

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Engineering Contract – Airport Fuel Facility
DATE: February 5, 2013

NEEDS: For the City Council to adopt Resolution 2013-XX approving a Professional Engineering Services Agreement with Tartaglia Engineering to design and draft technical specifications for a new fueling facility at the Municipal Airport.

- FACTS:
1. A key element of airport infrastructure is the aircraft fuel storage and dispensing facility. This equipment is owned by the City and then leased to a fuel vendor, who assumes the responsibility and liability for the daily operation and maintenance, and then provides all services to the aircraft.
 2. The existing tanks were installed in 1981. The tanks are single wall construction no longer allowed for fueling operations. The cost to upgrade them to meet current regulatory requirements would exceed the cost of the proposed replacement.
 3. Liabilities in fueling multi-million dollar aircraft would underscore the need to remain compliant with current standards.
 4. The City has utilized the services of Tartaglia Engineering to design and administer various airport improvement projects. A proposed contract and cost estimate, identifying the scope and maximum expenditure to complete the required work are attached.
 5. This proposed contract is to design the facility and to draft technical specification to purchase new fuel handling equipment. Once the project is designed and bids are obtained, the contract for construction of the tank foundations and the purchase agreement to provide the tank units will be submitted for City Council approval.

ANALYSIS
AND

CONCLUSION: The current equipment (tanks and piping) has been in the ground for over 30 years. Some of the areas of non-compliance are currently allowed under waiver, but those waivers will expire soon, rendering the airport without a fuel service source. It is essential that the equipment continue to remain compliant and competitive in the aviation market and continue to provide the necessary quality service to the public and public service agencies (CalFire, Highway Patrol, etc.) who utilize the airport. Maintaining such is a key obligation of the City, as airport owner.

POLICY

REFERENCE: Federal Air Regulations (FAR) Part 139; National Fire Protection Association (NFPA) 407; Air Transport Association (ATA) 103;

FISCAL

IMPACT:

The contract with Tartaglia is not to exceed \$42,000, which would be funded from Airport Enterprise reserves. Ultimately, a long-term loan from State Aviation (CALTRANS) sources would limit the direct impact to the Airport Fund and then be paid by Airport Fuel Flowage Fee revenue.

The City Council recently approved an increased fuel flowage fee on all aviation fuel sold on the airport, and a Fuel Facilities Rehabilitation fee was also enacted. Together, these increased fees are providing a noticeable increase in available funding in the Airport Enterprise Fund to finance the proposed improvements.

OPTIONS:

- a. For the City Council to approve Resolution No. 2013-XX, as presented.
- b. Amend, modify or reject the above option.

Attachments:

- 1) Resolution No. 2013-XX
- 2) Agreement for Professional Engineering Services

RESOLUTION NO. 13-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH
TARTAGLIA ENGINEERING TO DESIGN A NEW AIRPORT FUELING FACILITY

WHEREAS, the City of Paso Robles continues to operate the Municipal Airport for the aid and benefit of the public and their air transportation needs; and

WHEREAS, aircraft fuel service is an essential element of airport service, and

WHEREAS, it has been determined that the existing aircraft fueling facility needs upgrades and additional equipment in order to comply with current regulations, and

WHEREAS, the firm of Tartaglia Engineering has been determined to be capable and qualified to perform the required design work for such a project.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1 The City Council of the City of El Paso de Robles does hereby approve a Professional Engineering Services Contract with Tartaglia Engineering to design and draft technical specifications for the installation of a replacement Airport fueling facility.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 5th day of February, 2013, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Duane Picanco, Mayor

Caryn Jackson, Deputy City Clerk



CITY OF EL PASO DE ROBLES

"The Pass of the Oaks"

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES DPW PROJECT NO. 12-13

Airport Fuel Facility

This Agreement for Professional Engineering Services made and entered into this 20th day of January, 2013, by and between the **City of El Paso de Robles**, a municipal corporation existing under the laws of the State of California, hereinafter referred to as "City", and **Tartaglia Engineering**, hereinafter referred to as "Design Professional." City and Design Professional are sometimes individually referred to as a "Party" and collectively as "Parties" in this Agreement.

Recitals

- A. City is a municipal corporation duly organized and existing under the laws of the State of California, with the power to contract for the services to be provided under this Agreement.
- B. City requires certain professional architectural/engineering design and construction administration services in connection with the public work of improvement referred to as **Airport Fuel Facility**, more fully described in Exhibit "A" (the "Project").
- C. Design Professional has agreed to provide these services by reason of its qualifications and experience on the terms and in the manner set forth herein.
- D. Design Professional represents that it is fully licensed and qualified, with all professional skills necessary to perform the services described in this Agreement and has special expertise in the design of public works similar in size, scope and complexity to the Project.

Accordingly, the Parties agree as follows:

1. Design Professional's Representations and Responsibilities

1.1 Design Professional acknowledges that in entering into this agreement the City is relying solely upon Design Professional's special skills and experience to do and perform the Services in accordance with best standards of professional practice in the design and construction administration of public projects of size, scope and complexity similar to the Project in the general location of the Project. Design Professional agrees to perform the Services in accordance with these standards. The acceptance of Design Professional's services by City does not operate as a release of Design Professional from these obligations.

1.2 Design Professional accepts the relationship of trust and confidence established between it and City by this Agreement. Design Professional shall use its best efforts, skill, judgment, and abilities to perform the Services and to further the interests of City in accordance with City's requirements and procedures, each in accordance with professional standards that apply to Design Professional. Design Professional shall be responsible for the professional

quality, technical accuracy and coordination of all Services. Design Professional shall, without additional compensation, correct or revise any errors or deficiencies in its Services.

1.3 Design Professional represents that, upon completion of the Project in accordance with the construction documents, the Project will comply with all Applicable Laws and be suitable for its intended purpose.

1.4 Design Professional represents and maintains that it is skilled in the professional calling necessary to perform the Services. Design Professional represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Design Professional represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

1.5 Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Design Professional and shall not be re-employed to perform any of the Services or to work on the Project.

1.6 Design Professional's services are unique and personal. Design Professional shall not assign or transfer any of its interest or obligation under this Agreement without the City's written consent. Design Professional shall not subcontract its duties under this Agreement without the City's written consent. No subconsultant will be recognized by City as such; rather, all sub-consultants are deemed to be the agents of Design Professional, and Design Professional agrees to be responsible for their performance. Design Professional is specifically authorized to subcontract with the sub-consulting firms listed in Exhibit "B" to assist in providing the Services.

2. Scope of Services

2.1 Design Professional shall furnish to City all personnel, materials, tools, equipment necessary to perform the professional services for the Project in accordance with the provisions of this Agreement, including all incidental and customary services (hereinafter referred to as the "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "B." All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal states, laws, ordinances, rules and regulations ("Applicable Laws"). All Services performed by Design Professional shall be subject to the approval of the City.

2.2 Design Personnel will be responsible for employing or engaging all persons necessary to perform the Services at its sole expense

2.3 Design Professional's Basic Services include, generally, the design and drafting of plans, specifications and bid documents, for the specified project.

2.4 City may direct Design Professional to perform services not otherwise included in this Agreement, not included within the Basic Services listed in Exhibit “B” attached hereto, and/or not customarily furnished in accordance with generally accepted architectural or engineering practice. As used herein, “Additional Services” include: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit “B” attached hereto. Any changes in the Scope of Services must be approved in advance, in writing, by the City Manager or his designee.

2.5 Design Professional shall not perform, or be compensated for, Additional Services without prior written authorization from City and without a written agreement between the City and Design Professional as to the compensation to be paid for such services. City shall pay Design Professional for any approved Additional Services, pursuant to the compensation provisions; provided however, that any redesign or revisions to drawings, specifications or other documents when such revisions are necessary to bring such documents into compliance with Applicable Laws of which Design Professional was aware or should have been aware are not Additional Services.

2.6 Design Professional shall coordinate with City’s staff, contractors and consultants in the performance of the Services, and shall be available to City’s staff, contractors and consultants at all reasonable times.

3. Independent Contractor. City retains Design Professional as an independent contractor as defined in Labor Code 3353, under the control of the City as to the result of the work but not the means by which the result is accomplished. Design Professional is not an employee of City. Design Professional is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City’s employees. Any additional personnel performing the Services under this Agreement on behalf of Design Professional shall also not be employees of City, and shall at all times be under Design Professional’s exclusive direction and control. Design Professional shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Design Professional shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance.

4. Key Personnel.

4.1.1 Project Lead. Design Professional shall name a specific individual to act as Project Lead, subject to the approval of City. Design Professional hereby designates **John A. Smith, P.E.**, to act as the Project Lead for the Project. The Project Lead shall: (1) maintain oversight of the Design Professional’s activities and performance pertaining to the Project at all times; (2) have full authority to represent and act on behalf of the Design Professional for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) coordinate all portions of the Services; and (6) act as principal contact

with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Lead shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Lead shall be of at least equal competence to the prior Project Lead. If City and Design Professional cannot agree on a new Project Lead, City shall be entitled to terminate this Agreement for cause.

4.1.2 Key Personnel. In addition to the Project Lead, Design Professional has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Design Professional may substitute others of at least equal competence upon written approval of the City. In the event that City and Design Professional cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The additional key personnel, engineers and consultants for performance of this Agreement are as set forth in Exhibit B.

5. Hiring of Consultants and Personnel.

5.1 Right to Hire or Employ. Design Professional shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the Project. Design Professional shall be responsible for the coordination and cooperation of Design Professional's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its discretion. Design Professional shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work in order to allow City time to review their qualifications and approve their participation on the Project in its sole and reasonable discretion.

5.2 Qualification and License. All architects, engineers, experts and other consultants retained by Design Professional in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

5.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Design Professional shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Design Professional's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

6. Laws and Regulations.

6.1 Knowledge and Compliance. Design Professional shall keep itself fully informed of and in compliance with all Applicable Laws affecting the performance of the Services or the Project, and shall give all notices required of the Design Professional by law. Design Professional shall be liable for all violations of such laws and regulations related to the performance of its Services. If the Design Professional performs any work knowing it to be

contrary to any Applicable Law and without giving written notice to the City, Design Professional shall be solely responsible for all costs arising therefrom.

6.2 Drawings and Specifications.

6.2.1 Design Professional shall cause all drawings and specifications to meet the requirements of any Applicable Laws. For the preparation of all such drawings and specifications, the Design Professional shall use Computer Aided Design Drafting (“CADD”) (e.g., AutoCAD) or other technology acceptable to the Design Professional and City.

6.2.2 Americans with Disabilities Act. Design Professional will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act (“ADA”). Design Professional shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide City with its interpretation of such inconsistencies and conflicting interpretations. Design Professional shall be solely responsible for interpreting such inconsistencies and conflicting interpretations, and the Design Professional shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. Design Professional will adhere to the standard of care provided for in this Agreement and will use its reasonable professional efforts and judgment in making its interpretations.

6.3 Permits, Approvals and Authorizations. Design Professional shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Design Professional shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

6.4 Prevailing Wages. Design Professional acknowledges the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. To the extent required by the California Labor Code, Design Professional shall fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws.

6.5 Labor Certification. By its signature hereunder, Design Professional certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

6.6 Injury and Illness Prevention Program. Design Professional certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

7. Term, Progress and Completion.

7.1 Term. The term of this Agreement shall begin on the date the City approves this Agreement and shall expire upon completion of the Services or when terminated as provided below.

7.2 Timely Performance. Design Professional shall perform all Services hereunder diligently and as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Design Professional shall perform its Services so as to allow for the completion of the Project within the time required by the City and within any completion schedules adopted for the Project.

7.3 Notice to Proceed. Design Professional shall not commence performance of any Services under this Agreement unless and until the City provides a written Notice to Proceed.

7.4 Performance Schedule.

7.4.1 Design Professional shall perform the services in strict accordance with the schedule attached hereto as Exhibit “C” (the “Schedule”) and any updates to the Schedule approved by City. Design Professional shall work such overtime or engage such personnel and equipment as necessary to maintain the Schedule without additional compensation unless the delay is caused by circumstances entirely outside of Design Professional’s control. The schedule for performance of Services will be adjusted to conform to the City’s Project schedule.

7.4.2 Design Professional shall not exceed or modify the approved schedule without the prior written approval of City. If Design Professional does not perform the Services in accordance with the approved schedule, or any milestones established therein, the City will suffer damages for which the Design Professional will be responsible.

8. City Responsibilities. City’s responsibilities shall include the following:

8.1 Data and Information. City shall make available to Design Professional all available data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and other criteria. As part of the budget information, the City shall provide the Design Professional with a preliminary construction budget (“City’s Preliminary Construction Budget”).

8.2 Project Survey. If required for the scope of the Project and if requested by Design Professional, City shall furnish Design Professional with, or direct Design Professional to procure at City’s expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents that indicate existing structures, land features,

improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

8.3 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having jurisdiction over the Project.

8.4 City's Representative. Designate a person to act as its representative in connection with the performance of this Agreement ("City's Representative"). The City's Representative shall be authorized to act as liaison between Design Professional and City in the administration of this Agreement and the Construction Documents, and shall have the power to act on behalf of the City for all purposes under this Agreement. Such person will be the principal contact between Design Professional and the City. City may designate new and/or different individuals to act as City's Representative from time to time. The City's Representative shall render decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Services, as provided in the excusable delay provisions of this Agreement.

8.5 Review and Approve Documents. Review all documents submitted by Design Professional, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Design Professional of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement.

9. Compensation.

9.1 Design Professional's Compensation for Basic Services.

9.1.1 City shall pay Design Professional an amount not to exceed **\$42,000.00** for the performance of all Basic Services ("Not-to-Exceed Amount"). The Not-to-Exceed Amount shall constitute full compensation for the Basic Services and may be adjusted only accordance with the terms of this Agreement.

9.1.2 This Not-to-Exceed Amount shall include the fees of the following consultants listed in Exhibit B:

- **Tartaglia Engineering**
- **Power Communications Engineering**

9.1.3 The Not-to-Exceed Amount includes **all** Reimbursable Expenses required for the performance of Basic Services.

9.1.4 (OMITTED)

9.1.5 The City will make monthly payments for completed Services. The amount that will be approved and paid for each portion of the Services shall not exceed the

percent complete of that phase, as described above. Payments for various phases may be modified with approval of city within the Not-to-Exceed Amount.

9.2 Payment for Additional Services. The City may authorize Additional Services pursuant to the applicable provisions of this Agreement. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit “E,” unless a flat rate or some other form of compensation is mutually agreed upon by the parties. Design Professional shall be paid for Additional Services, as defined by this Agreement, only if the City approved the Additional Services in writing, in advance.

9.3 Reimbursable Expenses.

9.3.1 Reimbursable expenses are in addition to compensation for the Services and Additional Services. Design Professional shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit “E” attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Design Professional in the interest of the Project and include only (1) Reproduction and handling of construction documents prepared in connection with the Project; (2) Fees paid for securing government approval for the Project; and (3) such other expenses as City may approve in writing in advance.

9.3.2 Design Professional shall be required to acquire prior written consent in order to obtain reimbursement for the following expenses: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs; and (5) any other costs, fees and expenses.

9.4 Payment to Design Professional.

9.4.1 Design Professional shall submit written applications for progress payments in a form satisfactory to City on or before the first day of each month on account of the Basic Services, Additional Services and Reimbursable Expenses completed during the preceding month. The City will make payment for Basic Services for each phase of Services set forth above. Payment applications for Additional Services shall identify each person performing services, the time each person spends on each task (in units not to exceed one quarter hour) and shall be based on the rates in Exhibit “E”. Payment Applications for Reimbursable Expenses shall be supported by invoices or such other documents as City may reasonably request.

9.4.2 Within **thirty (30)** days after receipt of each application for progress payment, City shall verify the accuracy of the progress payment application, correct the charges where appropriate, and make payment to Design Professional in an amount equal to the amount of such application, as verified or corrected by City. No payment made hereunder prior to completion and acceptance of the Project shall be construed as evidence of acceptance of any part of the Services. If City disagrees with any portion of a billing, the City shall promptly notify Design Professional of the disagreement, and the City and the Design Professional shall attempt to resolve the disagreement. City's payment of any amounts shall not constitute a waiver of any disagreement and City shall promptly pay all amounts not in dispute.

9.4.3 The City may withhold payment, in whole or in part, on account of Services not performed satisfactorily, delays in Design Professional's performance, other defaults, or to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind arising from or related to Design Professional's Services. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to assert a claim against Design Professional or to withhold payment at a future time. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Design Professional is liable under the Agreement or state law. Payments to the Design Professional shall not be contingent on the construction, completion or ultimate success of the Project.

10. Records and Audit.

10.1 Design Professional shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. Design Professional's accounting system shall conform to the accounting practices of reputable firms providing professional services similar to the Services. The records shall include a breakdown of total costs charged under this Agreement, including properly executed payrolls, time records, invoices and payments made. All such records shall be clearly identifiable.

10.2 Design Professional shall permit City and its authorized representatives to inspect, examine and make copies of Design Professional's books, records, accounts, and any and all data relevant to this Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Design Professional pursuant to this contract and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3)-year period following final payment; and Design Professional shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for three (3) years after final payment.

10.3 Pursuant to California Government Code Section 8546.7, the parties to this Contract shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the contract. The examination and audit shall be confined to those matters connected with the performance of this contract including, but not limited to, the cost of administering the contract.

11. Termination, Suspension and Abandonment.

11.1 Suspension

11.1.1 The City may suspend this Agreement and Design Professional's performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Design Professional to perform any provision of this Agreement. Design Professional will be paid for satisfactory services performed through the date of suspension. In the event that Design Professional's services

hereunder are delayed for a period in excess of six (6) months due to causes beyond Design Professional's reasonable control, Design Professional's compensation shall be subject to renegotiation, provided that the suspension was not attributable to deficiencies in Design Professional's performance.

11.1.2 If City suspends Design Professional's Services, City may require Design Professional to resume such Services within fifteen (15) days after written notice from City.

11.2 Termination for Default.

11.2.1 If Design Professional at any time refuses or neglects to prosecute the Services in a timely fashion or in accordance with the Project schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the agreements herein contained, Design Professional shall be in default.

11.2.2 If Design Professional fails to cure the default within seven (7) days after written notice thereof, City may, at its sole option, take possession of any Project Documents (as defined, below) or other materials (in paper and electronic form) prepared or used by Design Professional in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Design Professional under this Agreement; or (2) terminate Design Professional's right to proceed with this Agreement.

11.2.3 In the event City elects to terminate, City shall have the right to immediate possession of all Project Documents and work in progress, whether located at the Project, at Design Professional's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Design Professional shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the expenses incurred by City in obtaining architectural and/or engineering services for the Project exceed such unpaid balance, then Design Professional shall promptly pay to City the amount by which such expense exceeds the unpaid balance of the Contract Amount. The expense referred to in the previous sentence shall include expenses incurred by City in causing the services called for under this Agreement to be provided by others, for attorneys' fees, and for any costs or damages sustained by City by reason of Design Professional's default or defective work.

11.3 Termination for Convenience. In addition to the foregoing right to terminate for default, City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Design Professional. In the event of termination without cause, Design Professional shall be entitled to payment in an amount not to exceed the Not-to-Exceed Amount which shall be calculated as follows: (1) Payment for Basic Services then satisfactorily completed and accepted by City, plus (2) Payment for authorized Additional Services satisfactorily completed and accepted by City, plus (3) Reimbursable Expenses actually incurred by Design Professional, as approved by City. The amount of any payment made to Design

Professional prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2) and (3) above. Design Professional shall not be entitled to any claim or lien against City or the Project for any additional compensation, lost profits or other damages of any kind in the event of such termination and payment. In addition, the City's right to withhold funds shall be applicable in the event of a termination for convenience.

11.4 Wind-Up Services. Upon the City's request and authorization, Design Professional shall perform any and all additional Services necessary to wind up the work performed to the date of suspension, abandonment or termination. Design Professional hereby expressly waives any and all claims for damages or compensation arising under this Section, except as set forth herein, in the event of such suspension, abandonment or termination.

11.5 Documents and Other Data. Within seven (7) calendar days following suspension, abandonment or termination of this Agreement, Design Professional shall provide to City all studies, sketches, working drawings, notes, specifications, computations, and all other Project Documents, as defined below, in paper and electronic form, to which City would have been entitled at the completion of Design Professional's Services under this Agreement. City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Design Professional under this Agreement. In the event of a dispute regarding the amount of compensation to which the Design Professional is entitled under the termination provisions of this Agreement, Design Professional shall provide all Project Documents to City upon payment of the undisputed amount. Design Professional shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. Design Professional shall make such documents available to City without additional compensation other than as may be approved as a Reimbursable Expense.

11.6 Employment of other Design Professionals. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services in connection with the Project similar to those terminated.

11.7 Savings Clause. If this Agreement is terminated by City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section 8 and Design Professional shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

12. Ownership and Use of Documents; Confidentiality.

12.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data recorded magnetically or electronically (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Design Professional or other applicable subcontractors or consultant, the Project Documents

shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, or at any time on seven (7) days' written notice from City, Design Professional shall provide to City copies of all Project Documents required by City. In addition, Design Professional shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Design Professional shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

12.2 Right to Use. Design Professional hereby grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Design Professional, for the following purposes:

12.2.1 The construction of all or part of this Project;

12.2.2 The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time; or

12.2.3 The construction of another project by or on behalf of the City for its ownership and use.

12.3 City is not bound by this Agreement to employ the services of Design Professional in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Design Professional or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Design Professional.

12.4 Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Design Professional shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Design Professional's seal from the Project Documents and hold harmless Design Professional and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

12.5 Design Professional shall not be responsible or liable for any revisions to the Project Documents made by any party other than the Design Professional, a party for which the Design Professional is legally responsible or liable, or anyone approved by the Design Professional.

12.6 License.

12.6.1 Design Professional hereby grants (and if any subsequent grant is necessary, agrees to grant) a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Design Professional shall require any and all subcontractors and

consultants to agree in writing that City is granted the license described above for the work of such subcontractors or consultants performed pursuant to this Agreement.

12.6.2 Design Professional represents and warrants that Design Professional has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Design Professional prepares or causes to be prepared pursuant to this Agreement. Design Professional shall indemnify, defend and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Design Professional makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Design Professional and provided to Design Professional by City.

12.7 Confidentiality. All Project Documents, either created by or provided to Design Professional in connection with the performance of this Agreement, shall be held confidential by Design Professional. All Project Documents shall not, without the written consent of City, be used or reproduced by Design Professional for any purposes other than the performance of the Services. Design Professional shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Design Professional shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

13. Indemnification.

13.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Design Professional shall defend (with legal counsel reasonably acceptable to the City) indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Design Professional or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

13.2 Neither termination of this Agreement nor completion of the Services shall release Design Professional from its obligations under this Section, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

13.3 Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any

other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement. If Design Professional fails to obtain such indemnity obligations from others as required, Design Professional shall be fully responsible for all obligations under this Section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Design Professional and shall survive the termination of this Agreement or this section.

13.4 Design Professional's compliance with the insurance requirements does not relieve Design Professional from the obligations described in this Section 10, which shall apply whether or not such insurance policies are applicable to a claim or damages.

14. Insurance. Design Professional shall, at all times it is performing services under this Agreement, provide and maintain insurance in the types and with limits set forth in Exhibit D to this Agreement, and meet all other requirements set forth in Ex. D. Design Professional shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In the event Design Professional fails to provide or maintain all required insurance, City may, in its sole discretion, obtain such insurance and deduct the amount therefor from the Not-to-Exceed Amount.

15. Miscellaneous.

15.1 Disabled Veteran Business Enterprise Certification. If required for this Project, **Design Professional** shall provide proof of DVBE compliance, in accordance with any applicable policies of the City, within thirty (30) days of its execution of this Agreement. If **Design Professional** fails to comply with this requirement, the Agreement may be canceled.

15.2 No Third Party Rights. This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

15.3 Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in the County in which City is situated.

15.4 Entire Agreement. This Agreement, with its exhibits, contains the entire, integrated agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

15.5 Exhibits and Recitals. All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth. The Exhibits are as follows:

Exhibit A: Project Description

- Exhibit B: Scope of Services, Approved Consultants
- Exhibit C: Initial Project Schedule
- Exhibit D: Insurance
- Exhibit E: Hourly Rates and Reimbursable Expenses

Severability. Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

15.6 Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is expressly specified in writing.

15.7 Safety. **Design Professional** shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the **Design Professional** shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

15.8 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY:

**City of Paso Robles
Attn: Doug Monn
1000 Spring Street
Paso Robles, CA 93446**

DESIGN PROFESSIONAL:

**Tartaglia Engineering
Attn: John Smith
P.O. Box 1930
Atascadero, CA 93423**

The parties may designate, in writing, other individuals to whom notice is to be given. Notices shall be deemed to be received upon personal delivery to the addresses above; if sent by email, upon delivery; if sent by overnight delivery, upon delivery as shown by delivery service records; if sent by facsimile, upon receipt as confirmed by the sending facsimile equipment; if by United States Postal Service, five days after deposit in the mail.

15.9 Attorney's Fees. Each party will be responsible for all of its own attorney's fees in connection with the preparation, negotiation, and execution of this Agreement. In the event of legal action arising out of or relating to this Agreement, the court shall have the discretion to determine whether one of the parties is a prevailing party for purposes of recovering its reasonable attorney's fees and other reasonable costs of such action.

15.10 Non-Discrimination. Design Professional warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither Design Professional nor any of its subcontractors shall

discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

15.11 Mediation. Should any dispute arise out of this Agreement, either party may request that it be submitted to mediation. The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first requesting mediation and making a good faith attempt to reach a mediated settlement. Upon the written request of either party, the parties shall exchange documents reasonably necessary to a resolution of the dispute prior to the mediation. The mediation process, once commenced by a meeting with the mediator shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

15.12 Litigation. Design Professional shall testify at City's request if litigation is brought against City in connection with Design Professional's services under this agreement. Unless the action is brought by Design Professional, or is based upon Design Professional's actual or alleged negligence or other wrongdoing, City shall compensate Design Professional for time spent in preparation for testimony, testimony, and travel as Additional Services at the rates set forth in Exhibit E.

15.13 Time of Essence. Time is of the essence for each and every provision of this Agreement.

15.14 City's Right to Employ Other Consultants. City reserves right to employ other consultants, including Design Professionals, in connection with this Project or other projects.

16. Prohibited Interests.

16.1 Solicitation. Design Professional maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Design Professional, to solicit or secure this Agreement. Further, Design Professional warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Design Professional, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

16.2 Conflict of Interest.

16.2.1 Design Professional understands that its professional responsibility is solely to City. Design Professional warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Design Professional shall not knowingly, and shall take reasonable steps to ensure that, it does not employ a person having such an interest in the performance of this Agreement. If after employment of a person, Design Professional discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Design

Professional shall promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

16.2.2 Design Professional (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Design Professional's services hereunder. Design Professional further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

16.2.3 Design Professional is not a designated employee within the meaning of the Political Reform Act because Design Professional:

16.2.4 Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official other than normal contract monitoring; and

16.2.5 Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a)(2)).

16.3 Subcontracting. As specified in this Agreement, **Design Professional** shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

16.4 Supplemental Conditions. Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

16.5 Drug/Tobacco Free Facilities. All City facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of City facilities.

16.6 Authority to Execute. The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

By: _____ Date: _____
James L. App, City Manager

Attest: _____
Caryn Jackson, Deputy City Clerk

TARTAGLIA ENGINEERING

By: _____ Date: _____
John A. Smith, Owner

Fed. Tax I.D. # _____

**EXHIBIT “A”
PROJECT DESCRIPTION**

The following reflects our understanding of the project based on information received through our meeting and follow-up site visit:

1. The Paso Robles Airport would like to construct and install a new, above-ground fuel facility and, subsequent to installation, remove and dispose of the existing underground fuel facility.
2. The new facility shall include a 12,000 gallon, Av-Gas fuel tank and a 20,000 gallon, Jet-A fuel tank. Tanks shall be double-walled, steel, with a leak monitoring system in the annular space.
3. The Av-Gas system will include a fuel dispenser, for self-serve operation, tied to a credit-card point of sale controller. Fuel and ground cabling will support over the wing self-serve fueling of private aircraft. Av-Gas will be filtered when moving from tank through dispenser and into the aircraft. System shall include two fuel pumps: a 10 HP pump for filling on-airport fuel trucks, and a 1 HP pump for self-serve fueling direct to aircraft.
4. The Jet-A tank will not include a fuel dispenser. Authorized fuel dispensing will be to the fuel vendor’s on-airport delivery trucks only. Jet-A fuel will be filtered in all directions; long haul truck into storage tank, and storage tank to on-site airport fueller. In addition, piping and valving will allow for circulation. of Jet-A out of storage, through the filter, and back into storage. Fuel pump shall be 10 HP.
5. A communications link will be connected to the fuel island for credit card sales and for service back to a fuel management system panel in the electrical vault.
6. Site improvements will include a concrete slab to support both fuel tanks, and a concrete loading/unloading apron in front. No area lights or pole-mounted fuel brand signs are anticipated.
7. Communications and electrical service to the fuel pumps, fuel management/sales system, and leak detection systems will be from existing services. No utility service upgrades or new services are anticipated. At present, two sources of electrical power are being considered. Final determination will be made during the design phase.
8. The construction of the Project will be packaged into two separate contracts:
 - A. Fabricate, deliver to Paso Robles, unload, anchor, and set-up, ready for operation, two self-contained aviation fuel tank units: one (1) – 12,000 gallon for Av-Gas, and one (1) – 20,000 gallon for JET-A . Each shall be complete with fuel management system, dispensers, hoses, valves, filters, etc., as

specified in the Technical Specifications drafted under this contract and procured under a separate City bid process.

- B. Construct site improvements at the designated tank location including clearing and grubbing, removal of existing surfacing material, concrete flatwork, electrical and communications runs from known points of connection to the fuel island area, and terminated in a manner suitable for tank connection. This effort will proceed through the formal City bid process.

9. Applicable standards include:

- A. AC 150/5230-4A: Aircraft Fuel Storage, Handling, and Dispensing on Airports
- B. NFPA 407, 2012 edition: Standard for Aircraft Fuel Servicing

10. The very preliminary estimated cost to complete this work (not including soft costs) is:

A.	Fabricate and deliver two fuel tanks	\$ 300,000
B.	Site improvements for two tanks, electric & communications	\$ 100,000
	TOTAL	\$ 400,000

EXHIBIT B
DESIGN PROFESSIONAL'S SCOPE OF SERVICES AND
APPROVED CONSULTANTS

Tartaglia Engineering, together with Power Communications Engineering (electrical engineer) will perform and provide the following services:

Design Phase:

1. Meet and discuss the project with agency representatives including City Fire and Building Departments, County Air Pollution Control District and Environmental Health, and State Water Quality Control Board. Gain information on requirements and expectations, permit fees, document review and approval procedures, etc.
2. Meet with City of Paso Robles Airport representatives and on-site fuel concession to confirm specifics and goals of the project, including tank size, flow rates, and fuel management requirements.
3. With the electrical engineer, tour and inspect the site and possible sources of electrical and communications services. Document findings and recommendations.
4. Topographic survey of the new site and alignment of existing and proposed power and communications conduit runs. Advise City of geotechnical information required for design.
5. Generation of plans, technical specifications, and construction cost estimates for the two described packages.
6. For the site improvements contract, incorporate technical specifications into City boiler-plate contract documents.
7. Provide City with review of plans and specifications at the 50%, 90%, and 100% complete intervals.
8. Prepare a Spill Prevention Control and Countermeasure Plan in accordance with Water Quality Control Board requirements.
9. Prepare, upload, and gain approval of an FAA-7460 Notice of Proposed Construction or Alteration for construction of the facility.
10. Provide original, signed, paper copies of approved plans and specifications and electronic file copy of same to the City of Paso Robles.

EXHIBIT B

Bidding and Construction Phase, Fabrication and Construction Contracts:

The City of Paso Robles will take the lead in bidding, award of contract, and administration and inspection of the constructed improvements. Tartaglia Engineering and Power Communications will provide services in a support position, as needed.

1. During the bidding process, answer contractor questions in a fair, impartial, and timely manner. Issue addenda if necessary.
2. Review and approve all shop drawings and material submittals.
3. During construction, provide periodic field engineering and inspection of site improvements.
4. Participate in a final inspection and generation of a Punch List.
5. Revise drawings to reflect as-constructed conditions.

SERVICES NOT INCLUDED

The following services / items are expressly not included in this contract:

1. Government, utility, plan review, or permit fees of any nature.
2. Partial or complete re-design if the site layout changes after our firm begins work.
3. Geotechnical investigation, lab analysis, and report of findings and recommendations for design of concrete tank and truck support slabs and foundations and any containment retaining walls.
4. Design of any on-site storm water pre-treatment or treatment systems.
5. Duplication of documents for bidding and construction.
6. Construction staking and layout.
7. Construction materials testing.
8. Full time inspection of construction activities.
9. Any work associated with removal and disposal of the existing facility.

EXHIBIT B

KEY PERSONNEL AND SUBCONSULTANTS

The work of this project will be performed by Tartaglia Engineering, and Power Communications Engineering working as a sub-consultant to Tartaglia Engineering. The following is a brief outline of key personnel that could work on this project:

TARTAGLIA ENGINEERING

John A. Smith, P.E.:	Primary point of contact, project engineer, technical specifications
Robert C. Tartaglia, P.E. :	Topographic survey for design
Scott A. Cope, P.E.:	Lead Designer
Jason Hargreaves:	Civil Designer
Patsy West:	Civil Designer
Forrest Keithley:	FAA 7460 Processing

POWER COMMUNICATIOSN ENGINEERING

Greg Notley, P.E.:	Electrical Engineering/Design
Staff:	CAD Drafting

**EXHIBIT “C”
INITIAL PROJECT SCHEDULE**

Tartaglia Engineering, together with Power Communications Engineering (electrical engineer) are prepared to start work on this project upon receipt of a written Notice to Proceed (NTP) from the City. The following is our anticipated schedule:

<u>Item</u>	<u>Description</u>	<u>Time from NTP</u>
1.	Meet with agencies, city, and inspect site	Within 2 weeks
2.	Topographic survey of site	Within 4 weeks
3.	Draft technical specifications for fuel tanks, pumps and equipment	Within 6 weeks
4.	50% complete plans and technical specification outline	Within 8 weeks
5.	90% complete plans and technical specifications	Within 10 weeks
6.	100% complete documents, ready for duplication and bidding	Within 12 weeks
7.	Construction phase services	With construction
8.	Final documentation	4 wks after complete

EXHIBIT "D" **INSURANCE**

Design Professional shall, at all times it is performing services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. Design Professional will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Design Professional agrees to amend, supplement or endorse the existing coverage to do so. Design Professional acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Design Professional in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

1. Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review, but in no event shall be less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit;

2. Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event shall be less than \$1,000,000 each occurrence. If Design Professional or its employees will use personal autos in any way on this Project, Design Professional shall provide evidence of personal auto liability coverage for each such person.

3. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers liability insurance, with minimum limits of \$1 million per occurrence.

4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Design Professional, subconsultants or others involved in the Project. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000.00 per occurrence.

5. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Design Professional and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be

no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

6. Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Best's rating of A- or better and a minimum financial size VII.

7. General conditions pertaining to provision of insurance coverage by Design Professional. Design Professional and City agree to the following with respect to insurance provided by Design Professional:

- a. Design Professional agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Design Professional also agrees to require all contractors, and subcontractors to do likewise.
- b. No liability insurance coverage provided to comply with this Agreement shall prohibit Design Professional, or Design Professional's employees, or agents, from waiving the right of subrogation prior to a loss. Design Professional agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
- c. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
- d. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
- e. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
- f. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Design Professional shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
- g. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Design Professional's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall

be charged to and promptly paid by Design Professional or deducted from sums due Design Professional, at City's option.

- h. Certificate(s) are to reflect that the insurer will provide 30-day's notice to City of any cancellation of coverage. Design Professional agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
- i. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Design Professional or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self- insurance available to City.
- j. Design Professional agrees to ensure that subcontractors, and any other party involved with the project that is brought onto or involved in the project by Design Professional, provide the same minimum insurance coverage required of Design Professional. Design Professional agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Design Professional agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
- k. Design Professional agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Design Professional or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Design Professional's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Design Professional, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
- l. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Design Professional ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Design Professional, the City will negotiate additional compensation proportional to the increased benefit to City.
- m. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
- n. Design Professional acknowledges and agrees that any actual or alleged failure on the part of City to inform Design Professional of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

- o. Design Professional will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
- p. Design Professional shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Design Professional's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
- q. The provisions of any workers' compensation or similar act will not limit the obligations of Design Professional under this agreement. Design Professional expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
- r. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
- s. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
- t. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
- u. Design Professional agrees to be responsible for ensuring that no contract used by any party involved in any way with the Project reserves the right to charge City or Design Professional for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
- v. Design Professional agrees to provide immediate notice to City of any claim or loss against Design Professional arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

EXHIBIT "E"

COMPENSATION RATES AND REIMBURSABLE EXPENSES

TARTAGLIA ENGINEERING FEE SCHEDULE:

Professional Engineer	\$115.00 per hour
Licensed Land Surveyor	\$110.00 per hour
Civil Engineer	\$110.00 per hour
Project Manager	\$85.00 per hour
Engineer Technician	\$75.00' per hour
Environmental Coordinator	\$75.00 per hour
Draftsman	\$65.00 per hour
Inspector: Day, Straight Time	\$97.00 per hour
Day, Overtime	\$112.00 per hour
Night, Straight Time	\$100.00 per hour
Night, Overtime	\$115.00 per hour
(Minimum night shift = 4 hours)	
Engineering Aide	\$55.00 per hour
Clerical	\$44.00 per hour
Survey Party: One Man (with robotic)	\$155.00 per hour
Two Man	\$180.00 per hour
Three Man	\$210.00 per hour

Direct expenses shall be reimbursed as follows:

Mileage	\$0.50 per mile
Per diem	\$110.00 per man-day
Reproduction, postage, express mail shipping, advertising	Cost + 10%
Sub-consultant services	Cost+ 5%
Permit, plan check, and agency inspection fees	At Cost

(Compensation to field inspectors and field surveyors is in accordance with prevailing wage requirements, State of California.)

POWER COMMUNICATIONS ENGINEERING FEE SCHEDULE:

Principal Engineer	\$150.00 per hour
Associate Engineer	\$120.00 per hour
Specification Writer	\$95.00 per hour
Design Assistant	\$75.00 per hour
Drafting	\$55.00 per hour

Direct expenses shall be reimbursed as follows:

Mileage	\$0.60 per mile
Reproduction, postage, express mail shipping, advertising	Cost+ 10%
Sub-consultant services	Cost+ 5%