

CONSULTANT AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Overland Park, Kansas, hereinafter referred to as “CITY,” and EB JACOBS, LLC, of State College, Pennsylvania, hereinafter referred to as “CONSULTANT.”

WHEREAS, the CITY desires to utilize the services of the CONSULTANT to assist in the hiring of entry-level police officers, and

WHEREAS, CONSULTANT by reason of training, knowledge, reputation and experience has expertise in developing entry-level hiring processes to include the examination and selection processes for hiring police officers, and

WHEREAS, CONSULTANT represents itself as being capable, experienced and qualified to undertake and perform the services described herein, and

WHEREAS, the CITY is authorized and empowered to contract with CONSULTANT for the furnishing of professional Human Resource Services in connection with the hiring process for entry-level police officers, and

WHEREAS, CONSULTANT agrees to perform the services described herein as an independent contractor and not as an employee of the CITY, and

NOW THEREFORE, In consideration of the premises and mutual covenants herein set forth the parties agree as follows:

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words shall have a meaning parallel thereto.

"Agreement" means this Agreement and any attachments, amendments or supplements hereto, including the Exhibits attached hereto.

"CITY" means the City of Overland Park, Kansas.

"CITY Representative" means the person designated by the Overland Park Chief of Police to coordinate the Project and act as liaison to the CONSULTANT.

"CONSULTANT" means EB JACOBS, LLC, and includes all of its employees, agents and assignees and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees.

"Human Resources Services" means the professional services, labor, materials, supplies, testing and other acts or duties required of CONSULTANT under the terms of this Agreement.

"Project" means the total scope of the services to be performed by the CONSULTANT in assisting the CITY in the hiring of entry-level police officers for the CITY, as fully outlined herein.

SECTION II. SCOPE OF PROJECT

The parties agree and intend that the scope of the Project that is the subject of this Agreement shall consist of the following:

A. Provide professional services that will assist the CITY in the hiring of entry-level police officers.

The CONSULTANT shall be responsible and obligated to assist the CITY in the hiring of entry-level Overland Park Police officers. The CONSULTANT'S recommendations and performance concerning this assistance shall include the use of entry-level examination components previously developed by CONSULTANT for use by the CITY. In addition, the CONSULTANT shall be responsible for other entry-level examination process components to include but not limited to, providing test materials and scoring activities. The responsibilities and obligations of the CONSULTANT are more fully described in Section IV herein.

B. Litigation Services.

The parties agree that should the CITY determine that the services of the CONSULTANT are necessary to assist in the litigation, pre-litigation or any other defense of the CITY, its employees, agents and assigns concerning any claim or cause of action relating to any product, process or performance provided by CONSULTANT pursuant to this Agreement, to include but not be limited to defending, justifying and documenting each step of the entry-level examination process, the CONSULTANT shall provide that assistance and cooperate in said defense. It is understood between the parties that CONSULTANT will apply the litigation fee schedule in effect at the time the work is contracted.

C. Related Processes and Consultation.

The parties agree that the CONSULTANT shall attempt to address reasonable questions from the CITY concerning processes related to the CITY'S entry-level hiring process for police officers that are not directly related to the examination process. The CONSULTANT reserves the right to request additional consideration for discussions and consultation that require unreasonable expenditure of CONSULTANT'S resources.

SECTION III. CITY'S RELIANCE ON CONSULTANT'S EXPERTISE AND THE LEGAL DEFENSIBILITY OF CONSULTANT'S WORK.

The CONSULTANT agrees and acknowledges that the CITY has entered into this Agreement based on CONSULTANT'S knowledge, reputation, experience and expertise in the development of legally defensible entry-level examination procedures for police officers. Further, the parties acknowledge that CONSULTANT has represented itself as being capable, experienced and qualified to undertake and perform the services required of it herein. The parties further agree and acknowledge that the CITY'S reliance on the CONSULTANT'S knowledge, reputation, experience and expertise in the development of entry-level examination processes for police officers includes the CITY'S reliance on the legal defensibility of CONSULTANT'S products, procedures and performance.

SECTION IV. RESPONSIBILITIES AND OBLIGATIONS OF CONSULTANT

The CONSULTANT shall furnish and perform the various professional duties and services required to assist the CITY in the implementation of its entry-level police officer hiring process as more fully described herein.

A. Administration of Tests.

CONSULTANT shall determine and notify CITY as to the proper version of testing instruments to be administered by the CITY.

B. Scoring, Standardizing, Weighting and Combining Test Scores.

CONSULTANT shall be responsible for the scoring of all testing components. The testing instruments administered by the CITY have been validated by the CONSULTANT on the basis of criterion and content validation strategies. The written ability test shall be scored in a straightforward manner, with each of the 60 items being worth one point. The work style and biodata inventory scales shall be used to score the candidate's work style and biodata inventory tests. CONSULTANT shall generate oral board scores for each candidate based on a statistical combination of assessor scores. If necessary, and based on discussions with the Project team, CONSULTANT will standardize scores by board and exercise version to ensure that any differences that occur as a result of board or exercise assignment are eliminated.

Once the CONSULTANT has scored all tests, the CONSULTANT will standardize each test component and apply the prescribed weights to each

component. These weights were derived on the basis of the job analysis and criterion-related validity results and finalized through joint discussion with the CITY'S Project team. The CONSULTANT shall then add the scores together to generate a total score for each candidate.

C. Final Eligibility List.

CONSULTANT will develop a final eligibility list of candidates and present it to the Overland Park Police Department in rank order, bands or another format, as indicated by the CITY. CONSULTANT will work with the CITY'S Project team to determine the most appropriate list format. CONSULTANT shall prepare language that the CITY can use to notify candidates of their performance.

D. Final Report.

The parties intend and understand that the Final Report generated for the initial administration in 1999 and subsequent reports documents in detail all Project activities and provides the validation evidence for each phase of the selection process. This Final Report shall serve as a first line of defense against any legal challenge to the examination process developed by CONSULTANT.

SECTION V. RESPONSIBILITIES AND OBLIGATIONS OF CITY

A. Designated Person.

The CITY shall designate a person to coordinate all Project activities with the CONSULTANT and act as the CITY'S Representative. The

designated person or alternate shall be available at all times reasonably necessary to make decisions on behalf of the CITY. The designated person shall work and coordinate Project activities with the CONSULTANT; however, the designated person shall not be under the direction or control of the CONSULTANT and shall at no time be considered an employee or agent of CONSULTANT.

B. Project Team.

The CITY shall designate a Project team that will consist of the CITY'S Representative, a Deputy Chief of Police, the Police Department Personnel Manager, the Division Commander of Administrative Services Division, and other persons designated by the Chief of Police. The Project team shall be familiar with the components of the Project and meet with the CONSULTANT as necessary to make decisions concerning availability of staff, date and time of testing, cut-score recommendation and other matters requiring the input of the CITY staff.

C. Availability.

The CITY shall reasonably make available to the CONSULTANT the staff necessary to implement the Project. The parties agree to reasonably negotiate the scheduling of testing and other Project activities with a high priority on conservation of police department personnel resources.

SECTION VI. CONSIDERATION AND PAYMENT TERMS.

A. Consideration.

CITY agrees to pay CONSULTANT for professional services performed in accordance with the terms of this Agreement as follows:

- a. Project Administration and Coordination - Contract development and on-going Project administration, including incorporation of any necessary revisions into test-related materials and provision of other administrative materials/support (e.g., camera-ready copy of Oral Board assessment materials and scan sheets):

\$6,600.00 (\$2,200.00 per administration)

- b. Candidate Preparation

\$1,000.00 per contract year (\$333.33 per administration)

Standard fee (\$333.33) per administration for the license to use proprietary material. This cost assumes that the CITY would retain responsibility for photocopying and distributing the study guides to candidates.

CONSULTANT will provide a new camera-ready copy for any page(s) that may require minor modifications, or of the full guide, if necessary.

- c. Non-Cognitive Test Licensing and Scoring: \$17.00
Per candidate

d. Additional Scoring and Administrative Activities:

\$9,000.00 (\$3,000.00 per administration)

- 1) Scoring the cognitive and oral board tests, weighting and integrating all test scores, generating a final eligibility list and generating summary statistics.

e. Optional Oral Board Training:

\$3,600.00 plus travel expenses

- 1) Includes one day training session for assessors led by an EB JACOBS staff member. Cost includes camera-ready copies of the training manual and associated training materials. Cost assumes that existing Oral Board examination and administrative materials will be used.

The parties agree that the total compensation to be paid the CONSULTANT by the CITY for the “hiring process for entry-level police officers” and ninth, tenth and eleventh administration of process to specifically include CONSULTANT’S performance as set forth in Section IV herein, shall not exceed \$30,400.00 plus expenses for Oral Board training, provided no more than 600 individuals participate in the testing across the three administrations.

B. Litigation Services Fees.

Should it become necessary for CONSULTANT to participate in any legal or quasi-legal activity related to the subject matter of this Agreement,

the CONSULTANT shall charge the fees pursuant to the terms set forth in the “EB Jacobs Engagement Agreement for Litigation Support and Work Beyond Project Scope” attached hereto and incorporated by reference herein as Exhibit A.

C. Payment Terms.

Upon CONSULTANT’S satisfactory performance, CITY shall make payment to CONSULTANT according to the following terms:

1. CONSULTANT shall submit itemized monthly billing invoices to the CITY. Payment of consideration pursuant to this Agreement shall be contingent upon each itemized activity being reviewed and approved by the CITY’S Representative.

2. Amounts approved by the CITY’S Representative shall be due and payable to CONSULTANT within thirty (30) days of presentment of CONSULTANT’S invoice.

SECTION VII. REPORTS AND DOCUMENTS.

A. Property and Possession.

All reports, studies, analysis, memoranda and related data and material as may be developed during the performance of this Agreement shall be submitted to and be the exclusive property of the CITY, which shall have the right to use the same for any purpose without any further compensation to CONSULTANT, provided the validation analysis and related documentation shall remain in the possession of and the property of

the CONSULTANT, provided further that the CONSULTANT shall maintain and make available to the CITY and its legal counsel these documents as necessary for the purpose of defending claims and litigation. The provisions of this paragraph shall not include the candidate preparation guide, work style inventory, biodata inventory or the scoring procedures associated with the work style and biodata inventories, provided that the CITY may utilize these materials for its ongoing use to include future administrations; provided further that the CONSULTANT shall maintain and make available to the CITY and its legal counsel these documents as necessary for the purpose of defending claims and litigation.

B. Confidentiality.

All of the aforementioned reports and documents prepared, assembled or compiled by CONSULTANT pursuant to the terms of this Agreement are to be considered confidential and CONSULTANT agrees that it will not, without prior written approval by the CITY, submit or make the same available to any individual, agency, public body or organization other than the CITY, except as may be otherwise herein provided, subject to the Kansas Open Records Act.

C. Status of Documents Upon Termination For Cause.

If this Agreement is terminated for cause or for any other reason, all finished or unfinished documents or materials prepared pursuant to this Agreement shall be immediately transmitted to the CITY by CONSULTANT.

SECTION VIII. CONDITIONS OF PERFORMANCE.

A. Performance Standards.

CONSULTANT agrees that the performance of all work, services and results therefrom, pursuant to the terms of this Agreement, shall conform to or exceed the recognized professional standards that are prevalent in the professional human resources consulting field and more particularly the services related to the development and administration of entry-level selection processes for police officers. Further, the CONSULTANT warrants that all work and services performed pursuant to this Agreement shall be performed with the professional expertise, skills and knowledge of state of the art procedures and techniques in all relevant subject matters including, test administration and validation and Federal and State equal opportunity and civil rights laws related to employment issues. The CONSULTANT shall accordingly be capable of performing the necessary statistical analysis, test validation methods, and possess the ready comprehension of applicable Federal and State laws that relate to the testing and screening processes used in hiring entry-level police officers and the expertise to recommend

effective, practical and legally defensible procedures relating to all of the work that it has performed.

B. Qualified Personnel.

CONSULTANT agrees that all of the work and services to be performed pursuant to this Agreement shall be performed by CONSULTANT or under its supervision and all personnel engaged in the work or services shall be fully qualified to perform such work and services.

C. Sub-contracting Services.

CONSULTANT shall not subcontract any of the work or services required by this Agreement without the prior written approval of the CITY. Should CONSULTANT request and the CITY agree to work being subcontracted, the CONSULTANT shall be as fully responsible to the CITY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by said sub-contractors, as CONSULTANT is for the acts and omissions of the persons it directly employs.

SECTION IX. COMPLETION TIME.

The CONSULTANT hereby agrees to diligently perform and complete all work required by this Agreement and specifically understands that time is of the essence. CONSULTANT shall complete the administration of all components of the examination and other required activities no later than December 31, 2004.

SECTION X. DISPUTE RESOLUTION

The CITY and CONSULTANT agree that disputes relative to the Project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, CONSULTANT shall proceed with the work as per this Agreement as if no dispute existed and unless the CITY indicates in writing it does not want the CONSULTANT to continue with the work; and provided further that no dispute will be submitted to arbitration without the CITY'S express written consent.

SECTION XI. RIGHT OF CITY TO TERMINATE AGREEMENT

A. Termination for Cause.

Without in any manner limiting the right of the CITY to terminate this Agreement or declare the CONSULTANT in default thereof for any reason set forth herein or in the Agreement documents, if the work to be done under this Agreement shall be abandoned by CONSULTANT; or if this Agreement shall be assigned by CONSULTANT otherwise than as herein provided; or if the CONSULTANT should be judged as bankrupt; or if a general assignment of its assets should be made for the benefit of its creditors; or if a receiver should be appointed for the CONSULTANT or any of its property; or if at any time the CITY determines that the performance of the work under this Agreement is being unnecessarily delayed, that the CONSULTANT is

violating any of the conditions or covenants of this Agreement or those provisions of the Agreement documents applicable to the CONSULTANT, that it is executing the same in bad faith or otherwise not in accordance with the terms of said Agreement; then, in addition to other rights the CITY may choose to exercise, the CITY may, at its option, serve written notice upon the CONSULTANT of the CITY'S intention to terminate this Agreement, and, unless within five (5) days after the serving of such notice upon the CONSULTANT a satisfactory arrangement be made for the continuance thereof, this Agreement shall cease and terminate. In the event of such termination, the CITY shall immediately serve notice thereof upon the CONSULTANT, and the CITY may take over the work and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the CONSULTANT, and the CONSULTANT shall be liable to the CITY for any and all excess cost sustained by the CITY by reason of such prosecution and completion; and in such event the CITY may take possession of, and utilize in completing the work, any and all documents and other materials as may be necessary therefor. When CONSULTANT'S services have been so terminated, such termination shall not affect any rights or remedies of the CITY against CONSULTANT then existing or which may later accrue. Similarly, any retention or payment of monies due CONSULTANT shall not release CONSULTANT from liability.

B. Termination for Convenience.

CITY reserves the right, in its sole discretion and for its convenience and without cause or default on the part of the CONSULTANT, to terminate the Agreement by providing written notice of such termination to CONSULTANT. Upon receipt of such notice from CITY, CONSULTANT shall: (1) immediately cease all work; or (2) meet with CITY and, subject to CITY'S approval, determine what work shall be required of CONSULTANT in order to bring the Project to a reasonable termination in accordance with the request of the CITY. If CITY shall terminate for its convenience as herein provided, CITY shall compensate CONSULTANT for all work completed to date of termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

C. Automatic Termination for Convenience.

Any termination of the Agreement for alleged default by CONSULTANT that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the CITY.

SECTION XII. INSURANCE

The CONSULTANT shall maintain throughout the duration of this Agreement, insurance in, at minimum, the amounts specified below. All insurance shall be written on an occurrence basis unless otherwise agreed to in writing by the CITY.

(1) General Liability Insurance

MINIMUM REQUIREMENTS

COMMERCIAL GENERAL LIABILITY POLICY

(Complete Certificate "Form B"):

General Aggregate:	\$500,000.00
Products-Completed	
Operations Aggregate:	500,000.00
Personal & Advertising	
Injury:	500,000.00
Each Occurrence:	500,000.00

Policy must include the following:

- 1) Broad Form Contractual/Contractually Assumed Liability
- 2) Independent Contractors

(2) Automobile Liability Insurance

Policy shall protect the CONSULTANT against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

- a) Any Auto

OR

- b) All Owned Autos; Hired Autos; and Non-Owned Autos.

Limits of liability protection required are the SAME as the limits for the General Liability section. Policy shall insure the contractual liability assumed by the CONSULTANT under Section XIII.

(3) Workers' Compensation and Employers' Liability

This insurance shall protect the CONSULTANT against all claims under applicable state Workers' Compensation laws. The CONSULTANT shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a Workers' Compensation law. The liability limits shall not be less than the following:

Workers' Compensation: Statutory

Employers' Liability:

Bodily Injury by Accident \$100,000 each accident

Bodily Injury by Disease \$500,000 policy limit

Bodily Injury by Disease \$100,000 each employee

There is no requirement that the CITY be named an additional insured on this policy.

(4) Professional Liability

The CONSULTANT shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00), and shall provide the CITY with certification thereof, provided there is no requirement that the CITY be named an additional insured on this policy.

(5) Industry Ratings

The CITY will only accept coverage from an insurance carrier who offers proof that it:

- 1) Is licensed to do business in the State of Kansas;
- 2) a rating of A or better; and
- 3) Carries at least a Class X financial rating, or

Is a company mutually agreed upon by the CITY and
CONSULTANT.

Certification of insurance coverage in items (1), (2) and (3) above shall be on the CITY'S Standard Certificate of Insurance Form B. Certification of professional liability insurance shall be provided on a separate form provided by the CONSULTANT'S insurance carrier. Unless otherwise specified, the CITY shall be shown as an additional insured on all applicable policies of insurance.

SECTION XIII - INDEMNITY

A. Definitions.

For purposes of indemnification requirements, the following terms shall have the meanings set forth below:

1. "The CONSULTANT" means and includes CONSULTANT, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees; and
2. "Loss" means any and all loss, damage, liability or expense of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or

loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the work required hereunder.

B. Indemnity.

For purposes of this Agreement, CONSULTANT hereby agrees to indemnify, defend and hold harmless the CITY, its employees and agents from any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the CONSULTANT. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the CITY or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the CITY'S or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the CONSULTANT'S obligation hereunder shall not include amounts attributable to the fault or negligence of the CITY. Nothing in this section shall be deemed to impose liability on the CONSULTANT to indemnify the CITY for loss when the CITY'S negligence or other actionable fault is the sole cause of loss. With respect to the CITY'S rights as set forth herein, the

CONSULTANT expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the duty of the CONSULTANT to indemnify the CITY.

SECTION XIV. EQUAL EMPLOYMENT OPPORTUNITY.

During the performance of this Agreement, the CONSULTANT agrees as follows:

A. The CONSULTANT agrees that:

1. The CONSULTANT shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, national origin, ancestry or age;
2. In all solicitations or advertisements for employees, the CONSULTANT shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
3. If the CONSULTANT fails to comply with the manner in which the CONSULTANT reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the CONSULTANT shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;

4. If the CONSULTANT is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the CONSULTANT shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and

5. The CONSULTANT shall include the provisions of paragraphs (1) through (4) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

B. The CONSULTANT further agrees that the CONSULTANT shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

SECTION XV. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject

matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

SECTION XVI. APPLICABLE LAW

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

SECTION XVII. SEVERABILITY CLAUSE

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

SECTION XVIII. TITLES, SUBHEADS AND CAPITALIZATION

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

SECTION XIX. ASSIGNMENT

This Agreement shall not be assigned or transferred by the CONSULTANT without the written consent of the CITY.

SECTION XX. WORK PRODUCT FORMAT

All documentation provided the CITY other than Project plans shall be furnished on a microcomputer diskette (3.5 or 5.25 inch; high or low density) in either WordPerfect file format, ASCII file format or other format required by the CITY.

SECTION XXI. EXECUTION OF AGREEMENT

The parties hereto have caused this Agreement to be executed in triplicate this ____ day of _____, 2004.

CITY OF OVERLAND PARK, KANSAS

By _____
Ed Eilert, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Assistant City Attorney II

EB JACOBS, LLC

By _____

ATTEST _____

