



CITY CLERK ORIGINAL

C-8787
02/10/2014

LETTER OF AGREEMENT

THIS AGREEMENT is made this 12 day of February, 2014 between the City of Glendale (hereinafter called "the Client") and CWH Research, Inc., (hereinafter called "CWH") a Colorado Corporation, whose business address is 9360 Teddy Lane, Suite 350, Lone Tree, CO 80124.

- 1) The Contract. This document is a complete agreement.
- 2) Definitions. When used in this Agreement, the following words and phrases shall have the indicated meanings:
 - a) candidate - an individual who appears at the testing site and begins the written test.
 - b) written test - a written measuring instrument and accompanying answer sheets, which may or may not be combined with other instruments into a single battery.
 - c) qualified administrator - an individual who has had previous experience in written test administration, has been apprised of the confidential nature of the tests, the importance of fair and impartial testing, and the importance of maintaining strict test security. Further, this individual shall have read the CWH general instructions for written test administrations, and shall have been approved by CWH.
 - d) written test session - the period from commencement of the first test in a CWH promotional test battery to the last test in that battery, occurring on the testing date (s) agreed upon by CWH and the Client.
 - e) assessment center - exercises or simulations designed to measure candidates' knowledge, skills, and abilities, as well as the scoring of those candidates' performance on each of the exercises and simulations.
 - f) assessor - an individual who has been trained in the use of assessment centers and the evaluation of candidates' performances in assessment centers. Further, the assessor or assessors shall have been apprised of the confidential nature of the assessment center exercises, the importance of fair and impartial evaluations, and the importance of maintaining strict security over all elements of the assessment center.
 - g) assessment center test session - the period from commencement of the first set of assessment center exercises to the last exercise and final evaluation of candidates.
 - h) oral board - series of structured interview questions designed to measure candidates' knowledge, skills, and abilities, as well as the scoring of those candidates' performance on each of the questions.
 - i) oral board test session - the period from commencement of the first oral board question to the last question and final evaluation of candidates.

CWH Research, Inc.

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303-617-3433

- 3) Services to be Performed by CWH. CWH is an independent contractor and is not an agent, servant, employee or partner of the Client, and nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating a relationship of principal and agent or partnership or joint venture between the parties. CWH shall perform services for the Client in the categories listed below (collectively, the "Services"). These categories, and some, but not necessarily all, of the major services to be performed for the **Fire Captain** position as follows:
- a) **Written Test Development**
 - (1) Develop and validate a traditional job knowledge written examination (approximately 100 questions) procedure including recommendations as to the format of the questions and answers, the number of questions to be included and the study sources.
 - (2) Provide copies of the exam and answer sheets, as well as administration instructions.
 - (3) Provide candidate feedback reports showing performance on each reading source.
 - b) **Test Scoring**
 - (1) Score tests.
 - (2) Conduct relevant statistical analysis.
 - (3) Consult with the Client regarding the format and structure of the final eligibility lists.
 - (4) Provide results in written format within 1 week after receiving answer sheets from client.
 - (5) Handle test challenges or concerns.
 - c) **Validity.** CWH shall conduct a content validation process for the test(s). This validation will meet and adhere to the following standards and guidelines:
 - (1) Federal EEOC Uniform Guidelines on Employment Selection Procedures.
 - (2) Standards for Educational and Psychological Testing established by the American Educational Research Association (AERA), the American Psychological Association (APA), and the National Council on Measurement in Education (NCME), 2013.
 - d) Client shall have the right to re-administer the written test one additional time within 3 years of the effective date of this contract for the cost of \$3,500 (plus the cost of feedback reports, if desired). CWH will modify up to 20% of the written test items if requested, provide test booklets, answer sheets, and scoring.

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- 4) Payment for Services. In consideration of the services to be performed by CWH, the Client shall pay CWH the total sum shown below for services. All work will be performed in Colorado at CWH offices. If on-site meetings are requested by Client, all associated travel must be pre-approved by the Client in writing. Travel expenses, if requested, will be billed at additional cost.

Breakdown for services is as follows:

Service	Cost
Job Analysis Review	Included
Written Test (Includes test materials for up to 100 candidates)	\$5,500.00
Candidate Feedback Reports (Based on 100 candidates at \$3 per candidate)	\$300.00
Total (excluding options below)	\$5,800.00
OPTIONS:	
Assessment Center Review or Oral Board Review (Includes up to 8 hours by request x \$75 per hour)	\$600.00

Payment to be made as follows:

100% due upon completion of project	\$5,800.00
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This price includes the complete and satisfactory performance of the Services specified in this Agreement. Optional components may be selected by client for additional charges noted.

Contract does not include travel to client site. If a site visit is requested, all travel and additional expenses will be billed at cost as incurred or at the below standard rates. These expenses will include the following categories and rates:

Consultant rate	\$800 per day for on site visit.
Airfare	Economy class, with first class upgrades paid for by CWH mileage points. Cost varies by area – every attempt will be made to minimize cost. Billed at cost.
Hotel charges	Mid priced hotel, such as Marriot, Hilton, etc. We use government rates and discounts when possible. Cost varies by area – every attempt will be made to minimize cost. Billed at cost.
Per Diem	\$55 per day.
Mileage to/from airport and to/from client site	\$0.56 cents per mile, plus applicable tolls.
Rental car	Mid size car. Varies by area – every attempt will be made to minimize cost. Billed at cost.

If any additional work is required beyond what this contract states, Dr. Hornick will provide his assistance at the rate of \$250 per hour. Any additional work provided by other personnel in CWH will be charged at the rate of \$175 per hour for consultants and \$55 per hour for clerical.

Expert Testimony. CWH shall provide expert testimony concerning any aspect of its work related to this contract and/or the resultant defense of all related products. This testimony and any necessary preparation will be performed at the hourly rate mentioned above, plus any travel or other related expenses which are incurred.

- 5) Client Responsibilities. In addition to paying CWH for services according to the preceding paragraph, the Client shall have the following responsibilities:
- a) The Client shall provide an appropriate testing site(s) for the written test and all materials, including rooms and furniture conducive to the taking of tests. In addition, all necessary supplies needed by candidates, assessors, and proctors during the written test shall also be provided by Client.
 - b) The Client shall make arrangements for qualified written test and assessment center administrators and proctors.
 - c) The Client shall make all notifications to those people who are eligible to take the test. These notifications include, by way of explanation, but not by way of limitation: testing dates, testing times, and testing places. Further, Client shall make all reasonable attempts to provide for notifications, testing opportunities, and similar concerns to all candidates in a fair and impartial manner.
 - d) CWH will retain the copyrights to all materials developed in the performance of this contract. CWH will, however, grant the Client a non-exclusive, royalty free license to use the selection procedures that will be developed for the duration of this contract. Client shall not reveal the contents of the tests to anyone without the written consent of CWH. The Client assumes full responsibility and liability for any violation of this provision by its employees and/or agents to the extent such employees and/or agents were acting within the scope of their employment and or agency
 - e) Client shall return all testing materials provided by CWH, to CWH.
- 6) Provisions of the Contract. The following provisions are made a part of this contract:
- a) Non-Discrimination. CWH certifies and represents that, during the performance of this Contract, Contractor 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, sex or age. Contractor further certifies that it will not maintain any segregated facilities.
 - b) Applicable Law. Parties to this contract 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 Colorado. If a dispute arises involving this agreement, and the parties are not able to amicably resolve such dispute, then the parties agree that all claims shall be brought in a Court of Competent jurisdiction located in Colorado.
 - c) Interest of the Client. No elected official or any officer or employee of the Client shall have a financial interest, direct or indirect, in this contract.
 - d) Interest of CWH. CWH covenants that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict with the performance of services required to be performed under this contract; they further covenant that in the performance of this contract, no person having any such conflict of interest shall be employed.
 - e) Maintenance of Records. All appropriate records related to the aforementioned projects will be maintained by CWH for the required statute of limitations.
 - f) 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 agent, employee or other representative of either party is empowered to alter any of the terms hereof unless mutually consented to in writing and signed by an authorized officer of the respective parties.

- g) Assignment. CWH may not assign its rights under this Agreement without the express prior written consent of the Client, and such successor in interest may not assign its rights under this Agreement without the express prior written consent of the Client. The Client has the right to continue with the assignee or cancel the Agreement with a pro-rata refund.
- h) Termination: The Client may terminate this Agreement upon 30 days written notice without cause. Upon delivery of said notice to CWH, CWH shall cease performing any work pursuant to this agreement and shall be entitled to retain that portion of the fee for services performed through and including the 30 days notice period prior to termination.
- i) Insurance: CWH 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 including errors and omissions.
 - A. Requirements. CWH must obtain and maintain the following insurance ("Required Insurance"):
 - a. CWH must procure and maintain the insurance coverages described below (collectively referred to herein as the "CWH's Policies"), until each Party's obligations under this Agreement are completed.
 - b. General Liability.
 - 1. CWH must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate limit.
 - c. Professional Liability. CWH 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.
 - d. Workers' Compensation and Employer's Liability. CWH must also maintain a workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
 - e. Notice of Changes. CWH's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - i. Cancellation or termination of CWH's Policies;
 - ii. Reduction of the coverage limits of any of CWH's Policies; and
 - iii. Any other material modification of CWH's Policies related to this Agreement.
 - f. Certificates of Insurance.
 - i. Within 10 business days after the execution of the Agreement, CWH must deliver to City Representative certificates of insurance for each of CWH's Policies, which will confirm the existence or issuance of CWH's Policies in accordance with the provisions of this section, and copies of the endorsements of CWH's Policies in accordance with the provisions of this section.
 - ii. City is and will be under no obligation either to ascertain or confirm the existence or issuance of CWH's Policies, or to examine CWH's Policies, or to inform CWH, Subconsultant, or Subcontractor in the event that any coverage does not comply with the requirements of this section.
 - iii. CWH's failure to secure and maintain CWH's Policies and to assure CWH's Policies as required will constitute a material default under the Agreement.
 - g. Policies. Except with respect to workers' compensation and CWH's professional liability coverages, City 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.
 - ii. 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 conduct and/or the negligence, carelessness or unskillfulness or other unlawful conduct of its respective officers, agents and/or employees acting in their official capacities.
1. To the fullest extent permitted by law, CWH must defend, indemnify, and hold harmless City 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 (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or CWH) and that arises out of or results from the breach of this Agreement by the CWH or the CWH's negligent actions, errors or omissions (including any Subconsultant or Subcontractor or other person or firm employed by CWH), whether sustained before or after completion of the Project.
 2. 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, CWH will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of CWH or of any person or entity for whom CWH is responsible.
 3. CWH 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.
 4. Client shall defend, indemnify and hold CWH, its officers, agents and employees free and harmless from and against any claims, demands, actions, damages, expenses, fees, liabilities and/or attorney's fees arising out of, by virtue of or associated with the negligence, tortuous acts or other unlawful conduct of Client or its respective agents, officers and employees in the performance of this agreement. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to CWH's negligence or breach of a responsibility under this Agreement, but in that event, the City will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of the City or of any person or entity for whom the City is responsible.

k.) Immigration Law Compliance.

- A. CWH, and on behalf any subconsultant, 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.
- B. Any breach of warranty under subsection (A) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- C. City of Glendale ("City") retains the legal right to inspect the papers of CWH or subconsultant employee who performs work under this Agreement to ensure that CWH or any subconsultant is compliant with the warranty under subsection (A) above.
- D. City may conduct random inspections, and upon request of the City, CWH shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. CWH agrees to keep papers and records available for inspection by the City during normal business hours and

will cooperate with City 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 I.

- E. CWH agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. CWH also agrees to require any subconsultant 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 City.
- F. CWH's warranty and obligations under this Section I to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

I.) Conflicts. This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

AUTHORIZED REPRESENTATIVE

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process, during the term of this contract and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

(i) CLIENT:

City of Glendale
6835 North 57th Drive
Glendale, AZ 85301

By:



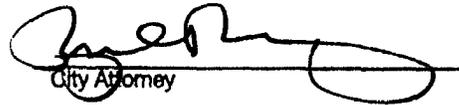
Name:

Brenda S. Fischer

Title:

City Manager

Approved as to form


City Attorney

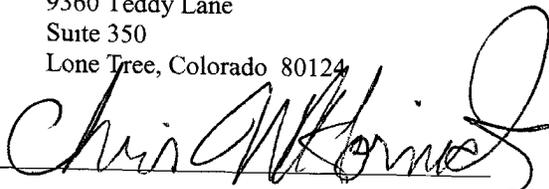
ATTEST:


City Clerk

(ii)

CWH Research, Inc.
Chris W. Hornick, Ph.D.
9360 Teddy Lane
Suite 350
Lone Tree, Colorado 80124

By:



President, Chris W. Hornick, Ph.D.

EXECUTED this 10 day of February, 2014.