nothing contained in the foregoing indemnity provisions shall be construed to require Consultant to indemnify City, against any responsibility or liability in contravention of Civil Code 2782.

J. Neither termination of this Agreement or completion of the Project under this Agreement shall release Consultant from its obligation to indemnify, as to any claim, so long as the event upon which such claims is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by Consultant, its employees, agents or consultants, or the employee, agent or consultant of any one of them.

K. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in this Agreement does not relieve Consultant from the obligations of this Section 16. The obligations of this Section 16 shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

17. INSURANCE.

A. Consultant shall procure and maintain, in insurance companies authorized to do business in the State of California and assigned an A.M. Best's rating of no less than A-(IX), the

following insurance coverage, written on the ISO form shown below (or its equivalent) at the limits of liability specified for each:

Commercial General Liability Insurance (ISO Form CG 0001 11/85)	\$ 1 Million per occurrence \$ 2 Million in the aggregate
Commercial Automobile Liability Insurance (ISO Form CA 0001 12/90)	\$ 1 Million per accident
Workers' Compensation Insurance	Statutory
Employer's Liability Insurance	\$ 1 Million policy limit
Professional Liability Insurance	\$ 1 Million per claim \$ 1 Million in the aggregate

B. The Commercial General and Commercial Automobile liability policies shall be endorsed to include the following:

(1) City, its officers, directors, employees and agents shall be named as Additional Insureds under ISO Form CG 2010 11/85 or its equivalent; and

(2) The coverage afforded City shall be primary and non-contributing with any other insurance maintained by City.

(3) If not covered separately under a business automobile liability policy, the general liability policy shall also be endorsed to include non-owned and hired automobile liability.

C. Prior to commencing work under this Agreement, Consultant shall provide City with Certificates of Insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements. Certificates of Insurance for automobile liability, workers' compensation/ employer's liability, and professional liability insurance shall specify that the insurer shall give City an unqualified thirty (30) days advance written notice by the insurer prior to any cancellation of the policy.

D. All insurance coverage required hereunder shall be kept in full force and effect for the term of this Agreement. Professional liability insurance shall be maintained for an additional, uninterrupted period of three (3) years after termination of this agreement, provided such insurance is commercially available at rates reasonably comparable to those currently in effect. Certificates of Insurance evidencing renewal of the required coverage shall be provided within ten (10) days of the expiration of any policy at any time during the period such policy is required to be maintained by Consultant hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.

18. PERSONNEL.

A. The Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by the Consultant or under Consultant's supervision, and all personnel engaged in the work shall be qualified to perform such services.

B. Continuity: Consultant shall make every reasonable effort to maintain stability and continuity of Consultants Project Leaders assigned to perform the services required under

this Agreement. Consultant shall provide City with a minimum twenty (20) days prior written notice of any changes in Consultant's Project Leader assigned to the Project.

19. NONEXCLUSIVE AGREEMENT. Consultant understands that this is not an exclusive Agreement and that City shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Consultant as the City desires.

20. ASSIGNMENT. Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of CITY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

21. TEMPORARY SUSPENSION. The City's Contract Administrator shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as he/she deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for services performed through the date of temporary suspension. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant's compensation shall be subject to renegotiation.

22. TERMINATION.

A. Right to terminate. City retains the right to terminate this Agreement for any reason by notifying Consultant in writing ten (10) days prior to termination. Upon receipt of such notice, Consultant shall promptly cease work and notify City as to the status of its performance. City shall pay Consultant for its reasonable costs and expenses through the date of termination. However, if this Agreement is terminated for fault of Consultant, then City shall be obligated to compensate Consultant only for that portion of Consultant services which are of benefit to City, up to and including the day Consultant receives notice of termination from City.

B. Return of materials. Upon such termination, Consultant shall immediately turn over to the City copies of studies, drawings, mylars, computations, computer models and other instruments of professional services, whether or not completed, prepared by Consultant, or given to Consultant in connection with this Agreement. Consultant, however, shall not be liable for City's use of incomplete materials or for City's use of complete documents if used for other than the Project or Scope of Services contemplated by this Agreement.

C. Should City fail to pay Consultant undisputed payments set forth in Section 6, above, Consultant may, at Consultant's options, suspend its services or terminate this agreement if such failure is not remedied by City within thirty (30) days of written notice to City of such late payment.

23. DISPUTE RESOLUTION. The following procedures apply only to disputes where the amount in controversy is less than \$50,000.00.

A. City and Consultant agree that disputes between them arising out of or relating to this Agreement where the amount in controversy is less than \$50,000.00 shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise. If the dispute is not settled by mediation, then the parties agree to submit the dispute to binding arbitration as provided in subsection B, below.

B. Either party may demand arbitration by filing a written demand with the other party within thirty (30) days from the date of final mediation, in accordance with the prevailing provisions of the California Arbitration Act at the time of written demand. The arbitration

procedures are as follows:

(1) The parties may agree on one arbitrator. If they cannot agree on one arbitrator, there shall be three: one named in writing by each of the parties within five days after demand for arbitration is given, and a third chosen by the two appointed. Should either party refuse or neglect to join in the appointment of the arbitrator(s) or to furnish the arbitrator(s) with any papers or information demanded, the arbitrator(s) may proceed ex parte.

(2) A hearing on the matter to be arbitrated shall take place before the arbitrator(s) within the County of San Luis Obispo, state of California, at the time and place selected by the arbitrator(s). The arbitrator(s) shall select the time and place promptly and shall give each party written notice of the time and place at least sixty (60) days before the date selected. The procedures of the California Arbitration Act are incorporated herein by reference.

(3) If there is only one arbitrator, his or her decision shall be binding and conclusive on the parties, and if there are three arbitrators, the decision of the two shall be binding and conclusive. The submission of a dispute to the arbitrator(s) and the rendering of a decision by the arbitrator(s) shall be binding on the parties. A judgment confirming the award may be given by any Superior Court having jurisdiction, or that Court may vacate, modify, or correct the award in accordance with the prevailing provision of the California Arbitration Act.

(4) If three arbitrators are selected, but no two of the three are able to reach an agreement regarding the determination of the dispute, then the matter shall be decided by three new arbitrators who shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is agreed on by two of the three arbitrators selected.

(5) The costs of the arbitration shall be borne by the losing party or shall be borne in such proportions as the arbitrator(s) determine(s).

24. CITY NOT OBLIGATED TO THIRD PARTIES. City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

25. NON-DISCRIMINATION. Consultant shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

26. UNAUTHORIZED ALIENS. Consultant hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

27. COSTS AND ATTORNEY'S FEES. The prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

28. SECTION HEADINGS. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

29. SEVERABILITY. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

30. REMEDIES NOT EXCLUSIVE. Except as provided in Sections 22 and 23, no remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

31. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement and each covenant and term is a condition herein.

32. NO WAIVER OF DEFAULT. No delay or omission of CITY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to CITY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of CITY.

32. ENTIRE AGREEMENT AND AMENDMENT. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

33. SUCCESSORS AND ASSIGNS. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

34. CALIFORNIA LAW. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

35. EXECUTION OF COUNTERPARTS. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

36. AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Consultant is obligated, which breach would have a material effect hereon.

37. FEDERAL AVIATION ADMINISTRATION (FAA) ENGINEERING CONSULTANT CONTRACTURAL REQUIREMENTS. Federal Aviation Administration Engineering Consultant 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 "F", and are incorporated by this reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by City.

TARTAGLIA ENGINEERING

John A. Smith
Owner

Date: _____

CITY OF EL PASO DE ROBLES

James L. App
City Manager

Date: _____