

**CITY CLERK
ORIGINAL**

**LICENSE AGREEMENT
FIRE & POLICE SELECTION, INC.**

C-8870
04/16/2014

This License Agreement is made this 11 day of April 2014 by and between the client, City of Glendale, an Arizona municipal corporation, as licensee ("**Client**") and Fire & Police Selection, Inc. ("**FPSI**"), a California corporation, as licensor. The contract is effective when signed by both parties and ends 90 business days following administration of the test(s) by the **Client** unless extended by written consent of both parties.

- 1) **Products.** The Product subject to this Agreement is the FPSI National Fire Select Test written test materials ("Test Materials") for **Client's** 2014 firefighter examination. For purposes of this Agreement, Test Materials include: National Fire Select Test booklets, administration instructions, and answer sheets.
- 2) **License.** FPSI grants to **Client** and **Client's** authorized users a non-exclusive, nonassignable license to use the Product, subject to the following terms and conditions.
- 3) **Terms and Conditions.**
 - a) It is expressly understood that in selling the right to use the Product), **FPSI** cannot guarantee compliance with the civil rights laws or the requirements of federal or state enforcement agencies. Nor does **FPSI** agree to stand as surety or otherwise immunize the **Client** from any civil rights liability that may result from the **Client's** use of the test. **FPSI** will provide consultation to the **Client** on a time-and-charges basis, should its test be challenged.
 - b) The Test Materials are provided to the **Client** for the internal use and benefit of the **Client** only. The **Client** agrees not to sell, rent, lease, give, lend, or otherwise disclose or provide the Test Materials to any other employer or entity, or use the Test Materials for the benefit of any other employer or entity. Test Materials may not be reproduced or copied without the written permission of **FPSI**. The **Client** agrees not to provide, disclose, or otherwise reveal the Test Materials to any persons except the employees of the **Client** directly and necessarily involved in test administration and promotional selections.
 - c) The **Client** is responsible for the security of all Test Materials during the license period. It is understood by the **Client** that any security breaches may adversely affect **FPSI's** future ability to license its Test Materials.
 - d) The **Client** agrees that neither its officers, agents, employees, representatives, nor any persons in active concert or participation with it or them, shall modify, adapt, or alter the Test Materials in any way, or develop any identical or similar tests without the prior consent, in writing, of **FPSI** which shall retain the copyright to all versions of the Test Materials.
 - e) The **Client** agrees to have at least two employees count all written Test Materials, including Test Booklets, upon receipt of each and to provide **FPSI** with telephone or facsimile notification within 48 hours of receipt of any discrepancies between the amount **FPSI** shipped and the amount the **Client** received followed by written notification mailed or transmitted via email or facsimile within five (5) business days of receipt of the Test Materials. If **FPSI** receives no such notification within the time period specified, it will be assumed for purposes of this Agreement that the Client received a complete shipment as recorded by **FPSI** on the information accompanying the shipment.



- f) The **Client** must return all used and unused Test Materials and Test Booklets via Federal Express (FedEx®) or United Parcel Service (UPS®) to **FPSI** within twenty (20) business days after the test administration. **FPSI** does not accept United States Postal Service (USPS) returns.
- g) The **Client** agrees to have at least two employees count all Test Materials, including Test Booklets, being returned to **FPSI**, provide **FPSI** with a written record of the materials being returned within five (5) business days of the shipment, and the name of the persons who counted.
- h) If **FPSI** scores the test, it will typically do so within three (3) business days of receipt of the answer sheets from the **Client**, but in no cases more than five (5) business days of receipt of the answer sheets. **FPSI** shall provide the **Client** with cutoff options for the test, none of which are binding to the Client. When possible (when gender and ethnicity demographics are provided), **FPSI** shall conduct and complete an adverse impact analysis and report this information to the **Client** in the written recommendation letter.
- i) **FPSI** regularly conducts statistical evaluations of all test items. Occasionally, test administrations will reveal statistical limitation with the effectiveness or fairness of one or more items on a test administration. **FPSI** reserves the right to either remove or “score perfect” such items when they are identified.
- j) Should the Client become the subject of any litigation or investigation by state or federal enforcement agencies arising from the Client’s use of the Test Materials, **FPSI** will provide consultation on a time-and-charges basis at such hourly rates as may then be current.

4) **Fees.**

- a) The Client agrees to pay a \$200 Cancellation Fee for any materials that have been shipped to the Client.
- b) The **Client’s** fees are based on the options selected by the **Client**, the base fee, the number of Test Booklets used, and upon the condition of all materials returned. These charges will be based on current **FPSI** Rental/Licensor Rates. There is a **\$500 Minimum Fee** for all Test Materials orders.
- c) **Client’s** Fees for the 2014 test administration shall be charged according the following **FPSI** Rental/Licensor Rates schedule:

<u>Description</u>	<u>Investment</u>	<u>Quantity</u>	<u>Sub Total</u>	
Base Fee	\$300.00	1	\$300	
NFST Test booklet	\$12.00	330	\$3,960	
		Subtotal	\$4260	
<u>Shipping/ Scoring</u>				
Shipping estimate*	\$300.00	1	\$300	*At Fed Ex Cost
Scoring	\$200.00	1	<u>\$200</u>	
Handling		1	<u>\$180</u>	
		Subtotal	\$680	
		Grand Total	<u>\$4,940</u>	(Estimate)

- d) The **Client** will be charged the current billable rates for any Test Booklet(s) not returned within twenty (20) business days after test administration or that are missing any pages or whole booklets. This charge is to cover the development cost for a replacement test.
- e) The **Client** agrees to pay a 10% Restocking Fee for unused Test Booklets that are being returned for credit (90%). An unused Test Booklet is one whose seal is not broken. **Clients** will be charged a handling fee of 5% cost for all used Test Booklets. The **Client** will also be charged for the shipping of returned Test Materials (at cost).

- f) After receiving from the **Client** the Test Materials, Test Booklets, and Key Sheets, **FPSI** will submit an invoice for the services provided. This invoice will reflect a refund for any unused Test Booklets, less 10% restocking fee. Payment is due on receipt of **FPSI's** invoice. A service fee of one and one-half percent (1-1/2%) per month (eighteen percent [18%] per year) will be charged on all unpaid balances in excess of thirty (30) days past due.

5) Provisions of the Contract.

- a) **Non-Discrimination** – **FPSI** certifies and represents that, during the performance of the Agreement, **FPSI** and any other parties with whom it may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religious creed, color, national origin, ancestry, handicap, gender or age.
- b) **Applicable Law** – Parties to this Agreement shall conform with all existing and applicable city ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. This contract should be construed in accordance with the laws of the State of Arizona.
- c) **Dispute Resolution** – Each claim, controversy and dispute (each a “Dispute”) between **FPSI** and **Client** will be resolved in accordance with Exhibit A. The final determination will be made by the City.
- d) **Maintenance of Records** – All appropriate records related to this Agreement will be maintained by **FPSI** for the required statute of limitations.
- e) **Modification** – This contract contains the entire Agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No amendment to this Agreement will be binding unless in writing and executed by the parties.
- f) **Remedies** – All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- g) **Severability** – If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.
- h) **Cancellation for Conflict** – **FPSI** acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement.
- i) **Insurance** – **FPSI** shall carry all appropriate and necessary insurance to be in compliance with state and national laws regarding the insurance coverage of its employees and professional liability and errors and omissions.
- a. **Requirements.** **FPSI** must obtain and maintain the following insurance (“Required Insurance”):
- i. **General Liability**
1. **FPSI** must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,00,000 for each claim and a \$2,000,000 annual aggregate limit.
 2. **Professional Liability.** **FPSI** must maintain a professional errors and omissions liability policy providing a minimum limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.
 3. **Workers’ Compensation and Employer’s Liability.** **FPSI** must maintain a workers’ compensation and employer’s liability policy providing at least the minimum benefits required by Arizona law.



4. Notice of Changes. **FPSI's** policies must provide for not less than 30 days' advance written notice of: 1) Cancellation or termination; 2) reduction of coverage limits; 3) any other material modification related to this Agreement.

ii. Certificates of Insurance

1. Within 10 business days after the execution of this Agreement, **FPSI** must deliver to Client certificates of insurance for each of **FPSI's** Policies, which will confirm the existence or issuance of such policies in accordance with the provisions of this section, and copies of the endorsements in accordance with the requirements of this section.
2. **Client** is and will be under no obligation either to ascertain or confirm the existence or issuance of **FPSI's** policies or to examine **FPSI's** policies or to inform **FPSI** in the event that any coverage does not comply with the requirements of this section.
3. **FPSI's** failure to secure and maintain the required insurance policies and to assure **FPSI's** policies as required will constitute a material default under the Agreement.

iii. Policies. Except with respect to workers' compensation and **FPSI's** professional liability coverages, Client must be named and properly endorsed as additional insureds on all liability policies required by this section.

1. The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
2. All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

j) Indemnification – Each party shall generally be responsible for its own acts and will be responsible for all damages, costs, fees, and expenses, including attorney's fees and costs, which arise out of the performance of this Agreement and which are due to that party's own negligence, carelessness, unskillfulness, and other unlawful or intentional conduct or that of its respective officers, agents, and/or employees acting in their official capacities.

- a. To the fullest extent permitted by law, **FPSI** must defend, indemnify and hold harmless Client and its elected officials, officers, employees and agents (each an "Indemnified Party," collectively, the "Indemnified parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury, infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each a "Demand or Expense" collectively "Demands or Expenses") that arises out of or results from the breach of this Agreement by **FPSI** or **FPSI's** or its officers, employees or agents negligent actions, errors or omissions or other wrongful or unlawful conduct (including any Subconsultant or Subcontractor or other person or firm employed by **FPSI**) in the performance of this Agreement.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, **FPSI** will be liable only to the extent the Demand or Expense results from the negligence or breach of responsibility of **FPSI** or any person or entity for whom **FPSI** is responsible.
- c. **FPSI** is not required to indemnify any Indemnified parties for, from or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified party.



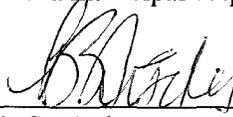
- d. Client shall defend, indemnify and hold harmless FPSI and its elected officials, officers, employees and agents (each an "Indemnified Party," collectively, the "Indemnified parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury, and all other losses and expenses, including attorneys' fees and litigation expenses (each a "Demand or Expense" collectively "Demands or Expenses") that arises out of or results from the breach of this Agreement by Client or the negligent actions, errors or omissions or other wrongful or unlawful conduct of Client or Client's officers, employees, and agents in the performance of this Agreement.
- k) Immigration Law Compliance – FPSI agrees to and is bound by the provisions and obligations set forth in Exhibit B.

(Signatures on Following Page)



DATE: 4/16/14

CITY OF GLENDALE,
an Arizona municipal corporation



Brenda S. Fischer
City Manager

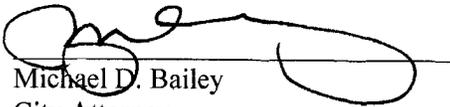
ATTEST:



Pamela Hanna
City Clerk

(SEAL)

APPROVED AS TO FORM:



Michael D. Bailey
City Attorney

DATE: 4/17/14

FIRE & POLICE SELECTION, INC. (FPSI),
a California corporation



Stacy Bell, M.S.
Executive Vice President



EXHIBIT A

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

2.5 **Final Decision.** The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 **Costs.** The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, FPSI must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and Client will continue to make payment to FPSI in accordance with this Agreement.

4. **Exceptions.**

4.1 **Third Party Claims.** Client and FPSI are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with Client and FPSI.

4.2 **Liens.** Client or FPSI may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 **Governmental Actions.** This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by Client of Glendale Building Safety Department or any other agency of Client acting in its governmental permitting or other regulatory capacity.



EXHIBIT B

IMMIGRATION LAW COMPLIANCE

Immigration Law Compliance.

1. FPSI, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
2. Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
3. Client retains the legal right to inspect the papers of FPSI or subcontractor employee who performs work under this Agreement to ensure that FPSI or any subcontractor is compliant with the warranty under subsection 9.1 above.
4. Client may conduct random inspections, and upon request of Client, FPSI shall provide copies of papers and records of FPSI demonstrating continued compliance with the warranty under subsection 9.1 above. FPSI agrees to keep papers and records available for inspection by the Client during normal business hours and will cooperate with Client in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
5. FPSI agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon FPSI and expressly accrue those obligations directly to the benefit of the Client. FPSI also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the Client.
6. FPSI's warranty and obligations under this section to the Client is continuing throughout the term of this Agreement or until such time as the Client determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
7. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.



I. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

J. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

K. BLANKET ADDITIONAL INSURED – PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed

and executed that contract or agreement; and

- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

L. BLANKET ADDITIONAL INSURED – BROAD FORM VENDORS

The following is added to **SECTION II – WHO IS AN INSURED:**

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";