

PROFESSIONAL SERVICES CONTRACT

This Professional Services Contract ("Agreement") for Pipistrel Alpha Electro Aircraft Management and Flight Instruction Services ("Services"), is made and entered into by and between, New Vision Aviation, Inc. (the "Consultant"), a California non-profit organization whose principal place of business is 510 W. Kearney Blvd., Suite 104, Fresno, California 93706, and the cities of Reedley and Mendota (the "Cities"), whose principal places of business are 1717 9th Street, Reedley, CA 93654, and 643 Quince St, Mendota, CA 93640, respectively.

NOW, THEREFORE, it is agreed as follows:

1. Term. The respective duties and obligations of the contracting parties shall be for a five year term the period commencing on March 1, 2019 and ending February 29, 2024. At the end of the term, the Cities and Consultant automatically continue this Agreement on a year to year basis, but such year to year Agreement may be terminated at any time, with or without cause, by either party upon providing the other party with sixty (60) days written notice of intent to terminate. The provisions contained in Section 3, Section 4 and Section 5 shall survive any termination of this Agreement.
2. Services. The Consultant shall:
 - a) Provide comprehensive aircraft management services for all four Pipistrel Alpha Electro aircraft owned by the City of Mendota and City of Reedley in support of the goals for the Sustainable Aviation Project that include, but not limited to, providing flight training services including ground school and flight instruction using FAA certified flight instructors (CFI), maintenance of all aircraft log books, cleaning and inspections, scheduling maintenance and warranty repairs on aircraft and chargers, identifying and providing suitable hangar space for the aircraft, screening and training pilots and CFIs, and conducting flight operations.
 - b) Act as primary point of contact with the Federal Aviation Administration for execution of the operational conditions under the petition for exemption request and subsequent renewals for aircraft airworthiness re-certification to Special Light Sport category and pilot training requirements associated with that re-certification.
 - c) Execute, with the City of Reedley and City of Mendota, a lease-back agreement that will allow the deployment of the aircraft in flight training operations once a successful petition for exemption is approved by the FAA. Such a lease-back agreement will be designed to meet the goals of the Sustainable Aviation Project grant agreement and provisions from Fresno County Transportation Authority to provide flight training opportunities for youth, veterans, and residents from the City of Reedley,

the City of Mendota, and disadvantaged communities within Fresno County.

- d) Assist the City of Reedley and the City of Mendota with recruiting students and Certified Flight Instructors once the aircraft are re-certified as SLSAs suitable for normal flight training operations conducted through New Vision Aviation.
- e) Assist the City of Reedley and City of Mendota with public engagement and outreach for the Sustainable Aviation Project aircraft. This work shall include, but not be limited to;
 - i. Presenting information about the project at national aviation association events and forums,
 - ii. Providing interviews with local and national media about the project,
 - iii. Providing information about and promoting the project with aviation industry representatives,
 - iv. Developing content and providing updates through the project website,
 - v. Engaging Federal agencies and Congressional representatives, such as U.S. Department of Transportation, U.S. Department of Labor, and the White House to educate them about the project and work to address any regulatory issues that potentially impact the project,
 - vi. Engaging State agencies such as the California Energy Commission, California Air Resources Board, and others to provide updates about the project and encourage their support and potential funding for project support and expansion.
 - vii. Assist with fund raising and sponsor engagement to enhance and support project operations and expansion.
- f) Collect and report data for the project to help support both the project and the advancement of zero emission electric aircraft development. Such data shall include:
 - i. Number of flight hours logged per aircraft per month
 - ii. Number of kWh of electricity used to charge each aircraft
 - iii. Total kWh of electricity used to charge all four aircraft per month
 - iv. Number of students trained in the aircraft per year and over the term of the project
 - v. Cost of maintenance for each aircraft per year and over the term of the project
 - vi. Operational costs to be reported as match funding for the project
 - vii. Average flight time and range per charge per year
 - viii. Battery state-of-charge performance of the term of the project
 - ix. Any other data requested by the FAA, cities, or other regulatory entity.

3. Independent Contractor Relationship.

(a) The Consultant shall perform the services contemplated by this Agreement as an independent contractor. The Consultant acknowledges that it is not an agent or representative of the Cities and has no authority to act for or bind the Cities without prior written consent.

(b) The Consultant represents that it has the legal authority to enter and perform the requirements of this Agreement and will maintain such status to complete the Work hereunder.

(c) Indemnity for Professional Liability: When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless the Cities and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error, or omission of Consultant, its officers, agents, employees, or Subconsultants (or any Agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(d) Indemnity for Other Than Professional Liability: Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless the Cities, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsels fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligent performance of this Agreement by Consultant or by any individual or Agency for which Consultant is legally liable, including, but not limited to, officers, agents, employees, or subcontractors of Consultant.

4. Insurance. Without limiting Consultant's indemnification of the Cities, and prior to commencement of Work, Consultant shall obtain, provide, and continuously maintain at its own expense during the term of this Agreement, and shall require any subconsultants to obtain and maintain, policies of insurance of the type and amounts described below and in a form satisfactory to the Cities.

(a) Workers' Compensation. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)).

- (b) General Liability. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, or equivalent, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. General liability policies shall provide or be endorsed using Insurance Services Office forms CG 20 10 to provide that Agency and its officers, officials, employees, and agents shall be additional insureds under such policies.
- (c) Automobile Liability. If Consultant (or subconsultants) utilizes automobiles in the performance of services under this agreement, Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.
- (d) Aircraft Liability. Consultant shall maintain aircraft insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented aircraft, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident for the following aircraft:
- i. N197AM; Insured Value \$135,000
 - ii. N198AM; Insured Value \$135,000
 - iii. N243AR; Insured Value \$135,000
 - iv. N244AR; Insured Value \$135,000
- (e) Professional Liability (Errors & Omissions). Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) Per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than one year after completion of the Services required by this Agreement.

- (f) Proof of Insurance. Consultant shall provide to Agency, certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by Cities prior to commencement of performance. Current evidence of insurance shall be kept on file with the Cities at all times during the term of this Agreement. The Cities reserve the right to require complete, certified copies of all required insurance policies, at any time.
- (g) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger), in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Cities.
- (h) Enforcement of Contract Provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the Cities to inform Consultant of non-compliance with any requirement imposes no additional obligations on the Cities, nor does it waive any rights hereunder.
- (i) Specifications not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
- (j) Notice of Cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to Agency with thirty (30) days' notice of cancellation (except for nonpayment for which ten (10) days' notice is required) or nonrenewal of coverage for each required coverage.
- (k) Self-insured Retentions. Any self-insured retentions must be declared to and approved by Agency. Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by Agency.
- (l) Timely Notice of Claims. Consultant shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

5. Work Product. The Cities shall provide an unrestricted and no-cost license for Consultant to use work products developed under this project for public benefit purposes that are not competitive with this project and do not represent a conflict of interest with the project.

6. Liability. With regard to the Work to be performed by the Consultant pursuant to the terms of this Agreement, the Consultant shall not be liable to the Cities, or to anyone who may claim any right due to any relationship with the Cities, for any acts or omissions in the performance of Work on the part of the Consultant except (i) in the event of a breach by Consultant of its obligations under this Agreement or (ii) when said acts or omissions of the Consultant are due to the negligence or fraud of the Consultant.

7. Amendment; Waiver. No amendment, modification or waiver of any provision of this Agreement shall be effective unless such amendment, modification or waiver is mutually agreed upon in writing by the parties hereto. The failure of any party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of any provision of this Agreement.

8. Governing Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

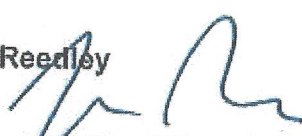
9. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement, that cannot be resolved by the parties in a reasonable amount of time, shall be settled by arbitration in accordance of the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court of competent jurisdiction. For that purpose, the parties hereto consent to the jurisdiction and venue of an appropriate court located in the State of California, County of Fresno. In the event that litigation results from or arises out of this Agreement or the performance hereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees and reasonable out-of-pocket and documented expenses and court costs, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled.

10. Counterparts and Facsimile Signatures. This Agreement may be executed in one or more counterparts and each of them shall be deemed to be one and the same instrument. This Agreement may be executed by facsimile signatures, including electronic format.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the date first written below.

City of Reedley

By:



Nicole R. Zieba
City Manager

Date:



3/26/19

New Vision Aviation, Inc.

By:



Date:



4/24/19


City of Mendota

By:



Cristian Gonzalez
City Manager

Date:



4/10/19



REEDLEY CITY COUNCIL

- ☐ Consent
- ☒ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing

ITEM NO: 5

DATE: March 12, 2019

TITLE: APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT IN SUBSTANTIAL FORM BETWEEN THE CITIES OF REEDLEY AND MENDOTA WITH NEW VISION AVIATION, INC. FOR COMPREHENSIVE AIRCRAFT MANAGEMENT SERVICES, FLIGHT TRAINING OPERATIONS, PUBLIC OUTREACH AND ENGAGEMENT AND OTHER ACTIVITIES IN SUPPORT OF THE GOALS OF THE SUSTAINABLE AVIATION PROJECT, INCLUDING AUTHORIZING THE CITY MANAGER TO MAKE NON-SUBSTANTIVE CHANGES TO THE AGREEMENT

SUBMITTED: Paul A. Melikian, Assistant City Manager

APPROVED: Nicole R. Zieba, City Manager

RECOMMENDATION

Staff recommends that the City Council approve and authorize the City Manager to execute a Professional Services Agreement in substantial form between the cities of Reedley and Mendota with New Vision Aviation, Inc. for comprehensive aircraft management services, flight training operations, public outreach and engagement, and other activities in support of the goals of the Sustainable Aviation Project, including authorizing the City Manager to make non-substantive changes to the Agreement.

EXECUTIVE SUMMARY

Over the past six months, Joseph Oldham and other selected pilots have been performing validation testing of the four Alpha Electro aircraft purchased with Measure "C" grant funds, a necessary activity to support a successful petition for exemption to be approved by the Federal Aviation Administration (FAA). A primary goal of the Project has always been a flight training operation that would eventually lease the four Alpha Electro aircraft from the cities of Reedley and Mendota so they could be used to train youth, veterans, and residents of Fresno County. A passionate group of supporters of the Project have formed a 501c3 non-profit corporation, New Vision Aviation, Inc. to operate, maintain, and provide flight training services using the Alphas Electros in addition to other gas-powered aircraft. New Vision Aviation's goal is to raise the expectations of youth from disadvantaged communities many times over by providing a more affordable path to an aviation career.

The attached five year Agreement with New Vision Aviation, Inc. represents the next step in implementing the goals of the Sustainable Aviation Project. The five year Agreement covers the scope of operations that New Vision Aviation, Inc. would perform, both on the cities behalf, and to fulfill the activities called for in the Fresno County Transportation Authority (FCTA) grant, specifically:

- Provide comprehensive aircraft management services for all four Pipistrel Alpha Electro aircraft including, but not limited to, providing flight training services including ground school and flight instruction using FAA certified flight instructors (CFI), maintenance of all aircraft log books,

cleaning and inspections, scheduling maintenance and warranty repairs on aircraft and chargers, identifying and providing suitable hangar space for the aircraft, screening and training pilots and CFIs, and conducting flight operations;

- Act as primary point of contact with the FAA for execution of the operational conditions under the petition for exemption request and subsequent renewals for aircraft airworthiness re-certification to Special Light Sport category and pilot training requirements associated with that re-certification;
- Execute a lease-back agreement with the cities of Reedley and Mendota, that will allow the deployment of the aircraft in flight training operations once a successful petition for exemption is approved by the FAA;
- Assist the cities with recruiting students and Certified Flight Instructors once the aircraft are re-certified as Special Light Sport Aircraft suitable for normal flight training operations conducted through New Vision Aviation;
- Assist the cities with public engagement and outreach for the Sustainable Aviation Project aircraft;
- Collect and report data for the project to help support both the project and the advancement of zero emission electric aircraft development.

BACKGROUND

On April 25, 2017, the City Council approved a Program Eligibility and Funding Agreement with the FCTA and the City of Mendota for the purchase of four (4) Pipistrel Alpha Electro trainer aircraft, as well as flight training cost assistance for low income veterans, students and others from disadvantaged communities, and administrative costs for partnering agencies and the California Energy Commission San Joaquin Valley Clean Transportation Center (CALSTART) to demonstrate the feasibility of advanced electrified aviation technology. The intent of the program is for the cities to act in conjunction with Reedley College, the CALSTART, and a private operator; and as such, additional partnering agreements will be forthcoming to the City Council for consideration as program, operational and administrative details are worked out, including a lease-back agreement that will allow the deployment of the aircraft in flight training operations once a successful petition for exemption is approved by the FAA.

FISCAL IMPACT

There is no additional fiscal impact to the City as a result of approving this Agreement. The cities of Reedley and Mendota will continue to fulfill their existing grant match obligations. Flight training cost assistance will be provided by an allocation of \$90,000 from the Sustainable Aviation Project grant, and all maintenance and operational costs for the electric airplanes will be paid by New Vision Aviation or available eligible grant funds.

ATTACHMENT

Professional Services Contract