PSA - 1388

CITY OF CHICO - PROFESSIONAL SERVICES AGREEMENT

REINARD W. BRANDLEY, CONSULTING AIRPORT ENGINEER
Architect/Consultant/Engineer

AIRPORT IMPROVEMENT PROGRAM NO. 37 – RECONSTRUCTION OF AIRCRAFT PARKING APRON PHASE 3 – NORTH CENTRAL: ENGINEERING & CONSTRUCTION MANAGEMENT SERVICES
Project Title

856-000-8800/50318-856-4140 & -4160
Budget Account Number

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THIS PROFESSIONAL SERVICES AGREEMENT (Agreement) is entered into on April 15, 2016, between the City of Chico, a municipal corporation under the laws of the State of California, (City) and Reinard W. Brandley, an individual, (Consultant).

SECTION 1 - DESCRIPTION OF PROJECT

City desires to undertake that certain project (Project) described in EXHIBIT A, entitled "DESCRIPTION OF PROJECT," and to engage Consultant to provide the required professional services relating to the Project.

SECTION 2 - SCOPE OF PROFESSIONAL SERVICES - BASIC; COMPLETION SCHEDULE

Consultant shall perform those basic professional services in connection with the Project as are set forth more particularly in EXHIBIT B, entitled "SCOPE OF PROFESSIONAL SERVICES - BASIC; COMPLETION SCHEDULE," and shall complete said professional services in accordance with the completion schedule for professional services as incorporated in EXHIBIT B.

SECTION 3 - SCOPE OF PROFESSIONAL SERVICES - ADDITIONAL; COMPLETION SCHEDULE

City and Consultant agree that it may be necessary, in connection with the Project, for Consultant to perform or secure the performance of professional services other than those set forth in EXHIBIT B. In each such instance, Consultant shall advise City, in advance and in writing, of the need for such additional professional services, their cost and the estimated time, if appropriate, required to perform them. Consultant shall not proceed to perform any such required additional professional service until City has determined that such professional service is beyond the scope of the basic professional service to be provided, is required, and has given its

written authorization to perform or obtain it. Each additional professional service so authorized shall constitute an amendment to this Agreement, shall be identified and sequentially numbered as "Amendment No. 1" and so forth, shall be subject to all of the provisions of this Agreement, and shall be incorporated into EXHIBIT B accordingly.

SECTION 4 - COMPENSATION

Consultant shall be compensated for professional services rendered to City pursuant to this Agreement periodically in the amounts, manner and in accordance with the payment schedule as set forth in EXHIBIT C, entitled "COMPENSATION." Amounts due to Consultant from City for professional service rendered shall be evidenced by the submission to City by Consultant of an invoice, prepared in a form satisfactory to City, setting forth the amount of compensation due for the period covered by it. Each such invoice shall be forwarded to City so as to reach it on or before the 15th day of the month next following the month or months, or other applicable period, for which the professional service invoiced were provided. All such invoices shall be in full accord with any and all applicable provisions of this Agreement. City will make payment on each such invoice within 30 days of receipt of it. However, if Consultant submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement, then City shall not be obligated to process any payment to Consultant until a correct and complying invoice has been submitted.

SECTION 5 - RESPONSIBILITY OF CONSULTANT

By executing this Agreement, Consultant warrants to City that Consultant possesses, or will arrange to secure from others, all of the necessary professional capabilities, experience, resources and facilities necessary to provide to City the professional services under this Agreement. In procuring the professional services of others to assist Consultant in performing the professional services set forth at EXHIBIT B or additional professional services under SECTION 3 of this Agreement, Consultant shall not employ or otherwise obtain the professional services of any person or entity known to Consultant or City to have, or be likely to develop during the term of this Agreement, an interest that is personally, or professionally, or financially adverse to any interest of City. Consultant will follow the best current, generally accepted professional practices in performing tests and procedures, making findings, rendering opinions, preparing factual presentations and providing professional advice and recommendations regarding professional services rendered under this Agreement.

SECTION 6 - RESPONSIBILITY OF CITY

To the extent appropriate to the Project contemplated by this Agreement, City shall:

6.1 Assist Consultant by placing at Consultant's disposal all available information pertinent to the Project, including previous reports and any other data relative to design and construction of the Project.

6.2 Guarantee access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform Consultant's professional services.

6.3 Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents prepared and presented by Consultant, and render verbally or in writing as may be

appropriate, decisions pertaining thereto within a reasonable time so as not to delay the progress of the services by Consultant.

6.4 Designate in writing a person to act as City's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements and systems pertinent to Consultant's professional services.

6.5 Give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in the Project.

6.6 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

SECTION 7 - INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with Consultant's use of City premises under this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Consultant shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Consultant/Subconsultant/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its directors, officials, officers, employees, agents, or volunteers.

Notwithstanding the above, Consultant's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents for claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) shall be limited to the extent caused by Consultant's negligent acts, errors or omissions.

This Section 7 shall only apply if Consultant is a design professional as defined in Civil Code section 2782.8(2), specifically, architects (Business & Professions Code section 5500), landscape architects (Business & Professions Code section 5615), professional engineers

(Business & Professions Code section 6701), and professional land surveyors (Business & Professions Code section 8701).

SECTION 8 - INSURANCE

Any requirements by City that Consultant carry general liability, errors and omissions, or any other type of insurance in connection with the services to be performed and/or professional services to be rendered by Consultant pursuant to this Agreement shall be as set forth in EXHIBIT D, entitled "INSURANCE PROVISIONS."

SECTION 9 - GENERAL PROVISIONS

9.1 Access to Records

Consultant shall maintain all books, records, documents, accounting ledgers, and similar materials relating to services performed for City under this Agreement on file for at least four years following the date of final payment to Consultant by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit and copying at reasonable times, during Consultant's usual and customary business hours. Consultant shall provide proper facilities to City's representative(s) for access and inspection. Consultant shall be entitled to reasonable compensation for time and expenses related to such access and inspection activities, which shall be considered to be an additional professional service to City, falling under the provisions of SECTION 3 of this Agreement.

9.2 Assignment

This Agreement is binding on the heirs, successors, and assigns of the parties hereto and shall not be assigned by either City or Consultant without the prior written consent of the other.

9.3 Changes to Scope of Services - Basic Professional Services

City may at any time, upon a minimum of 10 days written notice, modify the scope of basic professional services to be provided under this Agreement. Consultant shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify City in writing. Upon agreement between City and Consultant as to the extent of said impacts to time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by City and Consultant shall constitute the Consultant's notice to proceed with the changed scope.

9.4 Compliance with Laws, Rules, Regulations

All professional services performed by Consultant pursuant to this Agreement shall be performed in accordance and full compliance with all applicable Federal, State, or City statutes, and any rules or regulations promulgated thereunder.

9.5 Conflict of Interest Code Applicability

If City's City Manager has determined that one or several of Consultant's Principal(s) or Project Manager(s) are subject to the provisions of Section 2R.04.180 of the Chico Municipal Code (the City's Conflict of Interest Code), then each such person will be required to comply with the provisions of said Code in connection with the professional services they render to the City under this Agreement. In such event, City's requirements are set forth in EXHIBIT E,

entitled "CONFLICT OF INTEREST PROVISIONS," to this Agreement.

9.6 Exhibits Incorporated

All Exhibits attached to and referred to in this Agreement are hereby incorporated by this reference.

9.7 Independent Contractor

City and Consultant agree that the relationship between them created by this Agreement is that of an employer-independent contractor. Consultant shall be solely responsible for the conduct and control of the services performed under this Agreement. Consultant shall be free to render professional consulting services to others during the term of this Agreement, so long as such activities do not interfere with or diminish Consultant's ability to fulfill the obligations established herein to City.

9.8 Integration; Amendment

This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing signed by both parties.

9.9 Jurisdiction

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

9.10 Notice to Proceed; Progress; Completion

Upon execution of this Agreement by the parties, City shall give Consultant written notice to proceed with the services. Such notice may authorize Consultant to render all of the professional services contemplated herein, or such portions or phases as may be mutually agreed upon. In the latter event, City shall, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the services. Upon receipt of such notices, Consultant shall diligently proceed with the services authorized and complete it within the agreed time period.

9.11 Ownership of Documents

Title to all documents, designs, drawings, specifications, and the like with respect to services performed under this Agreement shall vest with City at such time as City has compensated Consultant, as provided herein, for the professional services rendered by Consultant in connection with which they were prepared.

9.12 Subcontracts

Consultant shall be entitled, to the extent determined appropriate by Consultant, to subcontract any portion of the services to be performed under this Agreement. Consultant shall

be responsible to City for the actions of persons and firms performing subcontract services. The subcontracting of services by Consultant shall not relieve Consultant, in any manner, of the obligations and requirements imposed upon Consultant by this Agreement.

9.13 Term; Termination

The term of this Agreement shall commence upon City's issuance to Consultant of a notice to proceed for all or a portion of the services, as hereinabove provided, and shall end upon City's acceptance and payment for all or such portion of the services as was authorized by such notice, including any and all retentions. Notwithstanding the foregoing, City may, in its sole discretion, terminate this Agreement at any time and for any reason whatsoever by giving at least 10 days prior written notice of such termination to Consultant. In this latter event, Consultant shall be entitled to compensation for all professional service rendered and services performed for City to the date of such termination.

9.14 Notice

Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service or, alternatively, by personal delivery or overnight courier service addressed to the parties as follows:

To City:	City Manager City of Chico P. O. Box 3420 Chico, CA 95927-3420	or	City Manager City of Chico 411 Main Street Chico, CA 95928
To Consultant:	Reinard W. Brandley Consulting Airport Engineer 6125 King Road, Suite 201 Loomis, CA 95650		

SECTION 10 - SPECIAL PROVISIONS

This Agreement shall include all special provisions, if any, as are set forth on EXHIBIT F, entitled "SPECIAL PROVISIONS."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date first set forth above.

CITY:

Mark Orme

Mark Orme, City Manager*

*Authorized pursuant to Section 3.08.060 of the Chico Municipal Code.

CONSULTANT:

By: Reinard W. Brandley, Principal

APPROVED AS TO FORM:

Vincent C. Ewing, City Attorney*

*Approved pursuant to The Charter of the City of Chico § 906(D)

REVIEWED AS TO CONTENT:

Frank Fields, Administrative Services Director*

*Reviewed by Risk Management, Human Resources, Finance and Information Systems.

APPROVED AS TO CONTENT:

Brendan Ottoboni, Public Works Director - Engineering

CITY OF CHICO - PROFESSIONAL SERVICES AGREEMENT

REINARD W. BRANDLEY, CONSULTING AIRPORT ENGINEER
Architect/Consultant/Engineer

AIRPORT IMPROVEMENT PROGRAM NO. 37 – RECONSTRUCTION OF AIRCRAFT PARKING APRON PHASE 3 – NORTH CENTRAL: ENGINEERING DESIGN & CONSTRUCTION MANAGEMENT
Project Title

856-000-8800/50318-856-4140 & -4160
Budget Account No.

EXHIBIT A

DESCRIPTION OF PROJECT

The Consultant shall prepare the updated engineering design, including preparation of plans and specifications, Engineer's Report, Engineer's Estimate, Construction Safety and Phasing Plan, and Construction Management Plan, for the Project entitled "Reconstruct Aircraft Parking Apron Phase 3 – North Central" at the Chico Municipal Airport, to conform to current Federal Aviation Administration (FAA) standards.

The Consultant shall also provide engineering support during Project bidding and contract award, engineering design services during construction and Project closeout, and construction management services for the Project.

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EXHIBIT B

SCOPE OF PROFESSIONAL SERVICES - BASIC; COMPLETION SCHEDULE

Scope of Professional Services - Basic

The Consultant shall provide professional services as follows:

Task 1: Engineering Design & Preparation of Updated Plans, Specifications, & Reports
The engineering design shall include the following:

a. Prepare engineering design, preparation of updated plans and specifications, Engineer's Report, Engineer's Estimate, and Construction Management Plan.
b. Create airspace case in Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) – Construction Safety and Phasing Plan.

Task 2: Engineering Support during Bidding & Contract Award
The engineering design requirements during bidding, contract award, and construction shall include the following:

a. Assist City staff in printing and distributing final plans and specifications to prospective contractors.
b. Participate in a pre-bid meeting for all prospective contractors.
c. Respond to any questions and comments from prospective contractors.
d. Prepare any required addenda.
e. Assist City staff in awarding the construction contract, including preparation of the Abstract of Bids and evaluation of bids.

Task 3: Engineering Design Services during Construction & Final Project Closeout
The engineering design requirements during construction and Project closeout shall include the following:

a. Participate in a pre-construction conference.

b. Provide engineering surveillance of all construction operations, including attendance at weekly construction meetings, preparation of any Contract Change Orders required, preparation of contractor pay estimates, preparation of FAA reimbursement requests, review of all contractor submittals, and preparation of final as-constructed drawings and final Engineer's Report.

Task 4: Construction Management

Project management during construction shall include:

a. Furnish qualified Resident Engineer to review and monitor all construction activities.
b. Provide all required inspection and testing as included in the quality assurance program, including providing technicians and inspectors as required.
c. Provide surveying services as required.
d. Retain, provide, and supervise ASTM Certified Asphalt Testing Contractor to conduct all testing of asphalt paving materials on the Project as required by FAA regulations.
e. Provide traffic safety inspectors and Safety Plan implementation.
f. Review and approve all of the contractor's quality control testing and inspection.

Completion Schedule

The Consultant shall complete all Task 1 services outlined herein within 30 calendar days of receipt of the City's Notice to Proceed.

The design engineering services during construction shall be conducted during the entire construction phase of the work. Final record drawings and the Engineer's Report shall be prepared within 30 calendar days of the Consultant's receipt of the contractor's final redline drawings and quality control test results.

Construction management testing services shall be performed during Project construction, as necessary, through filing of a Notice of Completion.

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EXHIBIT C

COMPENSATION

Compensation for the services shall be in accordance with the following schedule of hourly rates Total maximum compensation for the services outlined herein shall not exceed $259,010.00.

Compensation shall be based upon actual invoices received and shall be paid in accordance with the completion of each task as follows:

Task 1:	Engineering Design	$ 25,000.00	*(856-000-8800/50318-856-4140)*
Task 2:	Engineering Support during Bidding & Contract Award	$ 13,060.00	*(856-000-8800/50318-856-4140)*
Task 3:	Engineering Design Services during Construction & Final Project Closeout	$ 42,450.00	*(856-000-8800/50318-856-4140)*
Task 4:	Construction Management	$178,500.00	*(856-000-8800/50318-856-4160)*
	Total:	$ 259,010.00	

Reinard W. Brandley, Consulting Airport Engineer
Hourly Rate Schedule

Personnel
Principal $250.00/Hour
Senior Design Engineer $125.00/Hour

Junior Design Engineer.....$ 90.00/Hour
Senior Drafter.....$100.00/Hour
Junior Drafter.....$ 85.00/Hour
Project Administrator.....$ 85.00/Hour
Clerical.....$ 70.00/Hour

Resident Engineer.....$125.00/Hour
Junior Engineer.....$ 90.00/Hour
Senior Inspector.....$100.00/Hour
Junior Inspector.....$ 85.00/Hour
Testing Technician.....$ 80.00/Hour

Travel and Equipment Rental

Travel Expenses.....Cost + 10%
Vehicle Rental.....$ 25.00/Day + $0.40/Mile
Laboratory Rental.....$200.00/Month
Survey Equipment Rental.....$200.00/Month

Laboratory Tests

Testing Laboratory Services
By Outside Laboratory.....Cost + 10%

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EXHIBIT D

INSURANCE PROVISIONS

General Liability Insurance

Consultant/Contractor shall obtain commercial general liability insurance (occurrence policy form) from one or more U.S. domiciled insurance companies licensed to do business in the State of California with an A.M. Best Company rating of "B" or better or, in the alternative, an unlicensed U.S. domiciled company or companies with an "A" rating, which provides coverage for bodily injury, personal injury and property damage liability in the amount of at least $1,000,000 per occurrence, and $2,000,000 in the aggregate, with a maximum policy deductible of $5,000, or as approved by the City's Human Resources and Risk Management Office.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specific minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured, whichever is greater.

The insurance coverage required herein shall be evidenced by a certificate of insurance with policy endorsements and shall be executed by an authorized official of the insurer(s). In addition to the limits of coverage described above, the certificate of insurance shall provide that the insurer shall provide to City at least 30 days prior notice of cancellation or material change in coverage, or 10 days prior notice of cancellation for non-payment.

Consultant/Contractor acknowledges and agrees that City of Chico, its officers, boards and commissions, and members thereof, its employees and agents, are covered as additional insureds

with respect to any liability arising out of the activities of Consultant/Contractor as the named insured. Such additional insured status shall be evidenced by a policy endorsement executed by an authorized official of the insurer(s). A blanket endorsement which provides additional insured status to any person or organization with whom Consultant/Contractor, as named insured, has entered into a written contract, such as this Agreement, shall satisfy this requirement.

The insurance coverage required herein shall be primary and non-contributory insurance with respect to the City of Chico, its officers, officials and employees. Any insurance or self-insurance maintained by the City of Chico, its officers, officials or employees shall be in excess of the insurance afforded to the named insured by the insurance coverage required herein and shall not contribute to any loss. Such primary insurance status shall be evidenced by a policy endorsement issued by an authorized official of the insurer(s), and shall be at least as broad as CG 20 01 04 13. In the alternative, a letter issued by an authorized official of the insurer(s) and copies of the pertinent page(s) of the policy shall satisfy this requirement.

The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City of Chico (if agreed to in a written contract or agreement) before City of Chico's self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to the City's Human Resources and Risk Management Office 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 by either the named Insured or City of Chico. City of Chico reserves the right to obtain a full certified copy of any Insurance policy or endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Automobile Liability Insurance

Consultant/Contractor shall obtain automobile liability insurance from one or more U.S. domiciled insurance companies licensed to do business in the State of California with an A.M. Best Company rating of "B" or better which provides coverage for bodily injury, personal injury, and property damage liability in the amount of at least $500,000 combined single limit for each occurrence. Evidence of such coverage shall be maintained by Consultant/Contractor and provided to City upon request.

Subconsultant/Subcontractor Insurance

Consultant/Contractor agrees to include with all subconsultants/subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the subconsultant/subcontractor's work. Subconsultant/Subcontractor agrees to be bound to Consultant/Contractor and City of Chico in the same manner and to the same extent as Consultant/Contractor is bound to City of Chico under the agreement. Subconsultant/Subcontractor further agrees to include the same

requirements and provisions of this agreement, including the indemnity and Insurance requirements, with any Sub-subconsultant/Sub-subcontractor to the extent they apply to the scope of the Sub-subconsultant/Sub-subcontractor's work.

A copy of the City of Chico Insurance Provisions will be furnished to the subconsultant/ subcontractor upon request. Evidence of such coverage shall be maintained by Consultant/ Contractor and provided to City upon request.

Workers' Compensation Insurance

Consultant/Contractor shall, at Consultant/Contractor's expense, purchase and maintain in full force and effect workers' compensation insurance as required by Federal and State of California law. Consultant/Contractor shall also require all of Consultant's subconsultants/subcontractors to maintain this insurance coverage. Proof of workers' compensation insurance or other documentation acceptable to City evidencing such insurance coverage shall be provided by Consultant/Contractor or Consultant/Contractor's subconsultants/subcontractors to City upon request.

Subrogation

Consultant/Contractor shall agree to waive all rights of subrogation against City for losses arising from Services performed by the Consultant/Contractor or Consultant/Contractor's subconsultants/subcontractors for City under this Agreement.

Indemnity

Consultant/Contractor/Subconsultant/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

Professional Liability Insurance

Consultant/Contractor shall obtain professional liability (errors and omissions) insurance, with a minimum $1,000,000 limit, from one or more U.S. domiciled insurance companies licensed to do business in the State of California with an A.M. Best Company rating of "B" or better providing coverage for services rendered to City under this Agreement.

Said insurance coverage shall be evidenced by a certificate of insurance which shall be executed by an authorized official of the insurer(s). In addition to the limits of coverage described above, the certificate of insurance shall provide that the insurer shall provide to City at least 30 days prior notice of cancellation or material change in coverage, or 10 days prior notice of cancellation for non-payment.

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EXHIBIT E

CONFLICT OF INTEREST PROVISIONS

None.

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EXHIBIT F

SPECIAL PROVISIONS

FEDERAL COMPLIANCE REQUIREMENTS

CIVIL RIGHTS ACT OF 1964, TITLE VI – ENGINEER CONTRACTUAL REQUIREMENTS

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

1.1 Compliance with Regulations. The Engineer shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

1.2 Nondiscrimination. The Engineer, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified

by the Engineer of the Engineer's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1.4 Information and Reports. The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

1.5 Sanctions for Noncompliance. In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the Engineer under the contract until the Engineer complies, and/or

b. Cancellation, termination, or suspension of the contract, in whole or in part.

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

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The Engineer assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains

ownership or possession of the property. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§26.13) - The Engineer or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Engineer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts.

Failure by the Engineer 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 recipient deems appropriate.

Prompt Payment (§26.29) - The Engineer agrees to pay each subconsultant under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the Engineer receives from Modoc County. The Engineer agrees further to return retainage payments to each subconsultant within ten (10) days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Modoc County. This clause applies to both DBE and non-DBE subconsultants.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(1) No Federal appropriated funds shall be paid, by or on behalf of the Engineer, 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 the making of any Federal grant and the amendment or modification of any Federal grant.

(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 any Federal grant, the Engineer shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

ACCESS TO RECORDS AND REPORTS

The Engineer shall maintain an acceptable cost accounting system. The Engineer agrees to provide the Sponsor, 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 the Engineer which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Engineer 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.

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Engineer or their subconsultants may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

TRADE RESTRICTION CLAUSE

The Engineer or subconsultant, by submission of an offer and/or execution of a contract, certifies that it:

a. 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 published by the Office of the United States Trade Representative (USTR);

b. 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 on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Engineer or subconsultant who is unable to certify to the above. If the Engineer knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the Engineer agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Engineer may rely on the certification of a prospective subconsultant unless it has knowledge that the certification is erroneous.

The Engineer shall provide immediate written notice to the sponsor if the Engineer learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The subconsultant agrees to provide written notice to the Engineer if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Engineer or subconsultant knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

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 Engineer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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, United States Code, Section 1001.

TERMINATION OF CONTRACT

a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the Engineer's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Engineer shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.

e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

CERTIFICATION REGARDING DEBAREMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The Engineer certifies, by acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by acceptance of this contract that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Engineer or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this contract.