

Professional Services Agreement

This AGREEMENT is made and entered into this ___ day of _____ 2019, by and between the City of Key West, 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 *Life Extension Clinics, Inc.* whose address is *104 N. West Duval St. #3269* hereafter referred to collectively 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 6.1.

Article 1. Scope of Services

The CONSULTANT'S primary responsibility is to provide physical examinations for the Key West Fire Department Hazardous Materials Response Team members. The CITY engages Consultant to perform those services described in the Consultant's Response submitted on _____, in response to the City of Key West Bid #19-005. Copies of the Bid and Consultant's response are attached hereto, incorporated for reference, and more particularly described as Exhibit A.

Article 2. Compensation

As consideration for providing the services enumerated in Article 1, the CITY shall pay the CONSULTANT to perform annual Haz-Mat physicals to all Key West Fire Department Team members at a per member cost of *\$620⁰⁰ year one \$628⁰⁰ year two \$636⁰⁰ year three*

Article 3. Invoicing and Payment

As indicated in Article 2 above, CONSULTANT shall be paid _____ Upon receipt of an acceptable and approved invoice, payment(s) shall be made in accordance with the Florida Prompt Payment Act.

Article 4. Obligations of the Consultant

4.1. General

The CONSULTANT will serve as CITY'S professional representative under this AGREEMENT, providing Haz-Mat physicals to members of the Haz-Mat Team members of the City of Key West Fire Department.

4.2. Standard of Care

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.

4.3 CONSULTANT'S Insurance

A. CONSULTANT is to secure, pay for, and file with the City of Key West, prior to commencing any work under the Contract, all certificates for Medical Malpractice, Workers' Compensation, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Contract, the CONSULTANT shall provide the minimum limits of liability insurance coverages as follows:

Medical Malpractice	\$1,000,000 per claim/aggregate
Commercial General Liability	\$1,000,000 occurrence/aggregate

B. CONSULTANT shall furnish an original Certificate of Insurance with the required coverages to the City of Key West. CONSULTANT will maintain the Medical Malpractice insurance coverages summarized above with coverage continuing in full force until at least 3 years beyond completion and delivery of work contracted herein.

C. Notwithstanding any other provision of the Contract, the CONSULTANT shall maintain complete Workers' Compensation coverages for each and every employee, principal, officer, representative, or agent of the CONSULTANT who is performing and labor, service, or material under the contract. Further, CONSULTANT shall additionally maintain the following maximum limits of coverage:

Bodily Injury Each Accident	\$100,000
Bodily Injury by Disease Each Employee	\$100,000
Bodily Injury by Disease Policy Limit	\$500,000

D. CONSULTANT shall provide the City of Key West with a Certificate of Insurance verifying compliance with the workman's compensation coverage as set forth herein and shall provide as often as required by the City of Key West such certification which shall also show the insurance company, policy number, effective and expiration date, and the limits of workman's compensation coverage under each policy.

E. CONSULTANT's insurance policies shall be endorsed to give 30 days' written notice to the City of Key West in the event of cancellation or material change, using form CG 02-24, or its equivalent.

F. CONSULTANT will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. CONSULTANT will notify City of Key West immediately by telephone at (305) 809-3811 of any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the CONSULTANT.

4.4 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 \$325.00.

Article 5. Obligations of the City

5.1. Authorization to Proceed

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

5.2. 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 examinations. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

5.3. 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.

5.4. Timely Review

The CITY will examine the CONSULTANT'S studies, reports, and other documents as the CITY deems appropriate; and render in writing decisions required of CITY in a timely manner.

5.5. 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.

Article 6. General Legal Provisions

6.1. Agreement Period

The term of the agreement shall be three (3) years commencing on execution of this agreement.

6.2. 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. 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.

6.3. 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.

6.4 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.**

6.5 Termination

- A. This agreement may be terminated at any time, with or without cause, by the CITY upon thirty (30) days written notice to CONSULTANT. No further work will be performed by CONSULTANT upon receipt of this notice unless specifically authorized by the Fire Chief of the City of Key West.**
- B. On termination, the CONSULTANT will be paid for all authorized services performed up to the termination date plus, if terminated for the convenience of the CITY, reasonable expenses incurred during the close-out of the AGREEMENT. The CITY will not pay for anticipatory profits.**

6.6 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 Medical Director'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.**

6.7 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.

6.8 Indemnification

- A. To the fullest permitted by law, the CONSULTANT expressly agrees to indemnify and hold harmless the City of Key West, their officers, directors, agents and employees (herein called the "Indemnitees") from any and all liability for damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the**

indemnification and other rights agreed to in this paragraph, to persons property, caused in whole or in part by any act, omission, or default by CONSULTANT or its subcontractors, material men, or agents of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence or willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the CONSULTANT or subcontractors, material men, or agents of any tier or their respective employees.

B. Indemnification for Professional Acts. CONSULTANT hereby agrees to indemnify the City of Key West and each of its parent and subsidiary companies and the directors, officers and employees of each of them (collectively, the "indemnitees"), and hold each of the indemnitees harmless, against all losses, liabilities, penalties (civil or criminal), fines and expenses (including reasonable attorneys' fees and expenses) (collectively, "Claims") to the extent resulting from the performance of CONSULTANT'S negligent acts, errors or omissions, or intentional acts in the performance of CONSULTANT services, or any of their respective affiliates, under this Agreement. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of the City of Key West and CONSULTANT, they shall be borne by each party in proportion to its negligence.

The indemnification obligations under this Agreement shall not be restricted in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONSULTANT under Workers' Compensation acts, disability benefit acts, or other employee benefits acts and shall extend to and include any actions brought by or in the name of any employee or the CONSULTANT or of any third party to whom CONSULTANT may subcontract a part or all of the Work. This Indemnification shall continue beyond the date of completion of work.

6.9 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.

6.10 Assignment

A. 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.

6.11 Jurisdiction

A. 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.

6.12 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 4, 5, and 6 will survive termination of this AGREEMENT for any cause.

6.13 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.

6.14 Post Contractual Restriction

This Agreement is contingent upon the execution of Post Contractual Restrictions by the CONSULTANT, those sub-consultants referred to in Article 4.4(B) above, and those sub-consultants 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.

6.15 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.

Article 7. 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:

THE CITY OF KEY WEST

By:

Jim Scholl, City Manager

Attest:

Cherl Smith, City Clerk

Dated this _____ day of _____, 2019

CONSULTANT

By:

Patricia Johnson, CEO

Dated this 11

day of January

2019