

Consulting Services Contract
City of Waukesha – ERI International, Inc.
Project Name: Comprehensive Emergency Management Plan

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and ERI International, Inc., 4537 Foxhall Drive NE, Olympia, Washington 98516, referred to herein as the Consultant. Together, the City and Consultant are referred to as the Parties.

Recitals

The City published a Request for Proposals, referred to as the RFP, for consulting services in connection with the following Project:

Development of a comprehensive emergency-management plan.

The RFP contained a specific Scope of Work to be incorporated into the successful bidder's contract.

The Consultant submitted a proposal in response to the RFP, and was selected by the City to be awarded the contract for the Project.

The Consultant is willing to perform consulting services according to the Scope of Work stated in the RFP and the Consultant's responsive Proposal, and to accept the award of the contract for the Project.

Now, therefore, the City and the Consultant agree and contract as follows:

1. **Scope of Work.** The Consultant shall perform the Work described on Attachment 1, according to the terms and conditions of this Contract. Attachment 1 is incorporated into this Contract by reference.
2. **Standard of Work.** Consultant will perform the Work according to generally-accepted industry practices and the highest standards of the professions of the individual employees performing the Work for Consultant.
3. **Personnel.** All Work shall be performed by Patrick "Rick" LaValla, unless otherwise agreed in writing by the City.
4. **Payment.** The City shall pay to Consultant a total, flat Contract Price of Ten Thousand Dollars (\$10,000.00) for performance of the Work in compliance with the terms and conditions of this Contract. The Contract Price shall be paid in installments, according to the schedule shown in Attachment 2.
5. **Time.** Consultant shall commence the Work as promptly after execution of this Contract as is possible, and shall conform as close as reasonably possible to the schedule shown in Attachment 1, with all Work completed no later than December 28, 2015, subject only to delays for circumstances beyond Consultant's control, provided Consultant recommences work promptly in good faith upon the return of normal circumstances.
6. **Ownership of Work Product.** All materials produced in the performance of the Work shall be the sole property of the City, and shall be kept confidential and not disclosed to any third party without the prior written permission of the City.
7. **Changes.** This Contract can only be amended by the written, mutual agreement of the Parties. No change to the scope of the Work, or the total amount to be paid to Consultant, shall be effective unless done by the written mutual agreement of the Parties.
8. **Indemnification.** Consultant shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or

connected in any way with, Consultant's performance of the Work, including court costs and actual attorney fees.

9. **Insurance.** Consultant shall maintain insurance of the following kinds and for not less than the following limits, at Consultant's sole expense, at all times during the performance of the Work. Policies shall be occurrence, and not claims-made, policies. Consultant shall obtain an endorsement making the City an additional insured and loss payee, and Consultant's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Consultant shall deliver a certificate of insurance to City showing that all requirements of this section are met.
 - a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.
 - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
 - c. Excess liability-umbrella, \$5,000,000.
10. **Record Keeping.** Consultant shall keep all documents and records generated in the performance of the Work for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. Consultant acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.
11. **Cooperation by City.** The City shall cooperate with the Consultant in the performance of the Work, and shall respond timely to all reasonable requests for information and access.
12. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
13. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
14. **Permits and Licenses.** Consultant shall be responsible, at Consultant's expense, for obtaining all permits and licenses required for the performance of the Work.
15. **Assignment Prohibited.** This Contract, and the Consultant's responsibility to perform the Work under this Contract, may not be assigned by the Consultant without the City's written consent.
16. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

To the City: Attention Dennis J. Angle, Deputy Chief
City of Waukesha Police Department
1901 Delafield Street
Waukesha WI 53188

To Consultant: Attention Patrick LaValla
ERI International, Inc.
4537 Foxhall Dr NE
Olympia WA 98516

17. **Corporate Authorization.** The individuals executing this Contract on behalf of the Consultant warrant and represent that they are duly authorized to bind the Consultant to this Contract. Consultant warrants and represents that the execution of this Contract is not prohibited by the Consultant's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Consultant shall provide proof upon request.
18. **Assistance of Counsel, Voluntary Contract.** The Consultant acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Contract's terms, conditions and provisions, and their effects; and that it has executed this Contract freely and not under conditions of duress.
19. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
20. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
21. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
22. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
23. **Integration.** This Contract constitutes the entire agreement of the Parties formed by the City's RFP and the Consultant's responsive proposal; however, if any ambiguity in this Contract requires resolution, or this Contract is silent on a material point, then reference may be made to the RFP and the Consultant's proposal, in that order of priority, to construe this Contract. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable.
24. **Termination.** Either party may terminate this Contract without cause by giving written notice of termination to the other party, with termination to occur no sooner than 20 days after delivery of the notice. Upon termination, Consultant shall be paid for all Work completed as of the date of termination, according to the schedule of payments in Attachment 2.
25. **Costs of Enforcement.** The parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching party will pay the non-breaching party's costs incurred in such legal action, including actual attorney fees. If judgment is taken against the breaching party, then such actual costs of enforcement will be added to the non-breaching party's judgment.

City of Waukesha

By Shawn N. Reilly, Mayor

Date: _____

Attested by Gina L. Kozlik, City Clerk

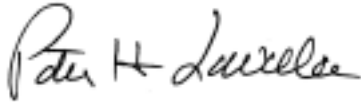
Date: _____

To certify that funds are provided for payment:

Richard L. Abbott, Director of Finance

Date: _____

ERI International, Inc.



By Patrick LaValla, President

Date: September 3, 2015

By (print name) Patrick LaValla

Title: President

Date: September 3, 2015

Attachment 1
Scope of Work Tasks and Timeline

PHASE 1		Target Due Date
1. Obtain background information from the City.	<ul style="list-style-type: none"> Review existing plan(s), procedures, and relevant written materials and agree on which portions of the existing plan(s) are relevant. Review, research legal planning requirements and basis. Review all relevant laws, policies, guidelines to ensure plan compatibility and compliance. Determine relevance of state planning guidance. 	Within 30 days after signed contract
2. Analyze current situation.	<ul style="list-style-type: none"> Gain an understanding of how City is organized, and how it intends to function during emergency and disaster conditions. 	Within 30 days after signed contract
3. Identification of hazards.	<ul style="list-style-type: none"> Obtain existing community Hazard Vulnerability Assessments (HVAs) to obtain knowledge of hazards facing the region and the City. Summarize this information for inclusion in the Basic Plan. Determine and agree on best approach to integrate specific hazards concerns. 	Within 30 days after signed contract
4. Determine City's "Concept of Operations" to include:	<ul style="list-style-type: none"> Use of ICS and EOC (ICS/EOC interface). Relationship of City's emergency management program to higher levels of government, i.e. city to county; county to state. What emergency functions are performed by each City departments, agencies, organizations. Levels of emergency. 	Within 30 days after signed contract
5. Determine CEMP structure, format, content.	<p>NOTE: The County's CEMP will be utilized as the template for the City's CEMP. Using the County CEMP we will:</p> <ul style="list-style-type: none"> Develop CEMP outline (table of contents). Establish outline and format of Basic Plan. Develop schedule of ESFs. Establish common outline, format, content for ESFs. Determine and agree on best approach to including special functions and hazards of local concern. Determine which "special subjects" will be appended to the CEMP. Develop list. Determine schedule of diagrams, charts, maps. 	Within 45 days after signed contract

6. Develop an ESF "primary / support" responsibility matrix.	<ul style="list-style-type: none"> Identify and list the plan participants (potential resource providers). Develop a matrix that will be used to identify and assess participation of the various agencies involved. (CEMP participants listed on one axis, and the schedule of ESFs listed on the other axis.) Fill in matrix. For each ESF indicate which agency will have the lead role (primary) and which agencies will be in a supporting role. 	Within 90 days after signed contract
7. Design EOC organization chart (basis for the City's incident management system).	<ul style="list-style-type: none"> Determine the EOC functions. Determine the sections, branches, units, and assign appropriate departments and ESFs to each. Summarize and include details in CEMP Basic Plan. 	Within 45 days after signed contract
8. Establish computer protocols i.e. central control, back-up system, etc.	<ul style="list-style-type: none"> Set up files for the various CEMP parts/sections on computer. 	Within 30 days after signed contract
9. Begin writing plan.		Within 45 days after signed contract
PHASE 2		
10. Produce a first draft of the CEMP.	<ul style="list-style-type: none"> Determine what information, content is missing. Include first draft of charts, diagrams, other display items. Submit to City emergency management staff for comment. 	TBD
11. Conduct an on-site work session with City and Stakeholders.	<ul style="list-style-type: none"> Determine with City best time frame. 	TBD
PHASE 3		
12. Produce a second draft of the CEMP from comments received on first draft and submit to City emergency management staff for comment.	<ul style="list-style-type: none"> Review and suggest changes to drafts. 	TBD
PHASE 4		
13. Prepare final draft of the making appropriate changes as per comments received from City emergency management staff for comment.	<ul style="list-style-type: none"> Review and suggest changes to final drafts. 	TBD
14. Produce and submit final electronic copies of plan both in "word" and "pdf".		TBD

ATTACHMENT 2
PAYMENT SCHEDULE

Project Phases	Percentage of Project Completed	Payment Due
Phase 1 (plan template delivered)	15	0
Phase 2 (first draft delivered)	50	\$5,000.00
Phase 3 (second drafts delivered)	75	0
Phase 4 (final drafts delivered)	100	\$5,000.00