

## RESOLUTION

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

That the City Manager be authorized to sign the First Amendment to the Agreement for Professional Services by and between the **CITY OF EL PASO** and **ECM INTERNATIONAL, INC.**, a Texas Corporation, for a project known as "**TxDOT REIMBURSEMENT REQUESTS PREPARATION FOR MULTIPLE PROJECTS**" for the Contractor to provide additional hours of services to complete the scope of work of the Agreement at a cost not to exceed One Hundred Twenty Five Thousand and 00/100 Dollars (\$125,000.00) thereby extending the contract amount from \$321,902.00 to \$446,902.00; and that the City Manager be authorized to establish the funding sources and make any necessary budget transfers.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2016.

CITY OF EL PASO:

\_\_\_\_\_  
Oscar Leaser, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sol M. Cortez  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Monica Lombraña, A.A.E., Director  
Capital Improvement Department

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**FIRST AMENDMENT  
AGREEMENT  
FOR PROFESSIONAL SERVICES**  
*ECM International*

CITY CLERK DEPT.  
2016 JUL -7 PM 1:48

This First Amendment to that certain Agreement for Professional Services is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between **THE CITY OF EL PASO**, a Texas municipal corporation (the "**City**"), and **ECM INTERNATIONAL, INC.**, (the "**Contractor**").

**WHEREAS**, on December 1, 2015, the City entered into a Professional Services Agreement (the "**Agreement**") with the Contractor for the project known as "**TxDOT REIMBURSEMENT REQUESTS PREPARATION FOR MULTIPLE PROJECTS**" (the "**Project**"), a copy of which is attached hereto as Attachment "A," and incorporated herein by reference; and

**WHEREAS**, on December 1, 2016, there was a floor Amendment to the Agreement approved by City Council to amend the term of the Agreement to commence immediately and continue until December 31, 2016, unless terminated sooner; and

**WHEREAS**, the Contractor is compensated based on an hourly rate as identified in the Agreement; and

**WHEREAS**, the Agreement was approved for an amount not to exceed \$321,902.00 based on estimated hours for the completion of the Project; and

**WHEREAS**, the Project scope of services has been expanded and the estimated number of hours needed for the completion of the Project has increased; and

**WHEREAS**, the parties desire to amend the Agreement for the Contractor to expand the scope of services and to provide additional hours of service to complete the Project at an estimated additional cost not to exceed \$125,000.00.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Scope of Services.** The City hereby authorizes the Consultant perform additional hours of service as described in Exhibit "A" of the Agreement and as expanded in Exhibit "A-1", which is attached hereto and incorporated herein for all purposes.
2. **Payments to Consultant.** Payments to the Consultant shall be made pursuant to the hourly rates established in Exhibit "A" of the Agreement. Payment to the Consultant for the expanded scope of services and for the additional hours of services as per this First Amendment shall not exceed One Hundred Twenty Five Thousand and 00/100 Dollars

(\$125,000.00), which will increase the amount which can be paid to the Contractor pursuant to the Agreement to a total amount not to exceed Four Hundred Forty Six Thousand Nine Hundred Two and 00/100 Dollars (\$446,902.00), which amount is all inclusive of time and materials.


3. **Time of Completion.** The additional services the subject of this First Amendment shall be completed within the term of the Agreement which ends on December 31, 2016, unless terminated sooner.
4. **Terms and Conditions.** All terms and conditions of the Agreement, except as herein revised, shall remain in full force and effect.

**WITNESS THE FOLLOWING SIGNATURES AND SEALS:**



**THE CITY OF EL PASO**

\_\_\_\_\_  
Tomás González  
City Manager


**CONTRACTOR:  
ECM INTERNATIONAL, INC**

By:   
\_\_\_\_\_  
Mel Herrera, P.E., OMP, LEED AP  
President

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
 Sol M. Cortez  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

 For ML  
\_\_\_\_\_  
Monica Lombraña, A.A.E., Director  
Capital Improvement Department

CITY CLERK DEPT.  
2016 JUL -7 PM 1:48

### ACKNOWLEDGEMENTS

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2016,  
by **Tomás González**, 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 7<sup>th</sup> day of July, 2016,  
by **Mel Herrera, P.E., OMP, LEED AP**, as **President/Principal of ECM International**.



Crystal Paz  
Notary Public, State of Texas

My commission expires:

05-19-2020

CITY CLERK DEPT.

2015 DEC -7 PM 5:29

6.4

STATE OF TEXAS )  
COUNTY OF EL PASO )

PROFESSIONAL SERVICES AGREEMENT  
*ECM International*

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into by and between THE CITY OF EL PASO, a home rule municipal corporation, (the "City") and ECM INTERNATIONAL, INC. (the "Contractor").

**RECITALS**

WHEREAS, the City desires to engage Contractor to assist in the preparation and completion of the Texas Department of Transportation (TXDOT) Construction Reimbursement Packet relating to the seven projects set forth in Exhibit "A," attached hereto and incorporated herein by reference for the project known as "TXDOT REIMBURSEMENT REQUESTS PREPERATION FOR MULTIPLE PROJECTS"; and

WHEREAS, the Contractor is qualified and possesses the skills, personnel and resources necessary to perform said services for the City; and

WHEREAS, the services to be provided under this Agreement are necessary in order for the City to be able to establish and comply with TXDOT reimbursement requirements.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **SCOPE OF SERVICES.** Contractor hereby agrees to perform the services and provide the deliverables set forth in Exhibit "A" (Contractor's Fee Proposal for Support Preparing TXDOT Reimbursement Requests for Multiple Projects, dated November 11, 2015). Additionally, Contractor agrees to provide City Council a status report on the work completed every sixty days (60).

2. **TERM.** The services of Contractor are to commence immediately and shall continue until December 31, 2015, unless terminated sooner as permitted herein.

3. **COMPENSATION AND METHOD OF PAYMENT.** In consideration of the undertakings and agreements on the part of the Contractor contained in this Agreement, the City agrees to

make payment to Contractor upon satisfactory completion by the Contractor of the services to be provided hereunder and the submission to the City of properly certified invoices therefore, as follows: Contractor shall be paid a total amount not to exceed \$321,902.00, which amount is all-inclusive of time and materials, as broken down and more fully set forth in Exhibit "A." Contractor must maintain complete and accurate records for invoicing purposes. Contractor may invoice the City on a monthly basis for the work completed during the previous month; or, the parties may mutually agree to a different invoicing and payment schedule.

No benefits will be provided to the Contractor by the City.

Payment shall be due thirty (30) days from the date of the City's receipt of an invoice in accordance with state laws.

Contractor hereby agrees that at no time will it make a claim against the City for more than the rate provided under the terms of this Agreement.

4. LOCATION OF PERFORMANCE. Contractor shall perform the services in El Paso, Texas, or at such place(s) as may be necessary or appropriate to fulfill the terms of this Agreement.

5. INDEPENDENT CONTRACTOR RELATIONSHIP. Nothing herein shall be construed as creating a relationship of employer and employee between the parties hereto. The City shall not be subject to any obligations or liabilities of the Contractor incurred in the performance of this Agreement unless otherwise herein authorized.

6. LAW GOVERNING AGREEMENT/VENUE. For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

7. TERMINATION. Either party may terminate this Agreement without cause after ten (10) days written notice to the other party of the intention to terminate this Agreement, or at any time by mutual agreement of the parties. Should the City have cause to terminate this Agreement or if the Contractor is in breach of this Agreement, the Agreement may be terminated immediately upon written notification to the Contractor of the cause for termination.

8. NOTICE. Any notices required under this Agreement shall be sufficient if sent by Certified Mail postage prepaid, to the City or the Contractor at the following addresses:

CITY: City of El Paso  
Attn: City Manager  
P.O. Box 1890  
El Paso, Texas 79950-1890

CITY CLERK DEPT.  
2015 NOV 23 PM 4:45

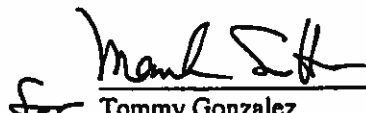
WITH COPY TO: Capital Improvement Department  
Attn: Director  
218 N. Campbell  
El Paso, Texas 79901

CONTRACTOR: ECM International, Inc.  
Attn: Mel Herrera, President  
404 Executive Center Blvd.  
El Paso, Texas 79902

9. COMPLETE AGREEMENT. This Agreement and its attachments constitute and express the entire agreement between the parties hereto in reference to the professional services. In the event that a provision of this Agreement and Exhibit "A" conflict with one another, the provision contained in this Agreement prevails.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 1<sup>st</sup> day of December, 2015.

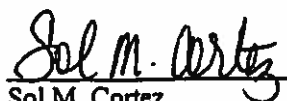
CITY OF EL PASO:

  
Tommy Gonzalez  
City Manager

CONTRACTOR:

  
Mel Herrera, P.E., PMP, LEED AP  
President, ECM International

APPROVED AS TO FORM:

  
Sol M. Cortez  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
Monica Lombrana, A.A.E., Director  
Capital Improvement Department

***EXHIBIT “A”***

***(Follows on the next page)***





November 11, 2015

City of El Paso – Capital Improvement Department  
218 N. Campbell  
El Paso, TX 79901

Attn: Omar Moreno

RE: Fee Proposal for Support Preparing TxDOT Reimbursement Requests for Multiple Projects

Mr. Moreno:

As requested, please find ECM's fee proposal to support the preparation of reimbursement requests for the following projects:

1. Mesa RTS (additional information requested by TxDOT)
2. Country Club Road
3. STRS No. 2
4. STRS No. 3
5. STRS No. 1
6. Mesa Pedestrian Enhancements
7. Pedestrian Overpass

Our proposal has been prepared with the following assumptions:

1. TxDOT is requesting installed quantity verification in order to release remaining funds.
2. It is understood the complexity & availability of records for each Project is unique. The extent of involvement cannot be fully understood until engaged.
3. ECM would provide the deliverables as noted in Table 1 required for the approval of the TxDOT CONSTRUCTION Reimbursement Packet (Management & design reimbursement packets to be prepared by others).
4. ECM Approach would be to first field measure each project & compare installed quantities to original plans.

- Electrical underground qty's performed by TriState electric will not be measured & instead taken at face value from the contractor's payment application (per TxDOT recent guidance)
  - Tally up sheet quantities & note discrepancies & variations
  - Review project files, interview Contractor & City personnel to identify changes by C/O's, RFI's, Field Directives, etc.
  - Reconcile measured/installed quantities w/ Contractor's payment requests
  - Produce Daily Work Reports & Summaries to TxDOT's satisfaction
  - Produce other required documentation as identified in Table 1 in support of the Construction Reimbursement Request.
  - Present Construction reimbursement packet to TxDOT for approval & resolve any accounting issues.
  - Assist the Owner led negotiations with the Contractor's to address qty discrepancies or obtain record documents.
5. OTHER Projects/Tasks include actual hours for work not billed under the previous AIA Task Order:
- Additional engagements, meetings, & TxDOT requests for the month of October 2015
  - Citywide constructability review, 3rd party cost estimate, material testing guidance, precon meeting, etc.
  - La Villita order of magnitude estimate, subsequent takeoff and detailed estimate
  - Prep folders & other work for Mesa RTS & Country Club Rd
  - Assistance during negotiations
6. Our NTE for this Time & Materials agreement relies heavily on the recent experience with TxDOT personnel and their ACCEPTANCE OF TRISTATE ELECTRIC, LTD RECORDS with minimal documentation and field measurements. The City understands requests from TxDOT officials beyond those expected from recent experience will require additional effort and fee from ECM staff.
7. For comparison, the initial 3 project's combined construction value of \$2.7M required a consultant effort in excess of \$120,000, or 4.4%. This estimate entails a construction bid value of \$32.2M plus an unknown amount of Change Orders for an ECM estimated effort totaling \$322,000, or 1%.

Monthly reporting documents EXCLUDED from ECM's scope of work for the reasons noted:

| Document (TxDOT Form #) or Incidental Task (ID) | Prior Responsibility | Status and Comments  |
|---|----------------------|--|
| MOH (F1914 & 1915)                              | Contractor           | Historic document  |
| Project Schedule Updates                        | Contractor           | Unknown status. This is a typical requirement for TxDOT records although monthly enforcement is lax.   |
| Labor Interview (F2220 & log)                   | Inspector            | Three each per quarter are typically required. If these were not performed, City will have to request an Exception from TxDOT.                   |
| TCP (F599)                                      | Inspector            | Monthly traffic control & night inspection. If these were not performed, City will have to request an Exception from TxDOT.                      |
| CUF (F2182)                                     | Inspector            | DBE commercial useful function survey, observation, & reporting. If these were not performed, City will have to request an Exception from TxDOT. |
| Cert Payroll & Log                              | Contractor           | Typically & assumed to be processed by City compliance staff.  |

ECM's Fee Proposal is a "not to exceed" time and materials amount of \$321,902. See breakdown attached.

Please let me know if you have any questions or require additional information.

Respectfully,



Mel Herrera, P.E., PMP, LEED AP  
President  
ECM International

C.c. File

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May 31, 2016

City of El Paso – Capital Improvement Department  
218 N. Campbell  
El Paso, TX 79901

Attn: Omar Moreno

RE: TxDOT Reimbursement Project Additional Scope of Work

Mr. Moreno:

As requested, please find ECM's additional SOW for the Support Preparing TxDOT Reimbursement Requests for Multiple Projects:

1. Additional reconnaissance tasks:
  - a. Drill Shalis: gathering of records, rebar shop drawings & concrete volume calculations to support linear feet claimed;
  - b. True Tapes: gathering of records, sorting, organizing, summarizing of provided contractor's tabulations to support conduit & conductor quantities claimed;
  - c. Cross referencing of plan sheets, highlighting actual runs placed, redlining & investigating installed quantity discrepancies & plan errors;
  - d. In general investigating overruns, providing explanations & Notes To File (NTF) for deviation from contract documents due to field changes or design errors (e.g. mast arms);
2. Comparison of historic photographs from project records (where available) or google earth to present day condition photographs and cross-referencing to the relevant plan sheets has been requested for all removal items & other above-ground installations (e.g. push buttons, service drop poles, luminaires, etc.)
3. Plan sheets attached to each Daily Work Report (DWR) & clearly highlighting the work quantity claimed. This is in addition to the clear highlighting of the various inspector-flagged narratives & highlighted tabulations (e.g. Country Club stone walls, SRTS's pavement markings & flashers, signage, etc.).
4. Engaging & coordinating with other team members (designers of record, laboratories, other City departments, contractors, etc.) & authoring numerous NTF's to expedite TxDOT's approval;
5. Increased meeting frequency between TxDOT, the City and ECM to twice per week for 2 to 3 hours each, as opposed to twice per month.

6. Higher level of line item detail similar to the first three federally-audited projects.
7. Engaging & coordinating with the contractors, laboratories, and suppliers in an effort to recover material testing and delivery tickets.
8. Provide contract & specification clarifications for the ongoing projects (Citywide intersections, Independence, Resler, River Bend, & Viscount)
9. Develop the material source letter and Quality Assurance Guide Schedule for three ongoing projects (Independence, Resler, River Bend, & Viscount).
10. Field measure 40+ items of work at Country Club road.

Please let me know if you have any questions or require additional information.

Respectfully,



Mel Herrera, P.E., PMP, LEED AP  
President  
ECM International

C.c. File