CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Engineering Department

AGENDA DATE: February 19, 2008

CONTACT PERSON/PHONE: Sam Rodriguez, ext. 4023

DISTRICT(S) AFFECTED: 2

SUBJECT:

That the City Manager be authorized to sign a Professional Services Agreement between the **CITY OF EL PASO** and **PARAGON PROJECT RESOURCES, INC.,** a Texas Corporation, to perform consulting services for a project known as **"CONSTRUCTION MANAGEMENT SERVICES – EPIA TERMINAL RENOVATIONS"** for an amount not to exceed **EIGHT HUNDRED THIRTY SIX THOUSAND TWO HUNDRED FIFTY FIVE AND 19/100 DOLLARS ($836,255.19).**

BACKGROUND / DISCUSSION:

The City intends to engage the Consultant to perform construction management and inspection services for the EPIA Terminal Renovations Project scheduled to be constructed over a 18 month period. The project is scheduled to be under construction in March 2008.

PRIOR COUNCIL ACTION:

City Council has not previously considered this item.

AMOUNT AND SOURCE OF FUNDING:

Airport Enterprise Fund PAP0037, 62620028, 41077, 508016

BOARD / COMMISSION ACTION:

N/A

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

CITY CLERK DEPT.
08 FEB 11 PM 2:28

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Professional Services Agreement between the **CITY OF EL PASO** and **PARAGON PROJECT RESOURCES, INC.,** a Texas Corporation, to perform consulting services for a project known as **"CONSTRUCTION MANAGEMENT SERVICES – EPIA TERMINAL RENOVATIONS"** for an amount not to exceed **EIGHT HUNDRED THIRTY SIX THOUSAND TWO HUNDRED FIFTY FIVE AND 19/100 DOLLARS ($836,255.19).**

ADOPTED this _____ day of _____, 2008.

THE CITY OF EL PASO:

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy-Momsen
City Clerk

APPROVED AS TO FORM:

_____
Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
R. Alan Shubert, P.E.
City Engineer

CITY CLERK DEPT.
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Doc # 36018 v1 - Resolution/Agreement for Professional Services/Construction Management Services/EPIA Terminal Renovations/Paragon Project Resources, Inc./COSB

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

AN AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made this _____ **day of** _____, **2008** by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the **"Owner"**, and **PARAGON PROJECT RESOURCES, INC.,** a Texas Corporation, hereinafter referred to as the **"Consultant"**.

WHEREAS, the Owner intends to engage the Consultant to perform professional services for a project known as **"CONSTRUCTION MANAGEMENT SERVICES- EPIA TERMINAL RENOVATIONS,"** hereinafter referred to as the **"Project"**, as further described in **Attachment "A"**; and

WHEREAS, the Consultant has been selected to perform such services as required by the Owner, and the Consultant was selected through the Owner's selection procedure, in accordance with all applicable state and local laws and ordinances;

NOW, THEREFORE, for the consideration set forth in this Agreement and its attachments, the Owner and Consultant agree as follows:

ARTICLE I.
ATTACHMENTS

1.1 The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

Attachment "A"	Scope of Services and Project Budget
Attachment "B"	Consultant's Fee Proposal and Hourly Rates
Attachment "C"	Consultant's Basic and Additional Services
Attachment "D"	Payment and Deliverable Schedules

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ARTICLE II.
PROJECT

2.1 The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform professional services for the Project as professional consultant for the Project. The Project shall consist of the Consultant's completion of the Scope of Services as further described in **Attachment "A".** Such Scope of Services shall be completed in accordance with the identified phases described in **Attachment "D"**.

2.2 In completion of such phases, the Consultant shall comply with the City of El Paso Engineering Department Construction Document Guidelines in effect on the execution date of

this Agreement in the performance of the services requested under the Design Phase of this Agreement. Such Guidelines are available in the Engineering Department.

2.3 The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.

2.4 The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.

2.5 The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five working days time period.

ARTICLE III.
CONSULTANT FEES AND PROJECT BUDGET

3.1 PAYMENT TO CONSULTANT. The Owner shall pay to the Consultant an amount not to exceed **EIGHT HUNDRED THIRTY SIX THOUSAND TWO HUNDRED FIFTY FIVE AND 19/100 DOLLARS ($836,255.19)** for all basic services and reimbursables performed pursuant to this Agreement. The Consultant's fee proposal for the performance of all Basic Services and reimbursables is attached hereto as **Attachment "B"**. Payments to the Consultant shall be made pursuant to the schedule enumerated within **Attachment "D"**.

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3.2 CONSULTANT'S SERVICES. The Basic Services to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C"**. If authorized by prior written amendment to this agreement, the Consultant may perform such Additional Services as also enumerated within **Attachment "C".** Owner shall make payment for such Basic and Additional Services at the rates established by Consultant within **Attachment "B"**.

3.3 CONSULTANT'S INVOICES. The Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in **Attachment "D"**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be made in writing. Within ninety days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.

3.3.1 Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced

amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.

3.3.2 The Owner agrees to pay invoices for all services performed as soon as reasonably possible but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

3.4 COSTS NOT ENUMERATED. Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

ARTICLE IV.
PERIOD OF SERVICE AND TERMINATION

4.1 PERIOD OF SERVICE. The services called for by each phase shall begin upon the issuance of a Notice to Proceed from the City Engineer. The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachments "C" and "D"**. **FOR REQUIREMENTS CONTRACTS ONLY:** The term of this Agreement shall be for a period **not to exceed two years** with an option to extend for one additional year.

4.2 SUSPENSION. Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.

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4.3 TERMINATION. This Agreement may be terminated as provided herein.

4.3.1 TERMINATION BY OWNER. It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written

notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

4.3.2 TERMINATION BY EITHER PARTY. It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

CITY SECRETARY
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ARTICLE V.
INSURANCE AND INDEMNIFICATION

5.1 INSURANCE. The Consultant shall not commence work under this Agreement until the Consultant has obtained sufficient insurance as required herein, and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

5.1.1 WORKERS' COMPENSATION INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

"The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the Owner, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured."

5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE. The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:

a) **COMMERCIAL GENERAL LIABILITY**
Personal Injury or Death
$500,000.00 for one person or occurrence
$1,000,000.00 for two or more persons or occurrences

Property Damage
$500,000.00 per occurrence

General Aggregate
$1,000,000.00

b) **AUTOMOBILE LIABILITY**
Combined Single Limit
$1,000,000.00 per accident

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5.1.3 PROFESSIONAL LIABILITY INSURANCE. The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS ($1,000,000.00) on a claims made basis.

5.1.4 OWNER AS ADDITIONAL INSURED. The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.

5.1.5 PROOF OF INSURANCE. The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.

5.1.6 GENERAL INSURANCE PROVISIONS. All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate. Further, each certificate shall contain the following statement:

> "The insurance covered by this certificate will not be canceled, and there will be no change in coverage or deductibles, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or change said insurance has been provided to the City of El Paso."

5.2 INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

To the extent allowed by state law, the Owner will be responsible for its own actions.

5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS. Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed $250,000.00 per person or $500,000.00 per incident with property damage liability limited to $100,000.00 per incident.

ARTICLE VI.
FEDERAL PROVISIONS

6.1 COMPLIANCE WITH APPLICABLE LAWS - FEDERAL FUNDING REQUIREMENTS

Consultant, at Consultant's sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal funds.

Specifically, and not in limitation of the foregoing, Consultant agrees that to the extent required by any agreement between the Owner and any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project, **including but not limited to:**

--The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.

--The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.

--The Federal Aviation Administration through a Grant Agreement or Cooperative Agreement with the Owner.

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Copies of grant assurances will be made available to Consultant. However, provided copies shall in no way be a limitation on the Consultant's obligation to comply with any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

6.1.1 CONTRACT ASSURANCE. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the 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 recipient deems appropriate.

6.1.2 DBE GOOD FAITH EFFORTS. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the

requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal of 12% has been established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

6.2 TERMINATION FOR CANCELLATION OF GRANT.

Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Consultant of the cancellation by certified mail-return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Consultant will be paid for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

ARTICLE VII.
GENERAL PROVISIONS

7.1 CONTRACT TIME. Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.

7.2 CONSULTANT'S QUALITY OF WORK. The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project and in accordance with the time periods established in **Attachment "D"** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner. Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar circumstances.

7.3 COPYRIGHT AND REPRODUCTION RIGHTS. Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

7.4 AUDITING RECORDS FOR THE SPECIFIC PROJECT. Consultant's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places.

7.5 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

7.6 VENUE. For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

7.7 GOVERNING LAW. The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

7.8 CAPTIONS. The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

7.9 SEVERABILITY. Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

7.10 NOTICES. Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

To the Owner:	The City of El Paso Attn: City Manager 2 Civic Center Plaza El Paso, Texas 79901
With a Copy to:	The City of El Paso Attn: City Engineer 2 Civic Center Plaza El Paso, Texas 79901
To the Consultant:	Paragon Project Resources, Inc. Attn: William Correa, P.E. 8411 Lockheed, Suite 7 El Paso, TX 79925

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Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

7.11 CONFLICTING PROVISIONS. Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

7.12 ENTIRE AGREEMENT. This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:

CITY OF EL PASO:

_____
Joyce Wilson
City Manager

CONSULTANT:
Paragon Project Resources, Inc.

_____
By: Danny Williams
Vice President

APPROVED AS TO FORM:

_____
Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
R. Alan Shubert, P.E.
City Engineer

CITY CLERK DEPT.
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Acknowledgements on following page

ACKNOWLEDGEMENTS

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 2008, by **Joyce A. Wilson, City Manager** of the **City of El Paso, Texas**.

_____
Notary Public, State of Texas

My commission expires:

_____

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THE STATE OF TEXAS §
§
COUNTY OF El PASO §

This instrument was acknowledged before me on this 9th day of February, 2008, by **Danny Williams,** as **Vice President** of **Paragon Project Resources, Inc.**.

_____
Notary Public, State of Texas

My commission expires:

May 19, 2010

MANOJ PATEL
Notary Public, State of Texas
My Commission Expires
MAY 19, 2010

ATTACHMENT A
Construction Management Services
City of El Paso – Department of Aviation

Terminal Renovations

SCOPE OF WORK

EPIA is in the final stages of the design for the addition of approximately 23,000 square feet to the airport's east concourse, including ~14,300 sf of concession space, ~3,075 additional hold room space, and ~3,690 sf of restrooms. Also included in this project will be renovation of an existing space on the first level and an addition of ~2,000 sf of provisioning, also to be located on the first level.

The scope of work includes, but is not limited to, bid evaluation, contract administration, consultant/contractor/materials testing coordination, agency coordination (including coordination with Airport concessionaires), project controls (budgetary and schedule), construction management, construction inspection, quality assurance, and other related tasks.

Consultant must demonstrate past, successful experience in managing airport facilities construction, to include coordination and managing of construction phasing, ensuring minimal disruption to airport and airline operations and coordination with existing concessions.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

FAA (AIP) Funded Projects
It is the policy of the Department of Transportation (DOT) that Disadvantaged Business Enterprises (DBE's), as defined in 49 CFR, Part 26, shall have equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirement of 49 CFR, Part 26 applies to all FAA AIP-funded projects.

Respondents shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Respondents shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts.

REQUIREMENTS

1. Specialized experience required to perform services related to renovation of and addition to airport facilities at an FAA-certificated small, medium, or large hub airport.
2. Familiarity with airport operations, FAA contract requirements, and FAA Advisory Circulars.
3. Successful past performance on projects of similar complexity and type.
4. Ability to provide a local presence for daily client and job site activities.
5. Ability to obtain security clearance for airfield activities.

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Terms of Contract:
Two years with an option to extend an additional year.

ATTACHMENT "B"

January 31, 2008

Ms. Irene Ramirez
Assistant City Engineer
City of El Paso Engineering Department
Two Civic Center Plaza, 4th Floor
El Paso, Texas 79901-1196

Re: El Paso International Airport Terminal Renovations
Rates for Construction Management Services and Proposal

Dear Ms. Ramirez:

We have reviewed your request and the documents available today for the proposed subject contract. Based on this information and your instruction to provide this proposal to you; we propose to provide the construction management services required at the rates presented herein. This proposal is based on providing personnel at the site at all times when the contractor is present during normal working hours and does not include overtime rates.

This proposal is based on providing the services outlined in the scope of services provided titled "Construction Management Services, City of El Paso – Department of Aviation, El Paso International Airport Terminal Renovations" as provided below.

[1] Specialized experience required to perform services (i.e. renovation and additions to airport facilities).

[2] Familiarity with airport operations, FAA contract requirements, and FAA Advisory Circulars.

[3] Successful past performance on projects of similar complexity and type.

[4] Ability to provide a local presence for daily client and job activities.

[5] Ability to obtain security clearance for airfield and restricted area activities.

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As requested, Paragon's overhead rate information is as follows:

Field Overhead Rate: 1.4039
Professional Fee: 10%

The Overhead components were previously provided to you. Based on this information we propose the following professional personnel categories for the subject contract.

Paragon Project Resources, Inc.
8411 Lockheed, Ste. 7, El Paso, TX. 79925
915-771-0121 - fax 915-771-0506

ATTACHMENT "B"

Category	Rate 2008	Rate 2009
Project Manager	$127.10	$131.55
Program Manager	$149.50	$154.73
Senior Project Manager	$139.84	$144.73
Construction Manager	$108.50	$112.30
Clerk	$48.90	$50.61
Senior Clerk	$53.70	$55.58
Design QA Engineer	$117.80	$121.92
Senior Inspector	$91.70	$94.91
Civil Inspector - Level 2	$87.10	$90.15
Civil Inspector - Level 1	$76.30	$78.97
Structural/Welding Inspector	$93.50	$96.77
Electrical/Mechanical Inspector	$88.40	$91.49
Sr. Electrical/Mechanical Inspector	$91.70	$94.91
Contract Administrator	$79.30	$82.08
Scheduler	$87.30	$90.36
Estimator	$87.30	$90.36
Principal	$163.10	$168.81

Paragon proposes a 2 years agreement plus a 1 year option for a Not-To-Exceed CM Services Cost of $840,000. Personnel and rates are provided herein for two years. The 2010 rates will be provided by mid 2009. Reimbursable expenses will be provided when Purchase Orders are furnished with scope requirements to develop project expenses, equipment, supplies and vehicle needs.

We trust that we have provided the information requested and look forward to starting our first task and working with you, the Engineering Department and other City Departments.

Sincerely,

William Correa

William Correa, P.E.
Project Principal
President and CEO

WC:jh

cc: Jorge Diaz
Danny Williams

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08 FEB 11 PM 2:32

ATTACHMENT "B"

CM AND CI SERVICES FOR EPIA - TERMINAL RENOVATIONS
City of El Paso

Paragon Project Resources, Inc.
January 31, 2008

Salary Expenses	Unit	2008 Total	Rate	2008 Extended	2009 Total	Rate	2009 Extended	Extended Total
Clerk	Hours	953.3	$ 48.90	$ 46,618.00	606.7	$ 50.61	$ 30,704.31	$ 77,322.30
Inspector	Hours	953.3	$ 83.00	$ 79,126.66	606.7	$ 86.00	$ 52,173.33	$ 131,299.99
Project Manager	Hours	1906.7	$ 139.84	$ 266,628.25	1213.3	$ 144.73	$ 175,611.06	$ 442,239.30
Inspection OT	Hours	TBD			TBD			$ 125,000.00
Principal	Hours	110.0	$ 163.10	$ 17,941.00	70.0	$ 168.81	$ 11,816.60	$ 29,757.60
Subtotal Salary Expense		3923.3			2496.7			$805,619.19

Other Expenses	Unit	Qty	Rate	Extended
Inspector/PM Vehicle	Hours	4680	$ 5.20	$ 24,336.00
Incidentals	Month	18	$ 300.00	$ 5,400.00
FedEx/Courier	Month	18	$ 50.00	$ 900.00
Subtotal Other Expenses				$ 30,636.00

Grand Total	$ 836,255.19

08 FEB 11 PM 2:32
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ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

For the Project known as **PARAGON PROJECT RESOURCES, INC.,** hereinafter referred to as the Project, the Consultant will provide the Basic and Additional Services as noted herein.

BASIC SERVICES OF THE CONSULTANT

GENERAL

1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated.

2. The Consultant shall comply with the City of El Paso Engineering Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the construction phase of this Agreement.

3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.

4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

CONSTRUCTION PHASE

The Construction Phase, for each construction contract, shall commence with the award of the construction contract and shall terminate upon written approval of final payment by the Owner, except that this phase may be extended, if required, by agreement between the Consultant and the Owner. During the Construction Phase the Consultant shall:

1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.

2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

3. The construction manager shall inspect work performed by Contractors, Subcontractors, Vendors as required by construction documents and City of El Paso Engineering requirements and guidelines.

4. Monitor and manage the project construction contract, cost and schedule.

CITY CLERK DEPT
FEB 11 PM 2:32

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

5. Schedule and lead the weekly progress meetings, properly documenting all issues and ensure all stakeholders are present to resolve them in order to keep the project moving forward. Assist in the coordination of the project with third parties.

6. Observe the progress and quality of the executed work to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents.

7. The Consultant shall provide the Owner with typed daily inspection reports to document all activity in accordance with industry standards. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall be required to make daily on-site inspections to check the quality or quantity of the work, and oversee the means, methods, techniques, sequences, or procedures, and the safety precautions incident thereto. The responsibility for the means, methods, techniques, sequences, procedures, and safety precautions remain solely with the contractor in accordance with the contract documents. The Consultant's efforts shall be directed toward providing assurance to the Owner that each completed construction contract meets the requirements of the construction contract documents. Any deviation from the construction documents shall be documented and promptly communicated to the contractor in writing to ensure the non-compliance is addressed accordingly.

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8. Review and track all shop drawings, diagrams, illustrations, brochures, catalog data, schedules, samples, the results of tests, inspections, and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.

9. Issue the Owner's instructions to the construction contractor when required to do so, review and negotiate change orders to include independent review of opinion of probable construction cost for the Owner's approval.

10. Based on the Consultant's documentation, review the contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend such amount, to owner, in writing; such recommendation of payment to constitute a representation to the Owner, based on such documentation, observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and documentation, the quality of the work is in accordance with the construction contract documents, meets the required standards for any tests called for in the construction contract documents, and conforms to any qualifications stated in construction contractors's approval.

ATTACHMENT "C"
CONSULTANT'S BASIC AND ADDITIONAL SERVICES

11. Conduct with the Owner and construction contractor substantial and final completion inspections. Document the inspections and all requirements resulting from the inspections. The **"punch list"** shall be furnished to the construction contractor and the Owner within **two City working days** after the inspections.

12. Issue a "Certificate of Substantial Completion" when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the substantial completion inspection.

13. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.

14. Furnish the Owner one set of all project documentation.

15. Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.

16. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.

17. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

18 The consultant may perform Additional Services in connection with the Project, which are not otherwise provided for in this Agreement. The owner shall pay for such Additional Services at the rates established by Consultant in Attachment "B" except where those services are required as a result of negligence or other fault on the part of the Consultant.

CITY CLERK DEPT.
08 FEB 11 PM 2:32

ATTACHMENT "D"
PAYMENT AND DELIVERABLE SCHEDULES

For the Project known as "**CONSTRUCTION MANAGEMENT SEERVICES – EPIA TERMINAL RENOVATIONS**", hereinafter referred to as the Project, the Owner will compensate the Consultant an amount not to exceed **EIGHT HUNDRED THIRTY SIX THOUSAND TWO HUNDRED FIFTY FIVE AND 19/100 DOLLARS ($836,255.19)** for all Basic Services and reimbursables noted within the Agreement and its attachments.

PAYMENT SCHEDULE

The compensation for the work described in **Attachment of "A"** shall be made on a monthly basis for the time and materials performed the previous month. Each monthly invoice prepared by Consultant shall include the amount due for the previous month as well as the total contract amount paid to date, so as not to exceed the amount of the contract. The Owner shall make payments upon presentation of the Consultant's detailed Invoice and accompanying Summary and Progress Report and the Owner's written approval.

DELIVERABLE SCHEDULE

CONSTRUCTION PHASE

The services called for in the Construction Phase of this Agreement shall be completed as follows:

Status Reports: In conjunction with the monthly invoice, Consultant shall submit **1 copy** of a Summary and Progress Report for each project assigned. Additional status reports may be requested at any time by the Owner for any project assigned.

Project Documentation: The consultant shall submit **1 copy** of approved submittals, all meeting minutes and any additional documents requested by the Owner within **three days** of their receipt by Consultant or request by Owner.

Consultant shall submit **1 copy** of all documentation for which action is required by the Owner within **2 days** of its receipt by Consultant.

Final Project Closeout documentation: The Consultant shall collect, review and process all documentation required by the contract documents from the contractor and design consultant for each project and submit to Owner within **45 days** of Project Construction Substantial Completion.

Consultant Files: The Consultant shall package all its project files and deliver to the Owner all files and a final invoice within **7 days** of Project Completion.

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08 FEB 11 PM 2:32

Summary

Project Name: **Construction Management Services – EPIA Terminal Modifications**

District: 2

Scope of work

EPIA is in the bid phase for the addition of approximately 23,000 square feet to the airport's east concourse, including ~14,300 sf of concession space, ~3,075 additional hold room space, and ~3,690 sf of restrooms. Also included in this project will be renovation of an existing space on the first level and an addition of ~2,000 sf of provisioning, also to be located on the first level.

The scope of work includes, but is not limited to, bid evaluation, contract administration, consultant/contractor/materials testing coordination, agency coordination (including coordination with Airport concessionaires), project controls (budgetary and schedule), construction management, construction inspection, quality assurance, and other related tasks..

Department Requesting Service: Airport

Procurement Type: Architect/Engineer Selection Process (Qualification based)

Request for Qualification Notification Date: October 29, 2007

Firms that were notified: All pre-qualified Civil Engineering and Construction Management Firms

Request for Qualification Due Date: November 12, 2007

Architect/Engineer firms that submitted RFQ packages:

ECM International Inc.
URS Corporation
Paragon Project Resources, Inc.
Perspectiva

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08 FEB 11 PM 2:32

Architect Engineer Selection Committee Members

Alan Shubert, P.E., City Engineer
Pat Abeln, Director of Aviation
Irene Ramirez, P.E., Assistant City Engineer
Monica Lombraña, Assistant Director of Aviation Development
Samuel Rodriguez, P.E., Engineering Division Manager

Date list of Finalists was submitted: November 26, 2007

Date of Finalist interviews: December 12, 2007

Final Ranking of Firms

Firm	Rank	Outcome
Paragon Project Resources, Inc.	1	Finalist - Selected
URS Corporation	2	Finalist - Not selected
ECM International Inc	3	Finalist - Not selected
Perspectiva	4	Not selected

Date firms were notified in writing of final selection: December 14, 2007

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08 FEB 11 PM 2:32