

**AGREEMENT BETWEEN CITY OF HYATTSVILLE, MARYLAND
AND EMERGENCY SERVICES CONSULTING INTERNATIONAL, INC.**

This Agreement (the "Agreement") is entered into and made effective this day, _____, (the "Effective Date") by and between the City of Hyattsville, Maryland (Hyattsville) and Fields Consulting Group/Emergency Services Consulting International (the "Company"), an Oregon corporation, to conduct promotional exam processes for various positions in the City of Hyattsville Police Department.

RECITALS

WHEREAS, the parties desire to enter into an Agreement for the Company to provide these services for Hyattsville; and

WHEREAS, the parties desire to reduce the terms and conditions for the provisions of these services to this written form.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

AGREEMENT

1. Scope of Services

The Company shall develop, validate, administer, and score a promotional process to assess candidates for eventual promotion into the positions of Corporal, Sergeant and Lieutenant in the Hyattsville Police Department, and agree to perform the tasks listed in the scope of work provided in the Company's similar contractual agreement with the City of Bowie, Maryland, attached herein.

2. Term and Termination

2.1 Term. This Agreement shall commence on the effective Date and shall continue in effect for three (3) years and be renewable for additional term of three (3) years by mutual written agreement of the parties.

2.2 Termination. Either party may, by written notice of default to the defaulting party, terminate this Agreement in whole or in part if the defaulting party fails to perform any of the provisions of this Agreement and does not either cure such default within a period of thirty (30) days after receipt of written notice from the non-defaulting party or, in the event that such default is not capable of being cured within such thirty (30) day period, commence action within such thirty (30) day period directed toward curing such default.

2.3 Termination for Convenience. Hyattsville, in its sole discretion, may terminate the Agreement in whole or in part if Hyattsville determines that said termination is in its best interest. Any such termination shall be affected by the delivery to Company of a written notice of termination thirty (30) days before the effective date of the termination. In the event of termination by Hyattsville under this Section, all obligations of either party which remain executor are discharged except to the extent that any right based upon prior breach or performance shall survive such termination. Company shall promptly delivery to Hyattsville all goods, items and documents for which Hyattsville has paid under this Agreement which have not been delivered at termination as if this Agreement had not been terminated. Hyattsville shall pay in full for all goods, services completed, and expenses incurred by Company up to and until the time of termination.

3. Consideration

3.1 Fee. In consideration of Company's performance of its services, Hyattsville shall pay the Company a fixed fee of \$37,500.00 for each promotional process (to consist of testing for Corporal, Sergeant and Lieutenant), as set forth in the Company's quote dated August 10, 2021, attached herein. Additional professional fees will be negotiated for any work requested that goes above and beyond the scope contained within the Company's agreement with Bowie.

3.2 Conditions of Payment. Net 30 days / 5% per annum late fee.

4. Resources

4.1 Personnel. Hyattsville shall ensure that personnel are available during normal working hours to provide information and other requested support to the Company while providing services under this Agreement. Hyattsville's management and staff will be made available, on an as-needed and reasonable basis, to meet with Company.

4.2 Hyattsville Documents. To assist the Company in its provided services, Hyattsville will provide Company with relevant documentation requested by Company, and agreed to by Hyattsville. For example, such documentation will include current position descriptions and other operational and administrative documents. The Company shall have no right to use or copy the material provided by Hyattsville except as required to perform the services of this Agreement.

5. Nature of Agreement

This Agreement concerns the personal services of Company and therefore cannot be assigned or delegated. This Agreement does not create an employment relationship between Hyattsville and the Company or its employees, as the Company is solely an independent contractor providing the services to Hyattsville as set forth in the Company's response to Hyattsville's request.

- 5.1 No Thirty Party Right Created. This Agreement is intended for the benefit of Hyattsville, not any other company or person.
- 5.2 Without Hyattsville's written consent, the Company shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. Unless Hyattsville otherwise agrees in writing, the Company and all assigns shall be subject to all of Hyattsville's defenses and shall be liable for all of the Company's duties that arise out of this contract and all of Hyattsville's claims that arise out of this contract. Without granting the Company the right to assign, it is agreed that the duties of the Company that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.
- 5.3 Independent Contractor Relationship. It is expressly understood that the Company is an "independent contractor" and not an employee of Hyattsville. The Company shall have control over the manner in which the Services are performed under this Agreement. The Company shall supply, at its own expense, all materials, supplies, equipment and tools required to accomplish the Services contemplated by this Agreement. The Company shall not be entitled to any benefits from Hyattsville, including, without limitation, insurance benefits, sick and vacation leave, workers' compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture or agency relationship between the Parties.

6. Warranties

- 6.1 Company Warrants. Company represents and warrants that the services shall be performed by competent, qualified personnel and shall meet professional standards. The Company further warrants that any and all information (in any medium) provided to Hyattsville is not currently the subject of any claim for infringement of any patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy or other similar rights of any person or entity, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against Company. The Company further represents and warrants that (i) the services, including any Work Product, shall be free and clear of all liens and encumbrances of any third party to which the Company is currently aware, and (iii) any services or work product shall not knowingly and intentionally infringe or misappropriate any patent, copyright or other similar proprietary right of a third party or otherwise intentionally and knowingly violate the rights of a third party.
- 6.2 Mutual Assent. Each party to the Agreement warrants to the other party the following: (i) that this Agreement constitutes a valid, binding and enforceable Agreement of the party; (ii) that it has full power and authority to enter into and perform its obligations have been approved by all necessary actions on behalf of the party; (iii) that this Agreement does not constitute a breach by the party of any agreement with any third party; and will not cause a breach by the party of any duty

arising in law or equity; and, (iv) the party possesses the financial capacity to perform all of its obligations under this Agreement.

7. Title

General Ownership. Ownership of the work products developed by Company and delivered to Hyattsville under this Agreement and all rights and interests embodied therein shall vest in the Company. Hyattsville acknowledges that the work product contains and is derived from the proprietary and confidential information and intellectual property of the Company.

8. Data Practices and Confidential Information

Government Data/Privacy. The Company agrees to abide by the applicable provisions of HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. The Company understands that all of the data created, collected, received, stored, used, maintained or disseminated by the Company in performing those functions that Hyattsville would perform may be subject to these requirements, and the Company must comply with these requirements as if it were a government entity. This does not create a duty on the part of the Company to provide the public with access to public data if the public data is available from Hyattsville, except as required by the terms of this Agreement.

9. Indemnification

To the fullest extent permitted under law, the Company shall defend, indemnify, and save harmless Hyattsville, any Hyattsville Subscribers, their agents, officers, and employees, from and against all charges that arise in any manner from, in connection with, or out of this Agreement as a result of the acts or omissions of the Company or its subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts arising out of or related to this Agreement any of them may be liable, save and except for damage or injury caused solely by the negligence of Hyattsville its agents, officers or employees. In performing its duties under this section, the Company shall at its sole expense defend Hyattsville, its agents, officers, and employees with legal counsel reasonably acceptable to Hyattsville. As used in this subsection – “Charges” means claims, judgements, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorneys’ fees, and penalties for alleged violations of state and federal laws, regulations, ordinances, rules or orders. Nothing in this section shall affect any warranties in favor of Hyattsville that are otherwise provided in or arise out of this Agreement. This section shall remain in force despite termination of this Agreement (whether by expiration of its term or otherwise) and termination of the services of the Contract under this Agreement. Indemnity for charges shall include of the following:

- 9.1 Infringement.
- 9.1.1 Any infringement of any copyright, trademark, patent, or other proprietary rights, or any misappropriation of any trade secrets, in connection with any software, documentation, services or other products supplied directly or indirectly by the Company in connection with the Agreement, or any allegation of any of the foregoing (collectively referred to as “Infringement Claims”);
- 9.1.2 If an Infringement Claim occurs, the Company shall either: (i) procure for Hyattsville the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the System or any component thereof shall not be adversely affected by such replacement or modification. If the Company is unable to do (i) or (ii) within thirty (30) days after receiving notice of the Infringement Claim Hyattsville shall have the right to terminate all Agreement Documents and receive as a pro rata refund of all amounts paid under the Agreement Documents.
- 9.2 Any act(s) of negligence or willful misconduct by the Company or any of its agents, (or any allegations of any of the foregoing), including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any real property, real or personal.
- 9.3 Any acts or omissions of the Company with respect to the services provided by the Company under this Agreement (or any allegations of any of the foregoing).
- 9.4 Hyattsville’s refusal to produce any item of “Confidential Information” (as defined in the Confidentiality and Non-Disclosure Agreement) of the Company after receiving a request for such item and after being instructed by the Company not to produce it.
- 9.5 Any claims by any persons or entities supplying labor or material to the Company in connection with the performance of the Company’s obligations under this Agreement.
- 9.6 Any failure by the Company to make any payment or withholding involving an employee or subcontractor, including but not limited to salary, benefits, bonus, withholding tax, Social Security, Medicare, unemployment compensation and workers’ compensation.
- 9.7 Any actions, proceedings or claims based on allegations that the Company or its employee is an employee of Hyattsville.

10. Notices and Principal Contacts

Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by fax to the intended recipient at the address set forth below:

<u>For the Company:</u>	<u>For the Hyattsville:</u>
Dr. Cassi L. Fields	Lt. Colonel Scott Dunklee
Vice President, Human Capital Division Emergency Services Consulting International	Chief of Police Hyattsville Police Department
4795 Meadow Wood Lane, Suite 110	4310 Gallatin Street
Chantilly, VA 20151	Hyattsville, MD 20781
Phone: 703-506-9400	Phone: (301) 985-5071
Email: cassi.fields@esci.us	Email: sdunklee@hyattsville.org

Notices shall be effective upon the date of receipt by the intended recipient provided that any notice, which is sent by electronic mail, shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

11. Dispute Resolution and Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maryland. All proceedings related to this Agreement shall be venued in Prince George’s County, Maryland. The Parties shall cooperate and use their best efforts to ensure that the various provisions of the Agreement are fulfilled. The Parties agree to act in good faith to undertake resolution of disputes, in an equitable and timely manner and in accordance with the provisions of this Agreement. If disputes cannot be resolved informally by the Parties, the following procedures shall be used:

- A. Whenever there is a failure between the Parties to resolve a dispute on their own, the Parties shall first attempt to mediate the dispute. The parties shall agree upon a mediator, or if they cannot agree, shall obtain a list of court-approved mediators from the Medina County District Court Administrator and select a mediator by alternately striking names until one remains. Hyattsville shall strike the first name followed by the Company, and shall continue in that order until one name remains.
- B. If the dispute is not resolved within thirty (30) days after the end of mediation proceedings, the Parties may pursue any legal remedy.

12. Insurance

The Company, at its expense, shall procure and maintain in force for the duration of this Agreement the following minimum insurance coverages:

- A. General Liability. The Company agrees to maintain Commercial General Liability insurance in a minimum amount of \$1,000,000 per occurrence; \$2,000,000 annual aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. Hyattsville shall be endorsed as additional insured.
- B. Automobile Liability. If the Company operates a motor vehicle in performing the Services under this Agreement, the Company shall maintain commercial automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum liability limit of \$1,000,000, combined single limit.
- C. Workers' Compensation. The Company agrees to provide Workers' Compensation insurance for all its employees in accordance with the statutory requirements of the State of Maryland. The Company shall also carry Employers' Liability Coverage with minimum limits are as follows:
- \$500,000 – Bodily Injury by Disease per employee
 - \$500,000 – Bodily Injury by Disease aggregate
 - \$500,000 – Bodily Injury by Accident

The Company shall, prior to commencing the Services, deliver to Hyattsville a Certificate of Insurance as evidence that the above coverages are in full force and effect.

The insurance requirements may be met through any combination of primary and umbrella/excess insurance.

The Company's policies shall be primary insurance to any other valid and collectible insurance available to Hyattsville with respect to any claim arising out of Company's performance under this Agreement.

The Company's policies and Certificate of Insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days' advanced written notice to Hyattsville.

13. Non-Discrimination and Equal Opportunity

During the performance of this Agreement, the Company agrees that neither the Company nor its employees, agents, subcontractors or others engaged by Company shall discriminate against any person, whether employed by the Company or otherwise, for any basis stated herein. The Company further agrees to make affirmative action to insure that it's employees, agents, subcontractors and others engaged by the Company, or applicants thereto shall be treated equally without regard to race, color, religion, gender, age, national origin, handicap, or political affiliation or belief. In all solicitations or advertisements for employees, agents, subcontractors or others to be engaged by the Company or placed by or on behalf of the Company, the Company shall state all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, national origin, handicap, or political affiliation or belief.

14. Miscellaneous

14.1 **Waivers and Remedies.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Any waiver in a particular instance shall not constitute a waiver of the same or different rights or breaches in any other instance. Failure, neglect or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not prejudice such party's right to take subsequent action. Except as otherwise provided herein relating to exclusive remedies in certain situations, no exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

14.2 **Severability.** If any term, condition or provision in this Agreement is found by a court of competent jurisdiction to be invalid, unlawful or unenforceable to any extent, then it is the intent of the parties that such court apply a rule of reasonableness and modify the provision in question. In the event a court finds such procedure to be inappropriate, then such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

14.3 **Section Headings.** Sections headings have been included in this Agreement merely for convenience or reference. They are not to be considered part of, or to be used in interpreting, this Agreement.

14.4 **Entire Agreement.** This Agreement (to include the Company's proposal in response to the request for proposal for these services) sets forth the entire Agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter, except that any previously executed or acknowledged confidentiality or non-disclosure provisions shall remain in effect. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that either party may use in connection with this Agreement will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Agreement, and each party hereby continuously objects to any such terms, provisions or conditions. This Agreement may only be amended by a writing signed by authorized representatives of both parties.

14.5 **Force Majeure.** If performance of this Agreement, or of any obligation hereunder, is prevented, restricted or interfered with by any act or condition beyond the reasonable control of the party affected thereby, including without limitation, fire or other casualty or accident; strikes or labor disputes; war, terrorist attacks or other violence; any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental or intergovernmental agency or body, the party so affected shall be excused from such performance to the extent of such prevention, restriction or interference. If such force

majeure prevents or delays the performance of the Company hereunder, the parties shall extend the Agreement for a period of time, up to six (6) months, equal to the period of force majeure suffered by the Company.

14.6 No Publicity or Statements to the Press. No advertising, sales promotion or other material of the Company or its agents or representatives may identify or reference this Agreement or Hyattsville in any manner absent Hyattsville's prior written consent. Failure to comply with this Section by the Company shall constitute a material breach and, without limiting other remedies Hyattsville may have, shall entitle Hyattsville to terminate this Agreement for default.

14.7 Benefit. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties to this Agreement or their respective successors or assigns, any rights remedies, obligations or liabilities under or by reason of this Agreement.

14.8 Audit. The Company agrees that Hyattsville, or any duly authorized representative, shall, until the expiration of three (3) years after final payment hereunder, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of the Company for the sole purpose of auditing costs related to this Agreement, at the sole cost and expense of Hyattsville.

14.9 Modification. Further modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law.

14.10 Survival of Provisions. The following sections of this Agreement shall survive the termination hereof:

Section 6	"Warranties"
Section 7	"Title"
Section 8	"Data Practices and Confidential Information"
Section 9	"Indemnification"
Section 10	"Notice & Principal Contacts"
Section 12	"Insurance"
Section 14	"Miscellaneous"

15. Governmental Immunity

The Parties expressly agree that nothing in this Contract is intended to constitute, nor shall it be construed as constituting, a waiver by Hyattsville or its employees and volunteers of the monetary limits of, or any rights, immunities, and/or protections provided by any Federal or State Law.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

EMERGENCY SERVICES CONSULTING
INTERNATIONAL (ESCI)

By: *Cassie L. Fields*

Title: Vice President, ESCI

CITY OF HYATTSVILLE, MD:

By: _____

Title: _____