AGREEMENT NO. _____
(Agreement for Airport Consulting Services)

THIS AGREEMENT ("Agreement") is made and entered into this _____, by and between the **City of Oroville**, a political subdivision of the State of California ("City") and _____ ("Consultant").

W I T N E S S E T H

WHEREAS, the City is authorized by Government Code Section 23004 to make contracts as necessary for the exercise of its powers; and

WHEREAS, the City is authorized by Government Code Section 31000 to contract with persons specially trained, experienced, expert and competent to perform special services such as airport consulting services; and

WHEREAS, the City desires to obtain the services of a consultant to provide airport consulting services on an as-needed basis, including but not limited to updating the ALP (Airport Layout Plan), support in update of the airport CIP (Capital Improvement Plan), support in application for FAA and state grants, bidding and design support and documents for a variety of airport development projects, providing support in meetings with various Government agencies to ensure airport compliance (FAA, DOT, et. al.), and related services; and

WHEREAS, the City issued two separate requests for qualifications (RFQ) in October 2019 seeking such services; and

WHEREAS, Consultant submitted proposals in response to each RFQ to provide such services, which proposals are attached as Exhibits C and D; and

WHEREAS, Consultant has represented and warrants to the City that it has the necessary training, experience, expertise and competency to provide the services, goods and materials that are described in this Agreement, at a cost to the City as herein specified; that it will be able to perform the herein described services at minimum cost to the City by virtue of its current and specialized knowledge of relevant data, issues, and conditions; and

WHEREAS, Consultant understands that the City is relying upon these representations in entering into this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

I. BASIC SERVICES

A. Consultant shall furnish and perform the following services as requested in a written Work Authorization from the City Administrator or his/her written designee ("Administrator"), in accordance with Exhibits A-D and in a manner satisfactory to the

Administrator:

1. **As-Needed, On-Call Architectural/Engineering Services for Airport Development Projects for Oroville Municipal Airport, such as:**

    a. Pavement Management PLAN (PMMP);
    b. Design/Construct;
    c. Crack Seal runways, Taxiways, Apron, and Taxilanes;
    d. Taxiways A & B Rehabilitation and Taxiway Safety Area Grading Design and Construction;
    e. Reconstruct and Align T/W S and Apron;
    f. Construct New Above Ground Fuel Farm Facility South Side;
    g. Other development projects that may arise, including possibly hangar construction, pavement improvements, and water and sewer system design and construction.

2. **As-Needed, On-Call Airport/Aviation Planning Services Consultant for the Oroville Municipal Airport, such as:**

    a. Prepare necessary applications and documentation for Federal Aviation Administration-Airport Improvement Program (FAA-AIP) grant funding. Assist in project coordination with the FAA and the California Division of Aeronautics;
    b. Provide airport master planning and consultant support services as may be required from time to time by the City;
    c. Design new Tee Hangar Taxilane Site;
    d. Reconstruct and Align T/W S and Apron;
    e. Design new Above Ground Fuel Farm Facility South Side;
    f. Airport Layout Plan Narrative including ALP Update Plans & Exhibit A with Aeronautical Study.

B. Consultant will provide all facilities, equipment, personnel, labor and materials necessary to provide the foregoing services in accordance with this Agreement.

C. The complete contract shall include the following exhibits attached hereto and incorporated herein:

Exhibit A: Notice of RFQ for Architectural & Engineering Services
Exhibit B: Notice of RFQ for Airport/Aviation Planning Services Consultant
Exhibit C: Bid Tabulation Packet for Architectural/Engineering Solicitation
Exhibit D: Bid Tabulation Packet for Planning and Environmental Solicitation

In the event of any conflict between any of the provisions of this Agreement (including exhibits), the provision that requires the highest level of performance from

Consultant for the City's benefit shall prevail.

II. ADDITIONAL SERVICES

Consultant shall also provide any services ancillary to those listed above, as requested in written Work Authorization from the City Administrator:

III. COMPENSATION AND REIMBURSEMENT OF EXPENSES

A. For the services described in Paragraph I above, and subject to the condition that the services to date have been completed in a manner satisfactory to the City Administrator, Consultant shall be compensated as set forth in Federal Aviation Administration Advisory Circular 150/5100-14E, which requires a fair and reasonable fee in all cases. In particular, for each submitted Work Authorization the Administrator shall conduct the Independent Fee Estimate (IFE) and negotiations required therein. If a mutually satisfactory agreement cannot be negotiated, the Administrator reserves the right to initiate negotiations with another consultant. Consultant agrees that each submitted Work Authorization will include the level of detail needed to satisfy the IFE requirements for that project.

B Allowable costs shat be as set forth in Chapter 4 of Federal Aviation Administration Advisory Circular 150/5100-14E.

C. Total compensation paid by County under this agreement shall not exceed $5,000,000 (five million dollars).

D. Reimbursement for all expenses incurred by Consultant in the performance of this Agreement is included in the compensation set forth above.

IV. METHOD OF PAYMENT

A. No more frequently than monthly, Consultant shall submit an invoice detailing the services provided during the preceding month, including but not limited to the Task as set forth in a written Work Authorization from the Administrator (as identified in Paragraph I) and the Phase thereof (as described in Exhibit C), the amount of time spent providing the services calculated to one-tenth of an hour, the rate per hour charged, and an itemization of the actual expenses for which reimbursement is requested. Any claim shall also include a copy of the Administrator's Work Authorization given in advance of such services being provided. If requested by the City, Consultant shall provide any further documentation to verify the compensation and reimbursement sought by Consultant.

B. Within fifteen (15) calendar days of the receipt of Consultant's detailed invoice, the City Administrator shall either authorize payment or advise Consultant in writing of any

concerns that the City Administrator has with the invoice and any need for further documentation.

C. Within thirty (30) calendar days of the City Administrator's authorization for payment of an invoice, the City Finance shall either issue the payment or advise Consultant in writing of any concerns that City Finance has with the request and any need for further documentation.

V. REPORTS

City shall provide Consultant with all information pertinent to the services required of Consultant by this Agreement which is requested by Consultant and which is within City's possession. No charge will be made for these materials.

VI. OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All professional and technical documents and information developed under this Agreement, and all work products, including writings, work sheets, reports, and related data, materials, copyrights and all other rights and interests therein, shall become the property of the City, and Consultant agrees to deliver and assign the foregoing to the City, upon completion of the services hereunder or upon any earlier termination of this Agreement. Consultant assigns the work products, as and when the same shall arise, for the full terms of protection available throughout the world. In addition, basic data prepared or obtained under this Agreement shall be made available to the City without restriction or limitation on their use. All charges for the foregoing are included in the compensation set forth above.

VII. RECORDS; ACCESS, RETENTION

Consultant shall retain and make available for review by the City and its designees all records, documents, and general correspondence relating to this Agreement and the services required hereunder for a period of not less than five (5) years after receipt of final payment or until all pending audits and proceedings are completed, whichever is later. Consultant shall make such records available for inspection and copying by the City and its designees at any reasonable time. At least thirty (30) calendar days prior to any destruction of these records following the five (5) years, Consultant shall notify the Administrator. Upon such notification, the City Administrator shall either agree to the destruction or authorize the records to be forwarded to the City for further retention.

VIII. DISPUTES

Any dispute arising under this Agreement shall be decided by the City Administrative Officer who shall put his or her decision in writing and mail a copy thereof to the address for the notice to Consultant. The decision of the City Administrative Officer shall be final unless, within thirty (30) days from the date such copy is mailed to Consultant, Consultant appeals the decision in

writing to the City Council. Any such written appeal shall detail the reasons for the appeal and contain copies of all documentation supporting Consultant's position. In connection with any appeal proceeding under this paragraph, Consultant shall be afforded the opportunity to be heard and offer evidence in support of its appeal to the City Council at a regular Council meeting. Pending a final decision of the dispute, Consultant shall proceed diligently with the performance of this Agreement and in accordance with the City Administrative Officer's decision. The decision of the City Council on the appeal shall be final for purposes of exhaustion of administrative remedies.

IX. TERM AND TERMINATION

A. The term of this Agreement shall be from January 21, 2020 to and including January 20, 2025 with up to two one-year extensions at the option of the Administrator and thereafter until all services required of Consultant pursuant to this Agreement have been fully performed to the satisfaction of the Administrator, unless sooner terminated as hereinafter provided.

B. The City may, by written notice to Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the City, Consultant must immediately discontinue all services affected.

Upon termination of the Agreement, Consultant must deliver to the City all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by Consultant under this Agreement, whether complete or partially complete.

The City agrees to make just and equitable compensation to Consultant for satisfactory work completed up through the date Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

The City further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

C. Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party seven days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

1. Termination by the City: The City may terminate this Agreement in whole or in part, for the failure of Consultant to:

a. Perform the services within the time specified in this Agreement or by City approved extension;

b. Make adequate progress so as to endanger satisfactory performance of the project; or

c. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, Consultant must deliver to the City all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by Consultant under this Agreement, whether complete or partially complete.

The City agrees to make just and equitable compensation to Consultant for satisfactory work completed up through the date Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

The City further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the City determines Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the City issued the termination for the convenience of the City.

2. Termination by Consultant: Consultant may terminate this Agreement in whole or in part, if the City:

a. Defaults on its obligations under this Agreement;

b. Fails to make payment to Consultant in accordance with the terms of this Agreement;

c. Suspends the project for more than 180 days due to reasons beyond the control of Consultant.

Upon receipt of a notice of termination from Consultant, the City agrees to cooperate with Consultant for the purpose of terminating the Agreement or portion thereof, by mutual consent. If the City and Consultant cannot reach mutual agreement on the termination settlement, Consultant may, without prejudice to any rights and remedies

it may have, proceed with terminating all or parts of this Agreement based upon the City's breach of the Agreement.

In the event of termination due to the City's breach, Consultant is entitled to invoice the City and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by Consultant through the effective date of termination action. The City agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

C. This Agreement is subject to the City, the State of California and the United States appropriating and approving sufficient funds for the activities required of the Consultant pursuant to this Agreement. If the City's adopted budget and/or its receipts from the State of California and the United States do not contain sufficient funds for this Agreement, the City may terminate this Agreement by giving ten (10) days advance written notice thereof to the Consultant, in which event the City shall have no obligation to pay the Consultant any further funds or provide other consideration and the Consultant shall have no obligation to provide any further services pursuant this Agreement. If the City terminates the Agreement pursuant to this subparagraph, the City will pay Consultant in accordance with this Agreement for all services performed to the satisfaction of the Administrator before such termination and for which funds have appropriated as required by law.

D. If Consultant, or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners, becomes excluded, debarred or suspended from participation in Federally or State funded programs, the City may terminate this Agreement by giving ten (10) days advance written notice thereof to the Consultant.

E. During and following the term of this Agreement, Consultant shall not use, distribute or otherwise circulate any of the materials developed pursuant to this Agreement and for which Consultant was compensated by the City without the express written permission of the Administrator.

X. APPLICABLE LAWS

A. In the performance of the services required by this Agreement, Consultant shall comply with all applicable Federal, State, County, and City statutes, ordinances, regulations, directives and laws. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed and resolved in a California State court located in Oroville, California. Consultant waives any removal rights it might have under State or Federal law.

XI. FEDERAL AVIATION ADMINISTRATION MANDATORY CONTRACT PROVISIONS

A. In the performance of design services, Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, Consultant agrees to furnish the City a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

B. Consultant must maintain an acceptable cost accounting system. Consultant agrees to provide the County, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of Consultant which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

C. Any violation or breach of terms of this Agreement on the part of Consultant or its subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this Agreement.

The City will provide Consultant written notice that describes the nature of the breach and corrective actions Consultant must undertake in order to avoid termination of the Agreement. The City reserves the right to withhold payments to Consultant until such time Consultant corrects the breach or the City elects to terminate the Agreement. The City's notice will identify a specific date by which Consultant must correct the breach. The City may proceed with termination of the Agreement if Consultant fails to correct the breach by the deadline indicated in the City's notice.

The duties and obligations imposed by this Agreement and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

D. Consultant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds Consultant and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

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

1. Compliance with Regulations: Consultant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Consultant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Consultant of Consultant's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports: Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Consultant will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

   a. Withholding payments to Consultant under the contract until Consultant complies; and/or
   b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Consultant will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Consultant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Consultant may request the United States to enter into the litigation to protect the interests of the United States.

F. Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). Consultant agrees to report any violation to the County immediately upon discovery. The County assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Consultant must include this requirement in all subcontracts that exceeds $150,000.

G. Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying Consultant from future bidding as non-responsible.

H. In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the City encourages Consultant to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. Consultant must include the

substance of this clause in all sub-tier contracts exceeding $3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

I. Consultant and subcontractors agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201et seq).

J. The provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), are incorporated into this Agreement by this reference and its terms apply with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers. Consultant has full responsibility to monitor compliance to the referenced statute or regulation. Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

K. By entering into this Agreement, Consultant certifies that with respect to this Agreement, Consultant--

1. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);

2. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and

3. has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

Consultant must provide immediate written notice to the City if Consultant learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. Consultant must require subcontractors provide immediate written notice to Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, neither Consultant nor any subcontractor shall:

1. be owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or

2. be owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or

3. incorporate in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Consultant shall incorporate this provision for certification without modification in all lower tier subcontracts. Consultant may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless Consultant has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when awarding this Agreement. If it is later determined that Consultant or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the City cancellation of the Agreement or subcontract for default at no cost to the City or the FAA.

L. Consultant certifies by entering this Agreement, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit

Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. Consultant shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

M. The requirements of 29 CFR Part 1910 are incorporated into this Agreement by this reference with the same force and effect as if given in full text. Consultant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Consultant retains full responsibility to monitor its compliance and their subcontractors' compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

N. Consultant must complete the following two certification statements. Consultant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (□) in the space following the applicable response. Consultant agrees that it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

1. Consultant represents that it is (□) is not (□) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. Consultant represents that it is (□) is not (□) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

O. In the employment of labor (excluding executive, administrative, and supervisory positions), Consultant and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled

by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

XI. NON-DISCRIMINATION IN SERVICES AND BENEFITS

Consultant certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, or physical or mental handicap in accordance with Title VI of the Civil Right Act of 1964, 42 U.S.C. Section 2000d, rules and regulations promulgated pursuant thereto, or as otherwise provided by State and federal law; nor on the basis of sexual preferences as determined by federal, State, or County regulations; except as may be required by federal, State or County regulations or other administrative directives established by the City Council or the City Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of race, color, creed, or national origin include but are not limited to the following: denying a participant any service or benefit to a participant which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by other receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services on the basis of race, color, creed, or national origin of the participants to be served.

XII. CONSULTANT'S RESPONSIBILITIES; INDEMNIFICATION

A. Consultant shall exercise all of the care and judgment consistent with good practices and that degree of care and skill ordinarily exercised by reputable members of its profession providing the same or similar services in the performance of the services required by this Agreement.

B. To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the City and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorneys' fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, City employees, and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors, This duty of Consultant includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

In providing any defense under this Paragraph, Consultant shall use counsel reasonably acceptable

to the City Attorney. The provision of this section shall survive the termination of expiration of this Agreement.

XIII. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

A. During the term of this Agreement, Consultant shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.

1. Minimum Coverages (as applicable). Insurance coverage shall be with limits not less than the following:

   a. **Comprehensive General Liability** – $1,000,000/occurrence and $2,000,000/aggregate

   b. **Automobile Liability** – $1,000,000/occurrence (general) and $500,000/occurrence (property) (include coverage for Hired and Non-owned vehicles)

   c. **Professional Liability/Malpractice/Errors and Omissions** – $1,000,000/occurrence and $2,000,000/aggregate

   d. **Workers' Compensation** – Statutory Limits/**Employers' Liability** - $1,000,000/accident for bodily injury or disease (If no employees, this requirement automatically does not apply.)

2. The City, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers' compensation and professional liability coverages.

3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a "per occurrence" basis unless the City Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Consultant changes insurance carriers Consultant shall purchase "tail" coverage covering the term of this Agreement and not less than three years thereafter. Proof of such "tail" coverage shall be required at any time that the Consultant changes to a new carrier prior to receipt of any payments due.

4. The Consultant shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the City's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.

5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the City Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits

of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or the City of Oroville.

6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Administrator (ten (10) days for delinquent insurance premium payments).

7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the City Risk Manager.

8. The policies shall cover all activities of Consultant, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.

9. For any claims relating to this Agreement, the Consultant's insurance coverage shall be primary, including as respects the City, its officers, agents, employees and volunteers. Any insurance maintained by the City shall apply in excess of, and not contribute with, insurance provided by Consultant's liability insurance policy.

10. The Consultant shall waive all rights of subrogation against the City, its officers, employees, agents and volunteers.

B. Prior to commencing services pursuant to this Agreement, Consultant shall furnish the Administrator with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the City Risk Manager before work commences. Upon Administrator's request, Consultant shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

C. During the term of this Agreement, Consultant shall furnish the City Administrator with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon City Administrator's request, Consultant shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

XIV. WORKERS' COMPENSATION

Consultant shall provide workers' compensation coverage as required by State law, and prior to commencing services pursuant to this Agreement shall file the following statement with the City in a form substantially as set forth below.

WORKERS' COMPENSATION CERTIFICATE

I am aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing any services required by this Agreement.

The person executing this certificate on behalf of Consultant affirmatively represents that she/he has the requisite legal authority to do so on behalf of Consultant, both the person executing this Agreement on behalf of Consultant and Consultant understand that the City is relying on this representation in entering into this Agreement.

XV. NOTICE

A. All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of City and Consultant at their respective addresses as follows:

Consultant:

City: City Administrator
City of Oroville
1735 Montgomery Street
Oroville, CA 95965
Tel: 530-538-2535

B. Any party may change the address to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

C. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

XVI. CONFLICT OF INTEREST

A. Consultant shall comply with the laws and regulations of the State of California and City regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.

B. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Consultant obligations and responsibilities hereunder. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed. This covenant shall remain in force until Consultant completes performance of the services required of it under this Agreement.

C. Consultant agrees that if any fact comes to its attention that raises any question as to the applicability of any conflict of interest law or regulation, Consultant will immediately inform the County and provide all information needed for resolution of the question.

XVII. COVENANT AGAINST CONTINGENT FEES

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this warranty, the City shall have the right to annul this agreement without liability, or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

XVIII. ASSIGNMENT AND SUBCONTRACTS

The services and obligations required of Consultant under this Agreement are not assignable in whole or in part. In addition, Consultant shall not subcontract any portion of the services required of Consultant by this Agreement without the express written consent of the Administrator. If any portion of the services required of Consultant are subcontracted, the sub-contractor Consultant (s) shall maintain the same insurance as required of Consultant by this Agreement and Consultant shall be fully responsible to the City for all work undertaken by sub-contractor Consultant.

XIX. STATUS OF CONSULTANT

A. It is understood and agreed by all the parties hereto that Consultant is an independent Consultant and that no relationship of employer-employee exists between the City and Consultant. Neither Consultant nor Consultant's assigned personnel shall be entitled to any benefits payable to employees of the City. Consultant hereby indemnifies and holds the City

harmless from any and all claims that may be made against the City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.

B. It is further understood and agreed by all the parties hereto that neither Consultant nor Consultant's assigned personnel shall have any right to act on behalf of the City in any capacity whatsoever as an agent or to bind the City to any obligation whatsoever.

C. It is further understood and agreed by all the parties hereto that Consultant must issue any and all forms required by Federal and State laws for income and employment tax purposes, including W-2 and 941 forms, for all of Consultant's assigned personnel.

XX. AMENDMENT

This Agreement may be amended only by written instrument signed by the City and Consultant.

XXI. WAIVER

The waiver by the City or any of its officers, agents or employees or the failure of the City or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

XXII. AUTHORIZED REPRESENTATIVE

The person executing this Agreement on behalf of Consultant affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of Consultant and to bind Consultant to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of Consultant and Consultant understand that the City is relying on this representation in entering into this Agreement.

XXIII. PUBLIC RECORDS ACT

Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

XXIV. ADDITIONAL PROVISIONS

A. Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both. Should the City choose to excuse any given failure of Consultant to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be, or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or obligation or any other found in this document. All conditions, covenants and obligations

continue to apply no matter how often City may choose to excuse a failure to perform them.

B. Except where specifically stated otherwise in this document, the promises in this document benefit the City and Consultant only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the parties hereto intend to convey to anyone any "legitimate claim of entitlement" with the meaning and rights that phrase has been given by case law.

XXV. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the City and Consultant and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

CONSULTANT

By: _____

CITY OF OROVILLE

By: _____
Chuck Reynolds, Mayor

Attest: Jackie Glover, Assistant City Clerk

By: _____

Approved as to Form:

By: _____
Scott Huber, City Attorney