**CONTRACTOR AGREEMENT FOR ER ASSIST, INC.**

**DISASTER RESPONSE AND RECOVERY SERVICES**

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| --- | --- | --- | --- |
| **Contractor Name:** | **ER Assist Inc** | **Client Name:** |  **\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Address:** | KY: ER Assist Inc3894 Georgetown Rd. Frankfort, KY 40601**AR: 108 E Central Suite 200; Bentonville AR 72712** | **Client Address:** |  |
| **Point of Contact:** | **Laurel Matula**  | **Client POC:** |  |
| **Email:**  | **laurel@erassist.com** | **Client email:**  | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Contract start date:** | **2/22/2021** | **Contract End Date (initial):**  | **2/22/2022** |
| **Billing type:** | **Hourly** | **Not to Exceed (NTE) Amount for all associated task orders:** | **$\_\_\_\_\_\_\_\_\_\_\_\_** |

 This Agreement, entered into this day of \_\_20 , by and between, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ,(hereinafter "Client"), and **ER Assist, Inc**. (hereinafter "Contractor"), collectively referred to as the "Parties".

RECITALS

I. WHEREAS, Client desires to retain Contractor to provide certain disaster operational management, administrative documentation, software, or other disaster response, recovery, or funding related services (“Services”), and the Contractor desires to provide such services, in accordance with the provisions contained in this Agreement. This Agreement imposes an obligation of good faith upon the parties, meaning: Contractor will deal in good faith with Client in its performance of the obligations imposed by this Agreement and Client will deal in good faith in its enforcement of the obligations imposed by this Agreement.

II. WHEREAS, **The initial term of this contract commences on the date set forth above and ends one year after that date, and may be extended 3 additional one year terms at the request of the Client and with mutual written consent.** This contract does not assign or authorize any work nor does it authorize any payment. Work assignments will be issued through subsequent task orders, assigning a scope of work and not to exceed dollar amount. All task orders must have an associated contract. This contract does have an initial task order starting at the same time as this contract.

 NOW THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this agreement, the parties agree as follows:

1. STATUS AS INDEPENDENT CONTRACTOR

 This Agreement does not constitute a hiring by either party. It is the parties’ intention that Contractor shall have an independent contractor status and not be an employee for any purposes.

2. TASKS, DUTIES, AND SCOPE OF WORK

 a. Client hereby retains Contractor to perform disaster operational management, administrative documentation, software, or other disaster response, recovery, or funding consulting related services (“Services”), as outlined and detailed in any subsequently executed Task Order.

b. The Contractor shall conduct criminal background and driver’s license check for any person used in fulfilling this Agreement. The Contractor must E-Verify the employment status of its employees and will maintain the documentation in its files. The Client shall have access at any time to the employment files of Contractor.

 c. This Agreement between the parties shall constitute the basic agreement, the terms and conditions of which shall apply to future task orders provided hereunder. Nothing in this agreement shall be construed to prohibit Contractor (i) from providing services to Client outside of the scope of this agreement, (ii) from providing identical services under a subsequent agreement with Client, or (iii) **from providing the same or similar services to any third party so long as it does not directly compete with reasonable interests of the Client.**

d. Rates have been determined to be reasonable as per federal disaster reimbursement requirements for non-competitive bid contracts.

3. COMPENSATION

 Contractor shall be entitled to compensation for performing those tasks and duties related to the Services described herein as follows:

 a. Contractor shall be compensated on a unit price basis pursuant to the Rate Schedule attached hereto as “Exhibit A” and fully incorporated herein. Such Rate Schedule may be amended from time to time as deemed necessary to fully supply the Client with appropriate staff.

b. Per 2 CFR (Federal Code for Regulations) 200, Contracts require a Not To Exceed Amount. The Parties agree that the compensation for the sum of all task orders issued under this Agreement shall not exceed **$** without prior written permission by Client.

 c. Contractor shall invoice Client on a monthly basis. Any failure by Contractor to include any item(s) of compensation in an invoice, regardless of the reason for the omission, shall in no way limit Client’s duty **to provide such compensation in the future so long as Contractor remedies the omission within 180 days of the invoice said omission should have been included in.**

d. Submitted invoices shall include time reports for each person performing work billed on the invoice. Time reports shall show time entries allocated to the site worked, activity performed, and position and rate billed to meet federal, state, or third party funding requirements for the Client to seek reimbursement for Contractor costs.

 e. Contractor’s invoices shall be subject to verification by the Client for completeness and/or accuracy. Contractor shall provide to Client any and all documentation necessary for any state, federal, third party or internal audit processes.

 f. Contractor acknowledges that the processing of its invoices will be subject to any approval or timelines set out under the Client’s invoicing procedures. All invoices shall be paid fourteen (14) days from receipt of Contractor’s invoice.

4. NOTICE CONCERNING WITHHOLDING OF TAXES

Contractor recognizes and understands that it will receive the appropriate tax statement from Client and other related tax documents, and will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable Federal and State law. Contractor hereby promises and agrees to indemnify the Client for any damages or expenses, including attorney's fees, and legal expenses, incurred by the Client as a result of contractor's failure to make such required payments.

5. TERMINATION

 This Agreement may be terminated by either party prior to the contract expiration date. If there is an active task order under this contract, notice of termination must be given at least two (2) weeks prior to cancellation of services. Such termination shall not prejudice any other remedy to which the terminating party may be entitled, either by law, in equity, or under this Agreement. At the termination of this Agreement, Contractor will deliver all data and documentation exports related to Client’s project to the Client.

6. DATA AND DOCUMENT SECURITY AND FREEDOM OF INFORMATION

 The Contractor shall comply fully with all documented and requested information security procedures of the Client in the performance of this Agreement. All information acquired by the Contractor which is not already available to the public or lawfully discoverable by the public shall be assumed to be confidential. It is understood that most documents and data made available to the contractor are discoverable by the public. Contractor may provide Client documentation, data, and information through software and services to state, federal, and third party entities. Contractor will comply with Freedom of Information Act inquiries received through Client.

7. ASSIGNMENT

The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under this Agreement without the prior written consent of the Client.

8. COOPERATIVE PURCHASING OF SERVICES

 Contractor agrees to offer its same or similar services to any entities covered under a cooperative purchase agreement with Client. If this contract is subject to a cooperative purchase, the new client shall enter into a separate contract with Contractor. Client shall not be liable for any services rendered by Contractor through the use of a cooperative purchase with the new client.

9. LICENSING, WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE

Contractor agrees to immediately supply the Client with proof of

1. Any licensing status required to perform services
2. Workers' Compensation Coverage
3. General Liability Insurance

10. NOTICES

 Any notice to be given hereunder by any party to the other may be delivered via electronic mail with confirmation receipt, or mailed to the address listed above. Contractor agrees to update Client should Contractor’s contact information change.

11. ATTORNEY'S FEES AND COSTS

 If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements incurred both before and after judgment in addition to any other relief to which such party may be entitled.

12. INDEMNIFICATION

Contractor shall defend, indemnify, hold harmless, and insure Client from any and all damages, expenses, or liability resulting from or arising out of, any negligence or misconduct on Contractor’s part, or from any breach or default of this Agreement which is caused or occasioned by the acts of Contractor. Contractor shall name Client as an additional insured on all related insurance policies including workers compensation, and general liability.

13. NON-SOLICITATION

 The Client hereby acknowledges that the Services contemplated in this agreement will be provided by Contractor with the assistance of Contractor’s employees and that said employees may be working under a covenant not to compete with Contractor. The Client agrees to refrain, during the term of this agreement and for twelve (12) months following the termination of this agreement, from recruiting or hiring, or attempting to recruit or hire, directly or by assisting others, any employee of the Contractor or its affiliates.

14. REPRESENTATION

a. Contractor represents that employees possess the training, skills and expertise necessary to perform the Services in a competent and professional manner. Contractor agrees to provide the Services in a professional manner, using the degree of care and skill ordinarily exercised by and consistent with the standards of competent service providers performing comparable services in the same or similar locality. It is Contractor’s express goal to complete the work outlined in any Task Order in a manner that is most expedient and efficient.

 b. Each party of this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party hereto, or anyone acting on behalf of any party hereto, which are not embodied herein, and that any other agreement, statement, or promise not contained in this Agreement shall be non-binding and void. Any modification of this Agreement shall be effective only if it is in writing, signed and dated by all parties hereto. This does not limit Client and Contractor from entering into separate contracts for work or services not within the scope of this Agreement.

15. AUTHORITY

Each of the undersigned individuals hereby represents and warrants that they are fully

authorized and empowered to enter into this Agreement on behalf of the entity for which they are signing. Each of the Parties hereby represents and warrants that it is fully authorized and

empowered to enter into this Agreement and that the performance of its obligations under this

Agreement will not violate any agreement between it and any other person, firm, or organization.

16. COMPLIANCE

 a. Client hereby represents and warrants that it has complied and shall remain compliant with all applicable laws and regulations, including any local or state procurement regulations.

Procurement:

This contract was procured through (check only one):

* Emergency Contracting: Due to the emergency nature of work, competitive bidding did not occur as it was in the best interest of the Client to secure the services of Contractor without delay due to its specialized knowledge and for the benefit of the community.
* Competitive Procurement
	+ Less than required for competitive solicitation “out for bid amount”

 🗹 Using State Master Agreement

* + Using TIPS Cooperative Purchasing
	+ Procurement Process Unique to this contract (RFP, RFI, RFQ etc)

Contractor has made every effort to comply with the laws and regulations of the Client and shall remain in compliance. Such laws and regulations include any federal, state, or local employment, labor, and safety regulations.

 b. Contractor shall not, in connection with this or any other agreement with the Client, directly or indirectly: 1) offer, confer, or agree to confer any pecuniary benefit or anyone as consideration for any Client officer or employee’s decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or 2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any Client officer or employee.

17. SEVERABILITY

 If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

18. OWNERSHIP OF PROGRAMS AND INTELLECTUAL PROPERTY

The Software Programs, Services, Modules, Matrixes and Tools, made by the Contractor, are the property of the Contractor. Any improvements made to Contractor’s software through any Client feedback are the sole property of Contractor.

Client recognizes that Contractor regards Contractor’s Software as its proprietary information and holds its confidential trade secrets of great value. No software development, custom or otherwise, is being completed by Contractor for the Client under this contract.

19. RECORDS & RECORDS RETENTION

The books and records related to the Services described in this Agreement shall be

maintained by Contractor at Contractor's principal place of business and open to inspection by

Client during regular working hours. Documents to which Client will be entitled to inspect include, but are not limited to, any and all contract documents, purchase orders and work authorized by Contractor or Client on existing or potential projects related to this Agreement.

Contractor shall maintain records, books, files, financial or accounting data, and any other data as specified in this Agreement for a period of eight (8) years from the conclusion of this Agreement and upon final payment. Client may request financial and accounting records from Contractor during its normal operating hours by written request from an authorized representative of Client.

Further, the following access to records requirements apply to this Contract:

(1) Contractor agrees to provide **CLIENT NAME\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** , Client, the FEMA Administrator, the Comptroller General of the United States, or any of their

 authorized representatives access to any books, documents, papers, and records of

 Contractor which are directly pertinent to this Contract for the purposes of making

 audits, examinations, excerpts, and transcriptions.

(2) Contractor agrees to permit any of the foregoing parties to reproduce by any means

 whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) Contractor agrees to provide the FEMA Administrator or his authorized

 representatives access to construction or other work sites pertaining to the work

 being completed under Contractor.

(4) In compliance with the Disaster Recovery Act of 2018, Client and Contractor

 acknowledge and agree that no language in this Contract is intended to prohibit

 audits or internal reviews by the FEMA Administrator or the Comptroller General

 of the United States.

20. SUSPENSION AND DEBARMENT

 a. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Contractor is required to verify that none of Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

 b. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000,

subpart C, and must include a requirement to comply with these regulations in any lower tier

covered transaction it enters into.

 c. This certification is a material representation of fact relied upon by Client. If it is

later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Client, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

 d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180,

subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of

any contract that may arise from this offer. The bidder or proposer further agrees to include a

provision requiring such compliance in its lower tier covered transactions.

21. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of $100,000 or more shall file the required

certification. Each tier certifies to the tier above that it will not and has not used Federal

appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

22. ADDITIONAL FEMA-REQUIRED PROVISIONS

 a. Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or

likenesses of DHS agency officials without specific FEMA pre-approval.

 b. The Federal Government is not a party to this Contract and is not subject to any

obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Contract.

 c. Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for

False Claims and Statements) applies to Contractor’s actions pertaining to this Contract.

23. AMENDMENT

 This Agreement shall not be modified or amended except by a further written document signed by the parties.

24. GOVERNING LAW AND JURISDICTION

Governing Law. This Agreement and any matter or dispute arising out of or related to the subject matter of this Agreement, shall be governed, and construed, and enforced in accordance with the laws of the State of Kentucky without regard to any conflict of laws principles. Jurisdiction and venue for all purposes shall be in COUNTY NAME:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , KY.

25. EXECUTED COUNTERPARTS AND FACSIMILES

This Agreement, and following task orders, may be executed in any number of counterparts, and all counterparts shall be considered together as one agreement. The parties hereto agree that digital signatures shall be as effective as if originals.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above.

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|  |  |
| --- | --- |
| For: ER Assist Inc | For: CLIENT |
| Signed: | Signed:  |
| Date: | Date: |
| Printed Name:  | Printed Name:  |
| Position: | Position:  |

Exhibit A: Rate Schedule

Note: Under federal disaster grant reimbursement guidelines, reasonable rates may be reimbursed, when documented appropriately, as part of disaster funding.

The following rates have been determined to be reasonable under previous disasters for similar work for similar clients as well as through the competitive procurement process of the KY Master Agreement MA 758 1700000007.

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| --- | --- |
|  |  |
| **Position** | **Hourly****Rate** |
|  |  |
| Subject Matter Expert/Project Manager (Debris Specialist) | $125 |
| Grant Project Manager/Data Manager/Documentation Manager | $95 |
| Documentation Supervisor | $65 |
| Documentation Specialist (Debris Monitor) | $35 |
|  |  |