

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

**DEPARTMENT:** Engineering and Construction Management

**AGENDA DATE:** August 14, 2012

**CONTACT PERSON NAME AND PHONE NUMBER:** R. Alan Shubert, P.E., City Engineer (X4423)

**DISTRICT(S) AFFECTED:** 2

**SUBJECT:**

That the City Manager be authorized to sign the Agreement for Professional Services Construction Management by and between the CITY OF EL PASO and ECM INTERNATIONAL, INC., a Texas Corporation, for a project known as "EPIA TAXIWAY "L" RECONSTRUCTION AND GEOMETRY OF TAXIWAY "J" AND "K" CONNECTORS" for an amount not to exceed FIVE HUNDRED SIXTY FIVE THOUSAND TWENTY TWO AND 93/100 DOLLARS (\$565,022.93) and that the City Engineer be authorized to approve up to \$50,000 in additional services for a total contract amount not to exceed SIX HUNDRED FIFTEEN THOUSAND TWENTY TWO AND 93/100 DOLLARS (\$615,022.93).

**BACKGROUND / DISCUSSION:**

The contract is for the construction management and inspection for the EPIA Taxiway L Reconstruction and Geometry of Taxiways J and K Connectors project. The project is federally funded. The contract is time and materials and is anticipated to last fourteen months.

ECM was selected in accordance with the City's A/E Selection Summary which is qualifications based.

**PRIOR COUNCIL ACTION:**

None

**AMOUNT AND SOURCE OF FUNDING:**

Passenger Facility Charge

**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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(If Department Head Summary Form is initiated by Purchasing, client department should sign also)  
Information copy to appropriate Deputy City Manager

**RESOLUTION**

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

That the City Manager be authorized to sign the Agreement for Professional Services Construction Management by and between the CITY OF EL PASO and ECM INTERNATIONAL, INC., a Texas Corporation, for a project known as "EPIA TAXIWAY "L" RECONSTRUCTION AND GEOMETRY OF TAXIWAY "J" AND "K" CONNECTORS" for an amount not to exceed FIVE HUNDRED SIXTY FIVE THOUSAND TWENTY TWO AND 93/100 DOLLARS (\$565,022.93) and that the City Engineer be authorized to approve up to \$50,000.00 in additional services for a total contract amount not to exceed SIX HUNDRED FIFTEEN THOUSAND TWENTY TWO AND 93/100 DOLLARS (\$615,022.93).

**ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2012.**

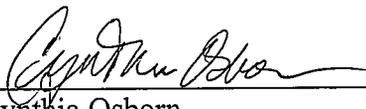
CITY OF EL PASO:

\_\_\_\_\_  
John F. Cook,  
Mayor

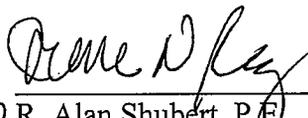
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen,  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
for R. Alan Shubert, P.E.  
City Engineer

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

AN AGREEMENT FOR  
PROFESSIONAL SERVICES  
CONSTRUCTION MANAGEMENT

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2012 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 ECM INTERNATIONAL, INC., a Texas Corporation, hereinafter referred to as the "Consultant".

WHEREAS, the Owner intends to engage the Consultant to perform professional construction management services for a project known as "EPIA TAXIWAY "L" RECONSTRUCTION AND GEOMETRY OF TAXIWAY "J" AND "K" CONNECTORS", hereinafter referred to as the "Project", as further described in Attachments "A" and "C"; 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
Attachment "E"	Insurance Certificate

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 Consultant shall complete the Scope of Services as further described in Attachments "A" and "C".

2.2 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 this Agreement. Such Guidelines are available in the Engineering Department.

2.3 The Consultant shall serve as the Owner's professional representative for the construction 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 the 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 **FIVE HUNDRED SIXTY FIVE THOUSAND TWENTY TWO AND 93/100 DOLLARS (\$565,022.93)** 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 **Attachment "D"**.

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 the City Engineer, prior to the performance of such services, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed \$50,000.00. Additional Services exceeding \$50,000.00 must have prior approval by City Council through written amendment to this Agreement. 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 **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 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 the Project. 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 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget for the **"EPIA TAXIWAY "L" RECONSTRUCTION AND GEOMETRY OF TAXIWAY "J" AND "K" CONNECTORS"** Project allocates FOURTEEN MILLION SEVEN HUNDRED SIXTY SEVEN THOUSAND FOUR HUNDRED FORTY THREE AND NO/100 DOLLARS (\$14,767433.00) for the construction of the Project and a construction time of **four hundred ten (410)** consecutive calendar days.

**3.5 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 this Agreement shall begin upon the issuance of a Notice to Proceed from the City Engineer and shall continue through the completion of the construction of the Project, including any required extensions beyond the contract time for construction of the Project, as may be directed by the Owner. However, should the Consultant's services be suspended for a period longer than one year, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period.

**4.2 TERMINATION.** This Agreement may be terminated as provided herein.

**4.2.1 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.

**4.2.2 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.

**4.2.3 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.

## **ARTICLE V. INSURANCE AND INDEMNIFICATION**

**5.1 INSURANCE.** The Consultant shall procure and maintain insurance coverage as required herein. Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance 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

**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.

--The Federal Highway Administration through a Local Project Funding Agreement through the Texas Department of Transportation.

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.** It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of this contract. The requirements of 49 CFR Part 26, regulations of the U.S. DOT, may also apply to this Project, in which case the award of this contract will be conditioned upon Consultant satisfying the DBE requirements. A DBE contract goal of 0% has been established for this Project. The Consultant 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 Consultant 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 Consultant'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 Consultant 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 this Agreement within the time schedules indicated herein. 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 shall perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided herein.

**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 herein 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: ECM International, Inc.  
Attn: Tom Cardenas, P.E., President  
404 Executive Center Blvd.  
El Paso, Texas 79902

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:**

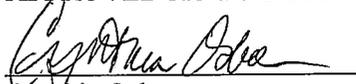
**CITY OF EL PASO:**

\_\_\_\_\_  
Joyce A. Wilson,  
City Manager

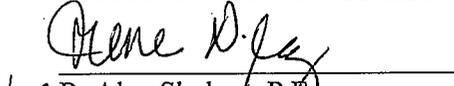
**CONSULTANT:  
ECM INTERNATIONAL, INC.**

\_\_\_\_\_  
Tom Cardenas, P.E.  
President

**APPROVED AS TO FORM:**

  
Cynthia Osborn  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

**ACKNOWLEDGEMENTS**

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF EL PASO §**

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012,  
by **Joyce A. Wilson, as City Manager of the City of El Paso, Texas.**

\_\_\_\_\_  
**Notary Public, State of Texas**

**My commission expires:**

\_\_\_\_\_

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF EL PASO §**

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2012,  
by **Tom Cardenas, P.E. as President of ECM International, Inc.**

\_\_\_\_\_  
**Notary Public, State of Texas**

**My commission expires:**

\_\_\_\_\_

**PROJECT SCOPE**

TITLE: EPIA Taxiway "L" Reconstruction and Geometry of Taxiway "J" and "K" Connectors

LOCATION: Montana Ave @ Global Reach

CONSULTING SERVICES AGREEMENT VALUE: \$565,022.93.

GENERAL DESCRIPTION: This contract will be used for construction management services for the construction of Sun Metro Facilities at the above mentioned location.

SERVICES INCLUDE:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Construction Inspection | <input checked="" type="checkbox"/> Construction Negotiations |
| <input checked="" type="checkbox"/> Value Engineering       | <input checked="" type="checkbox"/> Design Review             |
| <input checked="" type="checkbox"/> Constructability Review | <input checked="" type="checkbox"/> Cost Estimating           |

PRODUCTS REQUIRED:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Construction Documentation | <input checked="" type="checkbox"/> Construction Estimates |
| <input checked="" type="checkbox"/> Other Analysis and Reports |  |

OTHER CONSIDERATIONS:

1. Work to be coordinated with the Engineering Department.
2. This contract will be for a period of twenty four months (2 years).

PROJECT SCHEDULE:

Project Schedules to be developed.

Construction Management for EPIA Taxiway "L" Reconstruction and Geometry of Taxiway "J" and "K" Connectors

Revision 2

Date: 07-18-12

By: M. Herrera, P.E.



1) Taxiway "L" Reconstruction Project

Fee Estimation						
Position	Team Member	Prorated Hours per month	Hourly Rate	Monthly Fee	Duration (months)	Subtotal
<b>Pre-construction Services<sup>(5)</sup></b>						
Sr. Project Manager	Mel Herrera, PE	4.8	\$141.11	\$677.33	1	\$677.33
Field Project Manager <sup>(6)</sup>	Jerry Phares	24	\$120.00	\$2,880.00	1	\$2,880.00
<b>Construction Services - 2012</b>						
Sr. Project Manager	Mel Herrera, PE	12	\$141.11	\$1,693.32	4	\$6,773.28
Field Project Manager <sup>(6)</sup>	Jerry Phares	141.9	\$120.00	\$17,028.00	4	\$68,112.00
Backup Project Representative <sup>(7)</sup>	TBD	103.8	\$97.85	\$10,156.83	1	\$10,156.83
Project Administrative Assistant <sup>(9)</sup>	Jaime Varela	60	\$44.29	\$2,657.40	4	\$10,629.60
<b>Construction Services - 2013<sup>(10)</sup></b>						
Sr. Project Manager	Mel Herrera, PE	12	\$142.52	\$1,710.25	9.7	\$16,589.46
Field Project Manager <sup>(6)</sup>	Jerry Phares	141.9	\$121.20	\$17,198.28	9.7	\$166,823.32
Backup Project Representative <sup>(7)</sup>	TBD	103.8	\$98.83	\$10,258.40	1	\$10,258.40
Project Administrative Assistant <sup>(9)</sup>	Jaime Varela	60	\$44.73	\$2,683.97	9.7	\$26,034.55
<b>Post-construction Services - 2014<sup>(8 and 10)</sup></b>						
Sr. Project Manager	Mel Herrera, PE	4.8	\$146.80	\$704.62	1	\$704.62
Field Project Manager <sup>(6)</sup>	Jerry Phares	48	\$124.84	\$5,992.13	1	\$5,992.13
Project Secretary	Jaime Varela	30	\$46.07	\$1,382.25	1	\$1,382.25

Attachment B

Subtotal	\$327,013.76
Estimated reimbursable <sup>(2)</sup>	\$10,000.00
<b>Total for Project</b> <sup>(3)</sup>	<b>\$337,013.76</b>

1) Geometry of Taxiway "J" and "K" Connectors Project

Fee Estimation						
Position	Team Member	Prorated Hours per month	Hourly Rate	Monthly Fee	Duration (months)	Subtotal
<b>Pre-construction Services<sup>(6)</sup></b>						
Sr. Project Manager	Mel Herrera, PE	3.2	\$141.11	\$451.55	1	\$451.55
Field Project Manager <sup>(6)</sup>	Jerry Phares	16	\$120.00	\$1,920.00	1	\$1,920.00
<b>Construction Services - 2012</b>						
Sr. Project Manager	Mel Herrera, PE	8	\$141.11	\$1,128.88	4	\$4,515.52
Field Project Manager <sup>(6)</sup>	Jerry Phares	94.6	\$120.00	\$11,352.00	4	\$45,408.00
Backup Project Representative <sup>(7)</sup>	TBD	69.2	\$97.85	\$6,771.22	1	\$6,771.22
Project Administrative Assistant <sup>(9)</sup>	Jaime Varela	40	\$44.29	\$1,771.60	4	\$7,086.40
<b>Construction Services - 2013<sup>(10)</sup></b>						
Sr. Project Manager	Mel Herrera, PE	8	\$142.52	\$1,140.17	9.7	\$11,059.64
Field Project Manager <sup>(6)</sup>	Jerry Phares	94.6	\$121.20	\$11,465.52	9.7	\$111,215.54
Backup Project Representative <sup>(7)</sup>	TBD	69.2	\$98.83	\$6,838.93	1	\$6,838.93
Project Administrative Assistant <sup>(9)</sup>	Jaime Varela	40	\$44.73	\$1,789.32	9.7	\$17,356.37
<b>Post-construction Services - 2014<sup>(8 and 10)</sup></b>						
Sr. Project Manager	Mel Herrera, PE	3.2	\$146.80	\$469.75	1	\$469.75
Field Project Manager <sup>(6)</sup>	Jerry Phares	32	\$124.84	\$3,994.75	1	\$3,994.75
Project Secretary	Jaime Varela	20	\$46.07	\$921.50	1	\$921.50
Subtotal						\$218,009.17
Estimated reimbursable <sup>(2)</sup>						\$10,000.00

Total for Project<sup>(3)</sup> \$228,009.17

Total for both Projects \$565,022.93

**Notes:**

1. Estimate is based on discussions with City Engineering regarding the abovementioned projects and the notes that follow herein. This estimate is for a time and materials not to exceed contract. Invoices will include copies of timesheets.
2. Estimated reimbursable include making copies, mileage for delivering packages in town, and mileage for trips from field personnel to City, engineers or ECM offices.
3. Total fee is based on a 13.7 month project duration (410 days from Notice to Proceed to Final Completion). If project is extended, ECM may request an extension to the purchase order.
4. N/A
5. Pre-construction services include batching process, plan review, value engineering, bid support, and attending pre-construction meetings.
6. Field Project Manager Jerry Phares will be subcontracted through Williams CM Group, LLC. Rate includes all necessary vehicle use, per diems and traveling to residency. Per City's direction, ECM markup on subcontract is 5 percent. Per recent airport project experience, average working time for field project manager per week is 55 hours.
7. Backup Project Representative will work when oversight of night shifts are required. Time duration of two months is an estimate and will have to be validated by selected contractor work schedule.
8. Post-construction services include project closeout, warranty issues and a warranty site visit 11 months after project is completed.
9. Average project administrative time per moth was estimated based on the fact that Contractor will perform two projects into one contract. All documentation such as submittals, RFIs, meeting minutes, ASIs, and change orders will be separated by project.
10. A 1% annual increase on rates was applied to work done in 2013 and 2014 to account for average cost of living increases.

6. Monitor and manage the project construction contract, cost and schedule.
7. Visit the construction site at least once daily or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. 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's efforts shall be directed toward providing assurance for the Owner that the completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents. Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.
8. The Consultant shall provide the Owner with detailed typed or printed field notes for each construction site visit to include, but not limited to, notations regarding the number of workers present on the job site, the weather conditions and how the weather conditions may/may not affect the performance of the work for that day, the material or equipment delivered, any filed problems, a summary of construction activities, result of follow up inspection of previously reported deficiencies, any verbal discussions that took place, any concerns or problems to be addressed and the rate of progress on the work.
9. 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.
10. Review, process and track all shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and 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. Such review must be complete within five City working days following receipt of submittal documents, or as required by the Owner.
11. Prepare change orders to include independent detailed opinion of probable construction cost, for the Owner's approval, after securing approval of all agencies having approval authority over the construction contract.
13. Based on the Consultant's on-site observations as an experienced professional and on review of the construction contractor's applications for payment and supporting data (supporting data shall include detailed plan sheets showing the limits of payment for verified quantities and/or detailed quantity sheets), determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor

in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, 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 the construction contract documents. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of the construction contract price.

Schedule the initial start-up and test operation of equipment or devices.

14. Conduct with the Owner and construction contractor brief preliminary inspections as needed, at times requested by the construction contractor to determine if the Project is ready for substantial completion inspection.
15. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a substantial completion inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The "punch list" shall be furnished to the construction contractor and the Owner within two City working days after the substantial completion inspection.
16. In conjunction with the design consultant, issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) 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 final inspection.
17. Coordinate the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.
18. Schedule and conduct with the Owner a final inspection to 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.
19. Consultant shall review any close out documentation as required by the contract, including but not limited to maintenance and operation 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.

20. Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.
21. 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.
22. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.
23. 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.

**ATTACHMENT "D"**  
**PAYMENT SCHEDULE**

For the Project known as **"EPIA TAXIWAY "L" RECONSTRUCTION AND GEOMETRY OF TAXIWAY "J" AND "K" CONNECTORS"**, hereinafter referred to as the Project, the Owner will compensate the Consultant an amount not to exceed **FIVE HUNDRED SIXTY FIVE THOUSAND TWENTY TWO AND 93/100 DOLLARS (\$565,022.93)** for all Basic Services and reimbursables noted within the Agreement and its attachments.

**PAYMENT SCHEDULE**

Time and materials shall be billed to Owner by Consultant pursuant to the schedule provided in the consultant's proposal found in Attachment B. The time shown in Attachment B is an estimate. Should the services rendered during the construction phase exceed the estimated amount, written authorization will be required prior to rendering services. Written authorization shall be only by contract amendment in accordance with the contract provisions and applicable law. For contracts with a total value less than Fifty Thousand and No/100 Dollars (\$50,000), the parties agree that at no time may the amount of the compensation under this contract exceed Fifty Thousand and No/100 Dollars (\$50,000) except by execution of an amendment to this Agreement.

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.

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
7/11/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

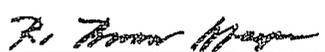
PRODUCER JDW Insurance P.O. Box 981021 El Paso, TX 79998-1021 915 496-8500	CONTACT NAME: PHONE (A/C, No, Ext): 915 496-8500	FAX (A/C, No): 915 496-8550	
	E-MAIL ADDRESS:		
INSURED ECM International, Inc. 404 Executive Center Blvd El Paso, TX 79902	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Allied Property and Casualty In		
	INSURER B: Texas Mutual Insurance Company		
	INSURER C: Iron Specialty		
	INSURER D:		
	INSURER E:		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR I WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		ACP7233779601	01/13/2012	01/13/2013	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		ACP7233779601	01/13/2012	01/13/2013	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$0		ACP7233779601	01/13/2012	01/13/2013	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N N/A	TSF0001219875	01/13/2012	01/13/2013	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional		000911400	01/13/2012	01/13/2013	Aggregate: \$1,000,000 Ea Occurrence: \$1,000,000 Deductible: \$10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 Project: DPIA Taxiway "L" Reconstruction and Radius Geometry of Taxiway "J" and "K" Connectors  
 General Liability and Auto policies include Additional Insured status only when there is a written contract between the named insured and the certificate holder that requires such status. The Workers Compensation includes a blanket Waiver of Subrogation only when there is a written contract between the named insured and the certificate holder that requires such status.

CERTIFICATE HOLDER City of El Paso #2 Civic Center Plaza El Paso, TX 79901	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



EFFECTIVE DATE: 12:01 AM Standard Time,  
(at your principal place of business)

BUSINESSOWNERS  
PB-60 03 (01-01)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - MUNICIPALITIES OR PUBLIC AGENCY -  
INSURED PROVIDING PROFESSIONAL SERVICES**

This endorsement modifies insurance provided under the following:

PREMIER BUSINESSOWNERS LIABILITY COVERAGE FORM

SCHEDULE

Municipality and/or Public Agency:

CITY OF EL PASO

#2 CIVIC CENTER PLAZA  
EL PASO TX 799011153

The following is added to Section II. WHO IS AN INSURED:

The municipality and/or public agency designated in the Schedule of this endorsement is also an insured, but only with respect to liability arising out of your operations, other than the rendering of or the failure to render professional services, advice of instruction, subject to the following additional exclusion:

This insurance, including any duty we have to defend "suits", does not apply to "bodily injury", "property damage" or "personal and advertising injury" that arises out of, in whole or in part, or is a result of, in whole or in part, the active or primary negligence of the municipality and/or public agency designated in the Schedule of this endorsement, whether or not such negligence has assumed by you in a contract or agreement.

All terms and conditions of this policy apply unless modified by this endorsement.

## PREMIER BUSINESSOWNERS COMMON POLICY CONDITIONS

Various provisions in this policy restrict coverage. Please read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insureds shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

All coverages of this policy are subject to the following conditions.

### A. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. Five (5) days before the effective date of cancellation if any one of the following conditions exists at any building that is Covered Property in this policy.
    - (1) The building has been vacant or unoccupied 60 or more consecutive days. This does not apply to:
      - (a) Seasonal unoccupancy; or
      - (b) Buildings in the course of construction, renovation or addition.
 

Buildings with 65% or more of the rental units or floor area vacant or unoccupied are considered unoccupied under this provision.
    - (2) After damage by a covered cause of loss, permanent repairs to the building:
      - (a) Have not started, and
      - (b) Have not been contracted for, within 30 days of initial payment of loss.
    - (3) The building has:
      - (a) An outstanding order to vacate;
      - (b) An outstanding demolition order; or
      - (c) Been declared unsafe by governmental authority.
  - (4) Fixed and salvageable items have been or are being removed from the building and are not being replaced. This does not apply to such removal that is necessary or incidental to any renovation or remodeling.
  - (5) Failure to:
    - (a) Furnish necessary heat, water, sewer service or electricity for 30 consecutive days or more, except during a period of seasonal unoccupancy; or
    - (b) Pay property taxes that are owing and have been outstanding for more than one year following the date due, except that this provision will not apply where you are in a bona fide dispute with the taxing authority regarding payment of such taxes.
  - b. Ten (10) days before the effective date of cancellation if we cancel for nonpayment of premium.
  - c. Thirty (30) days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be prorata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

PB 00 09 04 06

**B. CHANGES**

1. This policy contains all the agreements between you and us concerning the insurance afforded.
2. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent.
3. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

**C. CONCEALMENT, MISREPRESENTATION OR FRAUD**

1. This policy is void in its entirety in any case of fraud, at any time, by you or your representative as it relates to this policy.
2. This policy is also void if you, your authorized representative or any other insured, at any time, conceal or misrepresent any material fact, or violate any material warranty, concerning:
  - a. This policy, including your application for this policy;
  - b. The Covered Property;
  - c. Your interest in the Covered Property; or
  - d. A claim under this policy.
3. We also have the right to rescind this policy based upon any other grounds provided by law.

**D. EXAMINATION OF YOUR BOOKS AND RECORDS**

We may examine and audit your books and records as they relate to this policy or to any claim arising under this policy at any time during the policy period and up to three years afterward.

**E. INSPECTIONS AND SURVEYS**

1. We have the right but are not obligated to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.

3. This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

**F. INSURANCE UNDER TWO OR MORE COVERAGES OF THIS POLICY**

If two or more of this policy's coverages apply to the same injury, loss or damage, we will not pay more than the actual amount of the injury, loss or damage, up to the highest applicable Limit of Insurance under any one coverage.

**G. LIBERALIZATION**

If we adopt any revision that would broaden the coverage under this policy without additional premium within 60 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

**H. OTHER INSURANCE**

1. Under any property coverage provided by this policy, if there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.
2. Under any liability coverage provided by this policy,
  - a. If, for injury or loss we cover, there is other valid and collectible insurance available to any insured under another policy:
    - (1) Issued by another insurer, or if there is self insurance or similar risk retention that applies to a loss covered by this policy, then this insurance provided by us shall be excess over such other insurance; or
    - (2) Issued by us or any of our affiliate companies, that applies to a loss covered by this policy, then only the highest applicable Limit of Insurance shall apply to such loss. This condition does not apply to any policy issued by us that is designed to provide Excess or Umbrella liability insurance.
  - b. This insurance, if applicable, is also excess, whether that other insurance is primary, excess, contingent or provided on any other basis:

- (1) Over any applicable property insurance or other insurance that insures for direct physical loss or damage;
- (2) Over any valid and collectible insurance available to you as an additional insured under a policy issued to a tenant renting or leasing land or premises from you; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. under Section I. COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY of the Premier Businessowners Liability Coverage Form.

- c. When this insurance is excess, we will have no duty under the liability coverage provided by this policy to defend any insured against any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to any insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this policy.

d. **Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

I. **PREMIUMS**

1. The first Named Insured shown in the Declarations:
  - a. Is responsible for the payment of all premiums; and
  - b. Will be the payee for any return premiums we pay.
2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal of this policy, we will compute the premium in accordance with our rates and rules then in effect.
3. Undeclared exposures or changes in your business operation and acquisition or use of locations may occur during the policy period that are not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules in effect at the inception of such policy.

J. **PREMIUM AUDIT**

1. We have the right but are not obligated to audit this policy. The first Named Insured must keep records of the information we need for premium computation, and send us copies of those records at such times as we may request.
2. If we do audit your policy, at the close of that audit period, we will compute the earned premium for that period and the final premium due based upon your actual exposures.
3. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

PB 00 09 04 06

K. **TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

1. **Applicable to Businessowners Property Coverage:**

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

- a. Prior to a loss to your Covered Property.
- b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - (1) Someone insured by this insurance;
  - (2) A business firm:
    - (a) Owned or controlled by you; or
    - (b) That owns or controls you; or
  - (3) Your tenant, but only with our written consent.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

2. **Applicable to Businessowners Liability Coverage:**

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Payments Coverage.

L. **TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

1. Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.
2. If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

All terms and conditions of this policy apply unless modified by this endorsement.

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WORKERS' COMPENSATION AND EMPLOYERS  
LIABILITY INSURANCE POLICY

WC 42 03 04 A

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ( ) Specific Waiver  
Name of person or organization

( X ) Blanket Waiver  
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: ALL TEXAS OPERATIONS

3. Premium

The premium charge for this endorsement shall be 2.00 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium INCLUDED, SEE INFORMATION PAGE.

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.  
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on \_\_\_\_\_ at 12:01 A.M, standard time, forms a part of

Policy No. TSF-0001219875 20120113 of the Texas Mutual Insurance Company

Issued to ECM INTERNATIONAL INC

Endorsement No.

Premium \$

Authorized Representative

WC420304A (ED. 1-01-2000)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

PREMIER BUSINESSOWNERS COMMON POLICY CONDITIONS

**SCHEDULE**

Name Of Person Or Organization:

**CITY OF EL PASO**

**#2 CIVIC CENTER PLAZA, 4TH FLOOR  
EL PASO TX 79901**

In condition K. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US, under paragraph 2. Applicable to Businessowners Liability Coverage, the following paragraph is added:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

**All terms and conditions of this policy apply unless modified by this endorsement.**

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**ATTACHMENT "C"**  
**CONSULTANT'S BASIC AND ADDITIONAL SERVICES**

For the Project known as "EPIA TAXIWAY "L" RECONSTRUCTION AND GEOMETRY OF TAXIWAY "J" AND "K" CONNECTORS", 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 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 oversight and management of the 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**

At Owner's request, the Consultant shall provide the following services associated with the construction phase of the Project:

1. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of 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 from time to time.
2. Issue the Owner's instructions to the construction contractor when required to do so,
5. The construction manager/project inspector shall inspect work performed by Contractors, Subcontractors, Vendors as required by construction documents and City of El Paso Engineering requirements and guidelines.



# A/E SELECTION SUMMARY

**Project Name:** Construction Management Services for El Paso International Airport (EPIA) Projects

**Department Requesting Service:** EPIA

**District/ Representative:** ALL

## FINAL SELECTION

**RFQ Notification Date:** 9/19/2011

**RFQ Due Date:** 10/3/2011

### SELECTION COMMITTEE

Irene Ramirez, Assistant City Engineer

Sam Rodriguez, Engineering Division Manager

Victoria Ruiz, Engineering and Construction Management

Tony Marmolejo, EPIA

Lili Gutierrez, EPIA

**SCORING SHEETS ISSUED:** 10/4/2011

**SCORING SHEETS DUE:** 10/11/2011

**FINAL RANKING DATE:** 10/18/2011

**FIRMS NOTIFIED DATE:** 10/18/2011

### A/E FIRMS THAT SUBMITTED RFQ PACKAGE

6 ESSCO

1 ECM

4 Moreno Cardenas, Inc.

2 Parkhill, Smith, & Cooper

3 Huitt-Zollars

5 Paragon Projects

7 Alvidrez Architects

**SELECTED CONSULTANT:** ECM

**SCOPING MEETING:** TBD

**FEE PROPOSAL DUE:** TBD