

# Consulting Agreement

---

This AGREEMENT is made and entered into this 21st day of April, 2016 by and between the City of Key West, Florida, a municipal corporation of the State of Florida, whose address is P.O. Box 1409, Key West, Florida 33041, hereafter referred to as the "CITY" and Early Alert, Inc. a Florida, whose address is 722 SW Pine Tree Lane, Palm City, Florida, 34990, hereafter referred to as the "CONSULTANT". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 5.1.

## **Article 1. Scope of Services**

The CONSULTANT'S primary responsibilities include, but are not limited to, providing professional emergency management support services to the City of Key West ("Project"). Additional work may include other consulting services which the CONSULTANT is qualified to provide and which the CITY authorizes the CONSULTANT to undertake in connection with the CITY'S present and planned activities in the areas identified below. The specific task goals, task activities and key project milestones, which the CONSULTANT agrees to undertake, accomplish and furnish, are set forth as follows:

### **1. Scope of Work**

The CONSULTANT shall furnish all of the materials, tools, supplies, and labor necessary to perform all of the work described in the Proposal, a copy of which is attached hereto and specifically made a part of this Agreement as Exhibits "A", "Level 1 & 2". CONSULTANT hereby represents to CITY, with full knowledge that CITY is relying upon these representation when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience and manpower to perform the services to be provided by CONSULTANT pursuant to the terms of this Agreement.

## **Article 2. Compensation**

As consideration for providing the services enumerated in Article 1, the CITY shall pay the CONSULTANT as follows:

The CITY hereby agrees to pay CONSULTANT for the faithful performance of this Agreement, for work contracted in accordance with the Proposal attached hereto as Exhibit "A", Emergency Management Support Services, and as direct by CITY. The Annual total base contract price hereto is referred to as "Level I" Contract Sum and shall not exceed Fifteen Thousand Dollars (\$15, 000.00), per year.

In addition, the CITY will make payments to CONSULTANT for contracted and proper work and in the amounts stated in Exhibit "A", "Level 2", Incident Management Support Team Activation" FEE SCHEDULE and will be calculated per-project amounts according to the following time-and-expense rate table in Exhibit "A", "Level 2". The CONSULTANT shall guarantee all portions of the Project against poor workmanship and faulty materials for a period of twelve (12) months after final payment and shall immediately correct any defects which may appear during this period upon notification by CITY. The making and acceptance of the final payment shall constitute a waiver of all claims by the CONSULTANT other than those arising from requirements of the specifications. CONSULTANT is prohibited from placing a lien on the CITY's property. This prohibition applies to; inter alia, all sub-consultants and subcontractors, suppliers and labors.

### **Article 3. Obligations of the Consultant**

#### **3.1 General**

- A. The CONSULTANT will serve as CITY'S professional representative under this AGREEMENT, providing professional emergency management support services to the City of Key West ("Project").

#### **3.2. Standard of Care**

- A. The standard of care applicable to CONSULTANT'S services will be the degree of skill and diligence normally employed by professionals and other related consultants performing the same or similar services at the time said services are performed. The CONSULTANT will perform any services not meeting this standard without additional compensation.

#### **3.3 CONSULTANT'S Insurance**

- A. The CONSULTANT will maintain throughout this AGREEMENT the following insurance:
  1. Worker's Compensation - Statutory - in compliance with the Compensation law of the State of Florida. In addition, the Consultant shall obtain Employers' Liability Insurance with limits of not less than:
    - Five Hundred Thousand (\$500,000.00) Dollars Bodily Injury by Accident
    - Five Hundred Thousand (\$500,000.00) Dollars Bodily Injury by Disease, Policy Limits
    - Five Hundred Thousand (\$500,000.00) Dollars Bodily Injury by Disease, each employee
  2. Commercial General Liability including but not limited to bodily injury, property damage, contractual liability, products and completed operations (without limitation) and no more restrictive than ISO form CG 20 37 (07 04) shall be in an amount acceptable to the City of Key West but not less than One Million (\$1,000,000.00) Dollars Combined Single Limit per occurrence and Two Million (\$2,000,000.00) Dollars aggregate. The coverage must include:

- Commercial Form
  - Premises/ Operations
  - Products/Completed Operations
  - Independent Consultant (if any part of the Work is to be subcontracted)
  - Broad Form Property Damage
  - Personal Injury
3. **Business Automobile Liability Insurance** with a minimum limit of liability of One Million (\$1,000,000.00) Dollars each occurrence covering all worked performed under this contract. This insurance shall include for bodily injury and property damage the following coverage:
- Owned automobiles
  - Hired automobiles
  - Non-owned automobiles
  - Location of operation shall be "All Locations"

In the event Consultant does not own automobiles, Consultant agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. If private passenger automobiles are used in the business, they must be commercially insured.

4. ~~**Excess/Umbrella Liability** shall have a minimum limit of Two Million (\$2,000,000) Dollars per occurrence with an annual aggregate of Two Million (\$2,000,000) Dollars. This coverage is to be following form and include the Commercial General Liability and Automobile Liability Policies.~~

5. **Professional Liability/Errors & Omissions Insurance** with minimum limits not less than One Million (\$1,000,000.00) Dollars for professional services rendered in accordance with this contract. The Consultant shall maintain such insurance for at least two (2) years from the termination of this contract and during this two (2) year period the Consultant shall use his/ her best efforts to ensure that there is no change of the retroactive date on this insurance coverage. If there is a change that reduces or restricts the coverage carried during the contract, the Consultant shall notify City Risk Management within thirty (30) days of the change.

6. **Scope of Insurance and Special Hazards**

The insurance requirement contained in the foregoing Paragraphs are a minimum to provide adequate protection for the Consultant, respectively, against damage claims which may arise from operations under this contract, whether such operation be by the insured or by anyone directly or indirectly employed by the insured and, also against any of the special hazards which may be encountered in the entity's operation under this contract. The insurance required herein and approval of the Consultant's insurance by the City of Key West shall not relieve or decrease the liability of the Consultant hereunder.

Insurance requirements itemized in this contract and required of the Consultant shall be provided on behalf of all sub-contractors to cover their operations performed under this contract. The Consultant shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to sub-contractors.

## **7. Certificates of Insurance**

Certificates of Insurance shall be filed and maintained throughout the life of any resulting Agreement with the City of Key West, P.O. Box 1409, Key West, FL 33041-1409 evidencing the minimum limits of the insurance cited above prior to commencement of work. All insurance certificates shall be received by City Clerk and Department of Risk Management before Consultant will be allowed to commence or continue work (all insurance carriers must have their corresponding AM Best carrier ID listed on the COI). All policies shall provide that they may not be terminated or modified without the insurer providing the City of Key West at least thirty (30) days of advance notice. Additionally, the Consultant shall immediately notify the City of any cancellation of such insurance. The City of Key West reserves the right to review, at any time, coverage, form, and amount of insurance.

In addition, it is understood if at any time any of the policies required by City shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the City, the Consultant shall obtain a new policy, submit the same to the City for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of the Consultant to furnish, deliver and maintain such insurance as above provided, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of the Consultant to take out and/ or maintain any required insurance shall not relieve the Consultant from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the Consultant concerning indemnification.

### **3.4 Subconsultants**

- A. The CONSULTANT may not assign or subcontract its obligations under this AGREEMENT without the written consent of the CITY.
- B. The CONSULTANT is as fully responsible to the owner for the acts and omissions of his Subconsultants and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.
- C. Nothing contained in the Contract Documents shall create any contractual relationship between any Subconsultant and the City. The Subconsultants shall have the same insurance requirements as the CONSULTANT.

### 3.5 Licenses

The CONSULTANT will be required to obtain a local required license prior to performing any work for the CITY. This license will be a Business Tax Receipt at a cost not to exceed \$98.70.

## **Article 4. Obligations of the City**

### 4.1 Authorization to Proceed

Authorization to proceed will be considered to be given upon execution of this Agreement by CITY.

### 4.2 City-Furnished Data

The CITY will provide to the CONSULTANT all data in the CITY'S possession relating to the CONSULTANT's services on the PROJECT including, but not limited to, information on any pre-existing reports. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

### 4.3 Access to Facilities and Property

The CITY will make its facilities accessible to CONSULTANT as required for CONSULTANT's performance of its services and will provide labor and safety equipment as required by CONSULTANT for such access. CITY will be responsible for all acts of CITY'S personnel.

### 4.4 Timely Review

The CITY will examine the CONSULTANT's studies, reports, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner.

### 4.5 Prompt Notice

The CITY will give prompt written notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT'S services, or any defect in the work of the CONSULTANT.

### 4.6 Litigation Assistance

The Scope of Services does not include costs of CONSULTANT for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by CITY. All such services required or requested of CONSULTANT by CITY, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed in a separate agreement.

## **Article 5. General Legal Provisions**

### **5.1 Agreement Period**

The duration of the Agreement shall be Five (5) years commencing from the effective date of this Agreement.

### **5.2. Reuse of Project Documents**

Reports, documents and other deliverables of the CONSULTANT, whether in hard copy or in electronic form, are instruments of service for the project of the CITY. All documents shall be made available on re-writable CD and are the property of the City of Key West. Reuse, change, or alteration on another project, by the CITY or by others acting on behalf of the CITY of any such instruments of service without the written permission of the CONSULTANT will be at the CITY's sole risk. Nothing herein shall constitute a waiver of City's sovereign immunity rights, including, but not limited to, those expressed in Section 768.28, Florida Statutes.

### **5.3 Ownership of Work Product and Inventions**

All of the work product of CONSULTANT in executing a Project under this contract shall become the property of the CITY. The City may use the deliverables solely for the purpose for which they were intended.

### **5.4 Force Majeure**

- A. The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.
- B. In the event of a delay that results in additional costs to the CONSULTANT, an appropriate increase in compensation and schedule will be authorized in writing.

### **5.5 Termination**

This Agreement may be terminated by either party for cause, or the CITY for convenience, upon ten (10) days written notice by the CITY to CONSULTANT in which event the CONSULTANT shall be paid its compensation for services performed to termination date. In the event that the CONSULTANT abandons this Agreement or causes it to be terminated, he shall indemnify the CITY against any loss pertaining to this termination up to a maximum of the full contracted fee amount. All finished or unfinished documents, data, studies, plans, surveys, and reports prepared by CONSULTANT shall become the property of CITY and shall be delivered by CONSULTANT to CITY.

### **5.6 Suspension, Delay, or Interruption of Work**

- A. The CITY may suspend, delay, or interrupt the services of the CONSULTANT for the convenience of the CITY. In the event of such suspension, delay, or interruption, or any other act or neglect of CITY or CITY's subcontractors, CITY will pay CONSULTANT for work performed to date. An equitable adjustment in the PROJECT'S schedule and CONSULTANT's compensation will be made as agreed to by both parties.

- B. In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

### 5.7 Third Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third party beneficiaries. CONSULTANT's services are defined solely by this proposed scope of services, and not by any other contract or agreement that may be associated with the Project. All work products will be prepared for the exclusive use of CITY for specific application as described in the proposed scope of services. No warranty, expressed or implied, is made. There are no beneficiaries of the work products other than CITY, and no other person or entity is entitled to rely upon the work products without the written consent of CONSULTANT. Any unauthorized assignment of related work product shall be void and unenforceable.

### 5.8 Indemnification

- A. CONSULTANT to protect, defend, indemnify, save and hold harmless The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way grow out of any act or omission of the CONSULTANT, its agents, servants, and employees, or any and all costs, expense and/ or attorney fees incurred by the City as a result of any claim, demands, and/ or causes of action except of those claims, demands, and/ or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. The CONSULTANT agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent.

Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes.

- B. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, CONSULTANT shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The CONSULTANT shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CITY whether performed by CONSULTANT, or by persons employed or used by CONSULTANT.

- C. In no event shall CONSULTANT, its affiliated corporations, officers, employees, or any of its subcontractors be liable for any incidental, indirect, special, punitive, economic or consequential damages, including but not limited to loss of revenue or profits, suffered or incurred by CITY or any of its agents, including other contractors engaged at the project site, as a result of this Agreement or CONSULTANT's performance or non-performance of services pursuant to this Agreement. Limitations of liability provided in this paragraph apply whether the liability is claimed to arise in contract, tort (including negligence), strict liability, or otherwise.

#### 5.9 Limitation of Liability

- A. CONSULTANT's services shall be governed by the negligence standard for professional services, measured as of the time those services are performed.
- B. This Provision takes precedence over any conflicting Provision of this Agreement or any document incorporated into it or referenced by it.
- C. This limitation of liability will apply whether CONSULTANT'S liability arises under breach of contract or warranty; tort; including negligence; strict liability; statutory liability; or any other cause of action, and shall include CONSULTANT's officers, affiliated corporations, employees, and subcontractors.

#### 5.10 Assignment

CONSULTANT shall not assign all or any part of this Agreement without the prior consent of the CITY by Resolution of the Key West City Commission.

#### 5.11 Jurisdiction

The law of the state of Florida and Monroe County will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

#### 5.12 Severability and Survival

- A. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- B. ARTICLES 3, 4, and 5 will survive termination of this AGREEMENT for any cause.

#### 5.13 Dispute Resolution

- A. The parties will use their best efforts to resolve amicably any dispute, including the use of alternative dispute resolution options.
- B. Unless otherwise agreed in writing, the CONSULTANT shall continue the Work and maintain the approved schedules during any arbitration proceedings. If the CONSULTANT continues to perform, CITY shall continue to make payments in accordance with this Agreement.



#### 5.14 Post Contractual Restriction

This Agreement is contingent upon the execution of Post Contractual Restrictions by Consultant, those subconsultants referred to in Article 4.4(B) above, and those subconsultants approved by the City pursuant to Article 4.4(A) above restricting those persons and entities, as well as the employees of those persons and entities, from representing themselves or clients before the City Commission of the City Key West, the City's agents, boards, and committees on all planning related matters during the period of performance of this Agreement and for the period of one year following final approval of the Evaluation and Appraisal Report Amendments to the Comprehensive Plan. The Post Contractual Restrictions shall be executed simultaneously with this Agreement and shall be in a form acceptable to City.

#### 5.15 Attorney's Fees

In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder, including those pertaining to appeals.

#### 5.16 Record Retention

CONSULTANT shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

**Article 6. Schedules, and Signatures**

This AGREEMENT, including its Schedules, constitutes the entire AGREEMENT supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

CITY OF KEY WEST, FLORIDA

By: JK Scholl  
James Scholl, City Manager



ATTEST:  
Cheryl Smith  
Cheryl Smith, City Clerk

Dated this 10<sup>TH</sup> day of JUNE, 2016

EARLY ALERT, INC.

By: William A. Wagner, III  
William A. Wagner, III, its President

Dated this 2 day of MAY, 2016