

**AMENDMENT NO. 1 TO
IT AGREEMENT
For
PROFESSIONAL SERVICES**

This AGREEMENT is between the City of Corpus Christi, Texas, a Texas home-rule municipal corporation, "CITY", acting through its duly authorized City Manager or designee ("City Engineer"), and LMR Consulting dba EPM Live of Carlsbad, CA, ("CONSULTANT"), which agree as follows:

1. **DECLARATIONS.** "CITY" desires to engage "CONSULTANT" to provide services in connection with City's project, described as follows: Project Management Software (E13126) "Project".

2. **SCOPE OF WORK.** "CONSULTANT" shall provide services for the PROJECT in accordance with the accompanying Letters, Scope of Services, and Fee attached as "Exhibit A". Invoices to be submitted in accordance with Exhibit "C".

3. **FEE.** The "CITY" agrees to pay the "CONSULTANT" for services provided in accordance with Exhibit "A", Scope of Services, and Fee under this AGREEMENT, a total fee not to exceed \$60,125.00 (in figures), (Sixty Thousand One Hundred Twenty Five Dollars and Zero Cents) (in words) for a total revised fee not to exceed \$109,125.20 (in figures), (One Hundred Nine Thousand One Hundred Twenty Five Dollars and Twenty Cents) (in words) .

4. **INDEMNIFICATION AND HOLD HARMLESS.** The "CONSULTANT" agrees to indemnify, save harmless and defend the "CITY", and it's agents, servants, and employees as more fully set forth in "Exhibit A, Terms and Conditions, 5.05 - Indemnification".

CITY OF CORPUS CHRISTI

LMR CONSULTING dba EPM LIVE

Mark Van Vleck, P.E. (Date)
Interim Assistant City Manager for
Public Works and Utilities

Joe Larscheid (Date) 1/2/14
General Manager - EPM Live
2382 Faraday, Suite 200
Carlsbad, CA 92008
(866) 391-3700 Office
(858) 430-4894 Fax
jlarscheid@uplandsoftware.com

RECOMMENDED:

Daniel Biles, P. E., (Date) 1/3/13
Director of Engineering Services

Michael Armstrong (Date)
Director of Municipal Information Services

APPROVED

Office of Mgmt and Budget (Date)

Project Number: E13126
Fund Name: Engineering Services
Funding Source: 1150-5310-530000
Encumbrance Number: _____

APPROVED AS TO FORM

Legal Department (Date)

ATTEST

Rebecca Huerta, City Secretary (Date)



Portfolio and Project Management Application Implementation Statement of Work

Submitted By:

EPM Live

December 11, 2013



STATEMENT OF CONFIDENTIALITY

This document contains proprietary and confidential information. All data submitted is provided in reliance upon the recipient's agreement not to use or disclose except in connection with its business dealings with EPM Live, or as required by law. The recipient of this document agrees to inform its present and future employees who receive or have access to the information contained in this document of its confidential nature, and to instruct each employee that he or she must not disclose any information concerning this document to others except to the extent that such matters are generally known to, and are available for use by, the public. The recipient of this document agrees that it will not duplicate or permit others to duplicate any material contained herein except for its own internal use.

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1. Services

EPM Live LLC (EPM Live), an Upland Software Company, is pleased to provide a proposal to assist and guide the City of Corpus Christi Engineering Department (“CCTexas”) through a deployment of the EPM Live portfolio and project management solution that will allow the organization to improve portfolio, project management, resource management and team collaboration.

The phases outlined in the technical approach are broken into discrete stages mapped to tangible deliverables. EPM Live will provide a qualified and skillful Project Manager, as a single point of contact. Additionally, EPM Live will provide a Technical Lead who will work with the Project Manager to design, configure and deploy the EPM Live based software solution. Other technical and training resources will be included in the project as required.

The Project Manager and other technical resources will work with the CCTexas project team to define the global processes of CCTexas to be integrated into the software solution, design the configuration of the software solution and build the production EPM Live software system. This process will be initiated through a Business Strategy Workshop. This workshop will result in a clearly defined system implementation roadmap for the EPM Live implementation. Following the Business Strategy Workshop phase, the Implementation, Integration, Training and Support phases will follow.

In each of these phases, there will be checkpoints (completion criteria) that determine the successful completion of deliverables in order to progress from one phase to the next. Exit criterion will be identified and agreed upon at the commencement of each phase in this project.

Services are expected to be performed either onsite at the CCTexas facilities at the City of Corpus Christi, Texas or at the EPM Live offices, located at 2382 Faraday Avenue, Ste. 200, Carlsbad, CA.

This iteration of the EPM Live solution implementation will focus on an out of the box configuration leveraging best practices already included in the tool. This approach combines pre-configured proven concepts for Enterprise Portfolio and Project Management with customer business specific needs. This approach also supports an advanced deployment that will allow CCTexas to meet their project management needs within a reasonable timeframe.

1.1. Implementation

During the Implementation developing phase EPM Live accomplishes the configuration and/or building of the EPM Live solution. The EPM Live Technical Team will initiate the implementation activities in a prototype site that will then be transferred to the production. CCTexas will be required to procure via separate contract a dedicated hosted production site of EPM Live. Production dedicated hosted EPM Live software is not part of this statement of work.

1.1.1. **Build, Test, Adjust, Deploy**

The EPM Live project team will configure the EPM Live solution based on the BTO specification document completed as part of previous implementation phases. EPM Live Technicians will configure the following system areas as required to complete the CCTexas EPM Live solution:

Configuration Scope:

Configuration Area:	Configuration Details:
Portfolio Center	– Portfolio Custom Fields

Project Center	– Project Custom Fields
Risks	– Custom Fields for Associated Risks
Issues	– Custom Fields for Associated Issues
Task Center	– Custom Fields for Tasks
Documents	– Document properties for Associated Items
Project Schedule Templates	– Project Schedule templates in the Project Schedules Library
Security	– Out of the Box Permission Groups to account for Team Members, Project Managers, Administrators and Visitors
Resource Roles	– Roles with Rates
Cost Categories and Types	– Cost Planning Template(s)
Departments	– Organizational Departments
Resource Center	– Resource Attributes
What-If Modeler and Optimizer	– Scenarios for usage of the tool
Calendar	– Calendar definition

1.1.2. Workflow

The EPM Live solution includes a number of pre-configured SharePoint Designer Workflows for basic actions and notifications between team members in the overall PPM process. In order to facilitate basic PPM and work management automation, the EPM Live team will enable the out of the box workflows in order to deliver a Project Creation workflow for CCTexas.

- Configuration will be limited to the out of the box workflows with limited modifications to the existing actions and notifications available;
- Any change in scope with regards to workflow would be part of the standard Change Control process for this project.

1.2. Training

Training is considered a major deliverable that at its completion marks the deployment milestone. The following describes the training strategy to be followed as part of the project:

1.2.1. EPM Live University Learning Management System

EPM Live’s online learning management system courses are designed to help you and your team, from anywhere in the world, easily gain the knowledge needed to effectively use the EPM Live on demand.

The eLearning courses are 90-minute informational webinars designed to help you quickly learn specific areas of EPM Live through product demonstration and Q&A. Since our eLearning courses are offered every week, you have the flexibility to learn at your own pace and schedule.

The online eLearning for PortfolioEngine courses are focused on a standard-use application of the tool for Project Managers, Resource Managers, Team Members, and Executives. EPM Live University vouchers will be provided to all of the participants in the project.

As part of the training deliverables, CCTexas will receive adjusted training materials (no screenshot updates) that identify the configuration of EPM Live implemented for CCTexas. The purpose of the adjusted training materials is to highlight the specific usability of EPM Live defined for CCTexas.

1.3. Integration

This project includes gathering and documenting requirements and generating a preliminary design of the integration with Infor-ERP and LaserFiche. Requirements gathering sessions will be held with the CCTexas Subject Matter Experts. The EPM Live Project Manager and Technical Resources will deliver a requirements and preliminary design document for the integration of EPM Live with Infor-ERP and LaserFiche. The actual development of any integration methods (web services) is considered a separate from this statement of work and can be delivered independently of the EPM Live implementation as part of a separate scope of work and contract. EPM Live will assign a Developer resource for the integration requirements and design. For the integration effort, a standard waterfall methodology will be followed:

- I. Planning & High-Level Design (HLD)
 - Requirements Gathering
 - Documenting requirements and HLD

1.4. Engagement/Project Management

To ensure the success of the project, EPM Live will assign a dedicated Project Manager to be the single point of contact for this engagement. The Project Manager will lead and coordinate resources together with the assigned CCTexas Project Manager to make sure all deliverables are completed on time and budget. The Project Manager will provide weekly status reports as well as bi-monthly Timesheet Reports (in arrears) to CCTexas and maintain the Project Schedule. The EPM Live Project Manager will work to incorporate other internal CCTexas related project activities and deliverables into the overall Project Schedule.

2. Deliverables

EPM Live will provide the following deliverables within the indicated timeline:

- 1) **Implementation Deliverable(s):**
 - Build Test, Deploy, Adjust
 - Configured EPM Live Solution in Staging Site based on BTO specifications
 - Site Review Work Sessions with Project Team
 - Adjustments to Configuration Builds
 - Configured EPM Live Solution in Production Site based on BTO specifications
 - Workflow
 - Configuration of Out of the Box Workflow According to Build to Order Specifications Document for "Project Creation"

2) Training Deliverable(s):

- EPM Live Training Materials (Adjusted to Reflect CCTexas System Configuration Terminology – no screen updates.)
- EPM Live University Enrollments for End Users (Learning Management System)
- EPM Live University Enrollments for Administrators (Learning Management System)

3) Integrations Deliverable(s):

- Requirements Gathering Session(s)
- Integration Requirements and High Level Design Document

4) Engagement/Project Management:

- Weekly Project Status Reports
- Timesheet Reports Every Two Weeks (in arrears)
- Project Schedule Updates every Two Weeks

3. Checkpoints

The following Checkpoints will be managed as part of this project:

- Completion of Implementation phase
- Completion of Training phase

For the Implementation Checkpoint, the acceptance criteria are the completion of the EPM Live BTO Specification Document and the configuration of the EPM Live software on the hosted server infrastructure.

For the Training Checkpoint, the acceptance criteria are the completion Training Materials and the Enrollments for EPM Live University.

At the completion of each checkpoint EPM Live will provide a Checkpoint Acceptance Form. Sign off must occur within ten days of receipt. If sign off is not received without communication within two weeks, acceptance will be assumed.

4. Change Control

EPM Live considers change control to be a standard component of all engagements that we undertake. Change control includes changes to project scope and/or deliverables from the original project plan. Other project impacts, such as lost time due to emergencies, software errors in licensed software or unplanned absences of key personnel, can also effect the time required to complete the work and/or the quality of the deliverables.

EPM Live has a formal change control process that documents and authorizes changes. Scope changes beyond the original Statement of Work will be presented first for authorization to estimate the impact (i.e., deliverables / schedule / cost) and then to authorize the agreed upon scope change along with the associated schedule and fee adjustment. Project impacts due to lost time or unavailability of key resources that may impact the project scope, schedule or deliverables will be documented for decision(s) when changes to original time/fee estimates may be warranted. A CCTexas signature is required on all Change Order agreement/forms. If a decision is made to approve a change, a definitive time/fee estimate will be determined and the project scope and timeline will be adjusted.

5. Pricing/Payment

The services in this statement of work will be submitted on a **time and material** basis at a rate of US\$175 per hour (per assigned resource). The following estimate of cost covers the estimated fees for EPM Live to deploy EPM Live for CCTexas. The estimate of fees is submitted for services delivered in the United States and does not include additional fees incurred by EPM Live as part of providing services outside of the United States. CCTexas will be invoiced and all fees are due and payable upon receipt of invoice.

Consulting Services	Quantity (Hours/Units)	Unit Cost	Cost
Implementation			
Build, Test, Deploy and Adjust	140	\$ 175.00	\$ 24,500.00
Data Migration/Reporting	48	\$ 175.00	\$ 8,400.00
Workflow - Project Creation	48	\$ 175.00	\$ 8,400.00
Training			
Trainig Materials Adjustments	69	\$ 175.00	\$ 12,075.00
Services Total			\$ 53,375.00
Estimate of Travel and Expense			\$ 6,750.00

This statement of work does not include the cost of the EPM Live software (Dedicated Hosted Software). CCTexas is expected to procure the hosting services and/or on-premise software under a separate contract.

Travel and related expenses are additional, and will be invoiced at actual cost as incurred. For delivery of the on-site components of this engagement, EPM Live estimates a total of 3 trips, each trip at an average cost of \$2.25K for a total estimate of travel and expense for this engagement of \$6.7K. Any required travel and related expenses will be submitted by EPM Live for prior approval by CCTexas. In addition, EPM Live agrees to abide by the CCTexas travel policy.

For questions or changes regarding this quote please contact Jose Levy at jrlevy@uplandsoftware.com, 469-328-9851. Pricing is valid until 1/31/2014.

6. Resources Assigned

EPM Live will provide the following resources as part of this project. Additional resources will be added to the project as needed to complete the deliverables defined herein.

Role	Name	Description
------	------	-------------

Engagement Manager /Project Manager	TBD	Experienced in Project and Portfolio Management processes and the application configuration and implementation of EPM Live solutions including project management and engagement management to ensure all deliverables are completed in scope and on budget.
Technical Lead (Solution Architect)	TBD	Experienced in configuration of all aspects of the EPM Live software solution and Microsoft technologies including SQL Server, SharePoint Server.
EPM Live Developer	TBD	Experienced in custom software development of EPM Live and Microsoft technologies.
EPM Trainer	TBD	Experienced in delivering project management and EPM Live role-based training

7. Assumptions

In order to mitigate the risk to all parties associated with the project, EPM Live submits the following list of assumptions. EPM Lives' services and related pricing are contingent upon these assumptions. Modifications to these assumptions may impact the project timeline and/or result in lower or added costs. The project assumptions are:

- EPM Live anticipates that a majority of the set-up and configuration activities will be accomplished both onsite and offsite.
- The client will provide remote access to their server systems via the client's VPN, via EPM Live GoToMeeting or LiveMeeting capability, or by some other mutually agreeable means.
- The client will ensure appropriate access for EPM Live resources to facilities and personnel during normal business hours, throughout the duration of the Project, and for providing after-hours access for same upon receipt of two (2) business day advance notice or as mutually agreed, if required.
- In the event of onsite work, the client will prepare the physical project facilities and equipment as applicable for the development of the Project deliverables.
- All network connectivity issues will be handled and addressed by the client staff. Network performance and WAN connection from offsite or remote offices is not the responsibility of EPM Live and should be in place prior to project start.
- EPM Live is not responsible for potential time zone issues for client international offices.
- Microsoft Project and EPM Live Project Publisher installations on user machines/laptops are the responsibility of the client's IT group.
- This implementation includes the out of the box usage scenarios and capabilities of EPM Live. No custom software development deliverables have been included as part of this statement of work.
- Workflow configuration is limited to the out of the box workflows provided by EPM Live adjusted for the specifications of CCTexas. Any change in scope with regards to workflow would be part of the standard Change Control process for this project.

- Training material adjustments are limited to making changes to the out of the box training materials for EPM Live reflects the CCTexas EPM Live system configuration. This includes removing sections of the materials that are not relevant to CCTexas, providing the recommended sequence of the class based on the CCTexas process, and other minor adjustments, if necessary, based on the final configuration. No screenshot updates are included. Training materials will be delivered in Word format.
- Reports included as part of the solution are limited to configuration of out of the box reporting features to meet reporting requirements. No custom report development are included as part of this statement of work.

Failure to satisfy these assumptions may result in a project delay and fee increase and may trigger a project change request.

8. Authorization

The pricing and other terms as specified within this document are offered by EPM Live until 1/31/2014. Pricing and terms after that time are subject to increases and changes, respectively.

The estimate of fee is submitted for services delivered in the United States and does not include additional costs incurred by EPM Live as part of providing services outside of the United States.

By signing below, the City of Corpus Christi agrees to the terms within this Statement of Work.

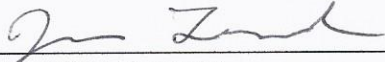
Company: City of Corpus Christi

Authorizing Signature	Date	PO Number	
Print Name and Title	Phone Number		
Billing Address	City	State	Zip
Country			

Please fax this page with proper authorization to:

EPM Live at 1.858.430.4894 Attention: Contracting

Company: EPM Live LLC

		11/2/14		
Authorizing Signature	Date	PO Number		
JOE LARSCHEID, GENERAL MANAGER		760 603 9990		
Print Name and Title	Phone Number			
2382 PARADAY AVE. SUITE 200	CA	92008		
Billing Address	City	State	Zip	
USA				
Country				

1. Terms and Conditions

THIS SERVICES AGREEMENT (Agreement) is made as of the signature date by and between EPM Live LLC, ("EPM Live") part of Upland Software and the City of Corpus Christi, Texas, a Texas home rule municipal corporation ("CCTexas"), acting by and through its authorized representative, the City Manager or his designee.

WITNESSETH

WHEREAS, EPM Live is a Limited Liability Corporation formed for the purpose of providing Business Solutions consulting and computer technology to organizations desiring to improve their financial status and efficiency

WHEREAS, CCTexas desires EPM Live to provide Consulting Services

NOW, THEREFORE, EPM Live and CCTexas hereby agree as follows:

ARTICLE 1: RECITALS AND DEFINITIONS

Section 1.01 – Recitals: The above recitals and identification of parties are true and correct.

Section 1.02 – Definitions: The following definitions shall apply:

- (1) Termination Notice: The term "Termination Notice" shall mean that written notice sent by one party to this Agreement to the other party to this Agreement seeking to terminate the Contract and this Agreement because of a material breach by such other party.
- (2) Consulting Services: The term "Consulting Services" shall mean all of the services provided by EPM Live as described in the Statement of Work of which this Agreement is a part.
- (3) Contract: The term "Contract" shall mean the entirety of the Statement of Work including this Agreement.

(4) Contract Term: The term "Contract Term" shall mean a period of time starting with the Effective Date and continuing until this Agreement is fulfilled, cancelled or terminated as provided under Article 4.

(5) Deliverables: The term "Deliverables" shall mean deliverables as defined in the Statement of Work.

(6) Development Services: The term "Development Services" shall mean any development of software as may be specifically designated in the Statement of Work by EPM Live on behalf of ("CCTexas")

(7) Services: The term "Services" shall mean the Development Services, Consulting Services and any other services provided by EPM Live to CCTexas including, but not limited to, best practice recommendations, process development, user training, user support, technical support, software installation, and software configuration.

ARTICLE 2: ACCEPTANCE

Section 2.01 – Acceptance: Payment for the Services shall be subject to the written approval and acceptance of CCTexas.

ARTICLE 3: PAYMENT

Section 3.01 – Consulting Fee: All of the Services shall be performed by EPM Live for the costs specified in the Statement of Work.

Section 3.02 – Travel Expenses: CCTexas is obligated to pay reasonable travel expenses only if the expenses are approved in writing by CCTexas prior to being incurred, and are associated with completing the Services. EPM Live will not charge and CCTexas is not obligated to pay for any travel expenses for any services that are performed within San Diego County.

Section 3.03 – Invoicing: EPM Live shall invoice CCTexas for fees in rendering all Services at the end of each month of the duration of the project. CCTexas shall pay such invoice in full within thirty days of receipt of the invoice to:

EPM Live
2382 Faraday Ave., Ste. 200
Carlsbad, CA 92008

Section 3.04 – Insurance: EPM Live shall maintain all insurance required under Exhibit B, and meet all requirements under Exhibit B, which is incorporated and made a part of this Agreement.

ARTICLE 4: TERMINATION

Section 4.01 – Termination Limitations: The Contract and this Agreement may be terminated as provided in this Article 4.

Section 4.02 – Term and Renewal: The Contract and this Agreement shall be valid for a one year Contract Term beginning on the date this Agreement is signed by the parties.

Section 4.03 – Termination: If a party materially breaches the Contract or this Agreement, the other party may terminate the Contract and this Agreement by sending a Termination Notice describing the material breach to the other party. Upon receipt of the Termination Notice, the other party shall have thirty days from the date of the Termination Notice either to cure the material breach or, if the material breach cannot be cured within such thirty day period, to begin in good faith to cure the material breach. If the material breach is not cured within the thirty-day period or, if the material breach cannot be cured within such thirty day period and the other party does not in good faith effort begin to cure the material breach, within the thirty-day period, the party providing the Termination Notice shall have the right to terminate the Contract and this Agreement as of the thirty-first day after the date of the Termination Notice.

Upon termination, CCTexas shall pay to EPM Live all expenses incurred pursuant to the terms of this Agreement to the date of Termination.

Section 4.04 – Effect of Termination: Termination as provided in this article shall terminate the Contract and this Agreement, except that the provisions of Articles 5 and 6 shall survive termination.

ARTICLE 5: INTELLECTUAL PROPERTY.

Section 5.01 – Copies: CCTexas shall have the right to make additional copies of any documents created and software developed by EPM Live for CCTexas for back-up purposes.

Section 5.02 – Deliverables: The Deliverables shall be the sole and exclusive property of CCTexas.

Section 5.03 – CCTexas Technology: CCTexas information technology shall be the exclusive property of CCTexas. CCTexas shall be the exclusive owner of all the rights, title and ownership interest therein. CCTexas hereby grants EPM Live a restricted license to use CCTexas Technology for purposes of performing the Contract and this Agreement.

Section 5.04 – CCTexas Confidential Information: CCTexas Confidential Information includes any information that may be considered confidential under Texas Public Information Act, Chapter 552 of the Texas Government Code, including but not limited to any information that may be considered confidential under:

- (a) Tex. Gov't Code § 552.110 related to confidentiality of trade secrets and certain commercial or financial information, including confidential and proprietary business practices, methods, processes, designs, and other information provided to CCTexas by third parties, and in the possession of CCTexas;
- (b) Tex. Gov't Code § 552.136 related to confidentiality of credit card, debit card, charge card, and access device numbers; and
- (c) Tex. Gov't Code § 552.139 regarding the confidentiality of government information related to security issues for computers.

EPM Live shall not disclose CCTexas's Confidential Information without the prior written consent of CCTexas. EPM Live hereby acknowledges and agrees that CCTexas's Confidential Information is subject to all applicable law, including the Texas Public Information Act, Chapter 552 of the Texas Government Code. If EPM Live receives a request for CCTexas Confidential Information, EPM Live agrees to immediately notify CCTexas.

Section 5.05 – Indemnification: EPM Live warrants that the Services (including computer software) sold to CCTexas pursuant to the Contract and this Services Agreement and CCTexas's use thereof do not infringe or violate any patent, copyright, trademark, mask work, trade secret, or any other intellectual property of any person or entity. In addition to and not in lieu of any other obligation imposed under the Contract and this Services Agreement, EPM Live agrees to and shall indemnify, defend, settle on behalf of, and hold harmless CCTexas (the City of Corpus Christi, its officers, agents, employees, and representatives) from and against any and all demands, claims, proceedings, actions, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees, other expenses for investigation, handling, litigation, and settlement or judgment amount) asserted against or incurred by CCTexas, or by reason of, resulting from, or arising in connection with EPM Live and its performance under this Agreement.

ARTICLE 6: WARRANTY

Section 6.01 – Services Warranty: EPM Live hereby represents and warrants that all services to be performed pursuant to the Contract and this Agreement will be performed on a best efforts basis by qualified personnel in accordance with standard industry practices for such services.

ARTICLE 7: MISCELLANEOUS

Section 7.01 – Assignments: Any assignments of rights under the Contract and this Agreement by CCTexas without the prior written consent of EPM Live shall be void.

Section 7.02 – Hiring: CCTexas agrees that it and its affiliates and subsidiaries shall not hire or attempt to hire either a current or terminated employee of EPM Live during the Contract Term and for a period of one year after the expiration of the Contract Term. The parties understand and agree, however, that the foregoing provision shall not prohibit CCTexas from engaging in any general solicitation for employment which is not directed at any such current or terminated employee of EPM Live (including, but not limited, to, through the use of an employment agency or recruiting firm) or from hiring any such employee who responds to such general solicitation, or who approaches CCTexas concerning possible employment without having been solicited.

Section 7.03 – Entire Agreement: The Contract and this Agreement, including this Agreement's Exhibits B through Exhibit D, constitute the entire agreement and understanding between the parties and supersede any previous oral or written agreements or understandings between the parties concerning the subject matters of the Contract and this Agreement.

Section 7.04 – Waivers, Amendments and Modifications: Waivers of, and amendments and modifications to the Contract and this Agreement shall not be binding unless such waiver, amendment or modification is in writing and signed by an authorized representative of each party.

Section 7.05 – Notice: Notices shall be in writing and shall be deemed delivered when delivered by courier or mailed postage prepaid by Certified or Registered Mail -- Return Receipt Requested -- to the person and address designated below. Notice shall be deemed given on the date of receipt -- as evidenced in the case of Certified or Registered Mail by Return Receipt.

to:

EPM Live, LLC
Attn: Joe Larscheid
Executive VP Upland Software
General Manager - EPM Live
2382 Faraday Ave., Ste. 200
Carlsbad CA, 92008

City of Corpus Christi
Attn: Holly Houghton, Sr. Application Specialist
City Hall, 3rd Floor, Engineering Svcs Dept
1201 Leopard Street
Corpus Christi, TX 78401

with copy to:

City of Corpus Christi
Attn: Veronica Ocanas, Sr. Asst. City Attorney
City Hall, 5th Floor, Legal Dept
1201 Leopard Street
Corpus Christi, TX 78401

Section 7.06 – Relationship of the Parties: Nothing in the Contract or this Agreement shall be deemed to create a partnership, a joint venture, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other.

Section 7.07 – Assurances: Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to the other under the Contract and this Agreement are true, correct and accurate as of the date of this Contract and Services Agreement to the best of their knowledge. Each party hereby represents and warrants that the person signing this Agreement for their party is authorized to legally bind the party.

Section 7.08 – Applicable Law: The Contract and this Agreement shall be governed by the laws of the State of California, exclusive of conflicts provisions.

Section 7.09 – Jurisdiction and Venue: Any action arising out of or in connection with the Contract or this Agreement shall be brought in the Superior Court of the State of California, San Diego County.

EXHIBIT "B"

INSURANCE REQUIREMENTS

I. VENDOR'S LIABILITY INSURANCE

- A. Vendor shall not commence work under this agreement until all insurance required herein has been obtained and approved by the City's Risk Manager or designee. Contractor must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.
- B. Vendor shall furnish to the Risk Manager or designee two (2) copies of Certificates of Insurance, with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the Risk Manager or designee. The City must be named as an additional insured for the General Liability policy, and a waiver of subrogation is required on all applicable policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day Notice of Cancellation required on all certificates or by policy endorsement(s)	Bodily injury and Property Damage Per Occurrence / aggregate
Commercial General Liability including: 1. Broad Form 2. Premises – Operations 3. Products/Completed Operations Hazard 4. Contractual Liability 5. Broad Form Property Damage 6. Independent Contractors	\$500,000 Per Occurrence
BUSINESS AUTOMOBILE LIABILITY 1. Owned 2. Hired & Non-owned	\$100,000 Combined Single Limit
WORKERS' COMPENSATION	Which Complies With The Texas Workers' Compensation Act And Paragraph II Of This Exhibit. All states endorsement is required if company is not domiciled in Texas
EMPLOYER'S LIABILITY	\$500,000 / \$500,000 / \$500,000

- C. In the event of accidents of any kind related to this project, Vendor shall furnish the Risk Manager with copies of all reports of such accidents within ten (10) days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Vendor must obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers' compensation obligations incurred will be promptly met. All States endorsement is required if company not domiciled in the State of Texas.

- B. Vendor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Vendor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Vendor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Vendor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Management
P.O. Box 9277
Corpus Christi, TX 78469-9277
(361) 826-4555- Fax #

- D. **Vendor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage. Vendor provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Vendor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Vendor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Vendor to discontinue sales/work hereunder, until Vendor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Vendor may be held responsible for payments of damages to persons or property resulting from Vendor's or its subcontractor's performance of the work covered under this agreement.

- H. It is agreed that Vendor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.

- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2013 Engineering Dept.
Purchase and Installation of Software – ins. reqs.
12/19/2013 ds Risk Management

COMPLETE PROJECT NAME
Project No. XXXX
Invoice No. 12345
Invoice Date:

	Contract	Amd No. 1	Amd No. 2	Total Contract	Amount Invoiced	Previous Invoice	Total Invoice	Percent Complete
Basic Services:								
Preliminary Phase	\$1,000	\$0	\$0	\$1,000	\$0	\$1,000	\$1,000	100%
Design Phase	2,000	1,000	0	3,000	1,000	500	1,500	50%
Bid Phase	500	0	250	750	0	0	0	0%
Construction Phase	2,500	0	1,000	3,500	0	0	0	0%
Subtotal Basic Services	\$6,000	\$1,000	\$1,250	\$8,250	\$750	\$1,500	\$2,500	30%
Additional Services:								
Permitting	\$2,000	\$0	\$0	\$2,000	\$500	\$0	\$500	25%
Warranty Phase	0	1,120	0	1,120	0	0	0	0%
Inspection	0	0	1,627	1,627	0	0	0	0%
Platting Survey	TBD	TBD	TBD	TBD	TBD	TBD	TBD	0%
O & M Manuals	TBD	TBD	TBD	TBD	TBD	TBD	TBD	0%
SCADA	TBD	TBD	TBD	TBD	TBD	TBD	TBD	0%
Subtotal Additional Services	\$2,000	\$1,120	\$1,627	\$4,747	\$500	\$0	\$500	11%
Summary of Fees								
Basic Services Fees	\$6,000	\$1,000	\$1,250	\$8,250	\$750	\$1,500	\$2,500	30%
Additional Services Fees	2,000	1,120	1,627	4,747	500	0	500	11%
Total of Fees	\$8,000	\$2,120	\$2,877	\$12,997	\$1,250	\$1,500	\$3,000	23%



City of
Corpus
Christi

SUPPLIER NUMBER
TO BE ASSIGNED BY CITY
PURCHASING DIVISION

CITY OF CORPUS CHRISTI DISCLOSURE OF INTEREST

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See reverse side for Filing Requirements, Certifications and definitions.

COMPANY NAME: LMR Consulting dba EPM Live

P. O. BOX: _____

STREET ADDRESS: 2382 Faraday, Suite 200 **CITY:** Carlsbad, CA **ZIP:** 92008

FIRM IS: 1. Corporation 2. Partnership 3. Sole Owner
4. Association 5. Other

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.
1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Job Title and City Department (if known)
<u>N/A</u>	_____
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Title
<u>N/A</u>	_____
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Board, Commission or Committee
<u>N/A</u>	_____
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Consultant
<u>N/A</u>	_____
_____	_____
_____	_____

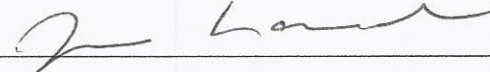
FILING REQUIREMENTS

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349 (d)]

CERTIFICATION

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: Joe Larscheid **Title:** General Manager – EPM Live
(Type or Print)

Signature of Certifying Person:  **Date:** 1/2/14

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Economic benefit". An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements."
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.