

**AGREEMENT BETWEEN  
MORRIS & McDANIEL, INC. AND THE CITY OF ANN ARBOR  
FOR  
DEVELOPMENT AND ADMINISTRATION OF FIREFIGHTER PROMOTIONAL TESTING  
PROCESS**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E Huron Avenue, Ann Arbor, Michigan 48103 ("City"), and Morris & McDaniel, Inc. ("Contractor") a Virginia corporation, with offices at 117 South Saint Asaph St., Alexandria, VA 22314 agrees as follows on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

The Contractor agrees to provide professional services to the City under the following terms and conditions:

**I. DEFINITIONS**

Administering Service Area/Unit means Human Resources and Labor Relations Director

Contract Administrator means Human Resources and Labor Relations Director, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Reports, Recommendations, and other materials developed for or delivered to City by Contractor under this Agreement

Project means Development and Administration of City Firefighter Promotional Testing Process

**II. DURATION**

This Agreement shall become effective on \_\_\_\_\_, 2016, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement.

**III. SERVICES**

- A. The Contractor agrees to provide professional development and administration services for the City of Ann Arbor Firefighter Promotional Testing Process (Project) as described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.
- B. Quality of Services under this Agreement shall be of the level of professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

#### **IV. COMPENSATION OF CONTRACTOR**

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator. Total compensation payable for all Services performed, including travel expenses, during the term of this Agreement shall not exceed Twenty-five Thousand and no/100 dollars (\$75,000.00).
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be payable according to the fee schedule in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- C. The Contractor shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

#### **V. INSURANCE/INDEMNIFICATION**

- A. The Contractor shall procure and maintain during the life of this contract, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before commencement of any work under this contract, documentation demonstrating it has obtained the policies and endorsements required by Exhibit C. .
- B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, from any acts or omissions by the Contractor or its employees and agents occurring in the performance of or breach in this Agreement.

## **VI. COMPLIANCE REQUIREMENTS**

- A. Nondiscrimination. The Contractor agrees to comply and to require its subcontractor(s) to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209) The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity
- B. Living Wage. The Contractor is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

## **VII. WARRANTIES BY THE CONTRACTOR**

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

## **VIII. TERMINATION OF AGREEMENT**

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. The City may terminate this Agreement, on at least fifteen (15) days advance

notice, for any reason, including convenience, without incurring any penalty, expense or liability to the Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.

- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The Contract Administrator shall give the Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.
- E. The provisions of Article V shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party.

#### **IX. OBLIGATIONS OF THE CITY**

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

#### **X. ASSIGNMENT**

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

#### **XI. NOTICE**

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Morris & McDaniel  
17 South Saint Asaph St.  
Alexandria, VA 22314  
Attn.: David M. Morris

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor  
301 E. Huron St., POB 8647  
Ann Arbor, Michigan 48107-8647  
Attn.: Human Resources and Labor Relations Director

## **XII. CHOICE OF LAW**

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

## **XIII. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this Agreement, all documents (i.e., deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., preexisting information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

**XIV. CONFLICT OF INTEREST**

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

**XV. SEVERABILITY OF PROVISIONS**

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

**XVI. EXTENT OF AGREEMENT**

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Contractor and the City.

**FOR CONTRACTOR**

By \_\_\_\_\_  
David M. Morris, Ph.D., J.D.

**FOR THE CITY OF ANN ARBOR**

By \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

**Approved as to substance**

\_\_\_\_\_  
Howard S. Lazarus, City Administrator

[signatures continue on next page]

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Larry Collins, Fire Chief, AAFD

**Approved as to Form and Content**

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Stephen K. Postema, City Attorney

## **EXHIBIT A**

### **SCOPE OF SERVICES**

The scope of services shall consist of those duties, functions, obligations, responsibilities, and tasks found reasonably necessary for a professionally designed and implemented promotional testing assessment process for candidates seeking promotion within the ranks of the Ann Arbor Fire Services Unit:

Services will include the following specific Tasks for Firefighter Ranks of Lieutenant, Captain and Battalion Chief:

- Job analysis and written exam
- Exercise Development
- Administration of Exercise
- Recruiting and training assessors
- Oversee Scoring
- Feedback to candidates
- Coordinate Second Review
- Compile statistics for Validity Report
- Issue Final List to Fire Chief/City Administration

Services will include the following specific Tasks for Firefighter Ranks of Master Mechanic, Assistant Mechanic, Training Officer, Assistant Training Officer, Fire Marshall and Inspector:

- Job analysis and written exam

Contractor shall complete the work on an expedited basis and in an efficient and diligent manner. It is agreed and understood that time is of the essence, and that if Contractor fails to perform the work in a timely manner, the City shall have the right to summarily terminate this Agreement.

Contractor shall maintain or cause to be maintained all records, tests, reports or other documents relative to the scope of services set forth in Exhibit A, any alleged breaches of the Agreement, settlement of claims, or any other matter pertaining to Contractor's performance under this Agreement or demand for compensation by the City for a period of not less than three (3) years from the date of the final payment for work performed under this Agreement.



**EXHIBIT B  
COMPENSATION**

Fee

TASK	Lieutenant	Captain	Batt Chief
Job analysis and Written exam	\$5,000.00	\$5,000.00	\$5,000.00
Exercise Development	\$ 1,250.00	\$ 1,250.00	\$ 1,250.00
Administration of Exercise	\$ 2,000.00	\$ 1,250.00	\$ 1,250.00
Recruiting and training assessors	\$ 1,500.00	\$ 750.00	\$ 750.00
Oversee scoring	\$ 1,200.00	\$ 1,200.00	\$ 1,200.00
Feedback to candidates	\$ 350.00	\$ 350.00	\$ 350.00
Coordinate Second Review	\$ 650.00	\$ 650.00	\$ 650.00
Compile statistics for Validity Report	\$ 125.00	\$ 125.00	\$ 125.00
Issue Final List to Client	\$ 250.00	\$ 200.00	\$ 200.00
Sub-Total	\$12,325.00	\$10,775.00	\$10,775.00

  

TASK	Master Mechanic	Assistant Mechanic	Training Officer	Assistant Training Officer	Fire Marshal	Inspector
Job analysis and written exam	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Subtotal	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00

**Subtotal of all Nine Ranks**

\$63,875.00

Expenses

Contractor will be reimbursed for actual expenses for any required travel to the City to include actual coach or equivalent airfare, reasonable ground transportation costs, lodging, and per diem during travel periods at rates and on terms provided by Ann Arbor travel rules and regulations. The following shall apply:

- Per diem rate for Michigan (\$10/breakfast; \$15/lunch and \$20/dinner) shall apply to this contract.
- Ground transportation reimbursement is limited to current IRS standard mileage rate multiplied by actual miles traveled or actual cost of fare. Car rental limited to a compact car.
- Lodging reimbursement will be based on a single room rate
- No reimbursement will be made for alcoholic beverages, entertainment or social activities.

**Expenses NTE**

\$11,125.00

It is understood and agreed by Parties that Total Fees, including any travel and related costs for assessors, under this Agreement are capped at the NTE amount of \$75,000.00 as specified in Article IV.

Contractor agrees to provide the City not less than 10 business days notice if it anticipates exceeding the NTE expense amount during the term of this Agreement. On receipt of any such notice the Parties agree to negotiate an amendment to this Agreement, if necessary, subject to final approval by the Ann Arbor City Council. It is understood that grounds for amendment above only applies to expenses; no additional cost will be access for additional search work.

## EXHIBIT C

### INSURANCE REQUIREMENTS

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance and endorsements to the City on behalf of itself, and when requested any subcontractor(s).

A. Contractor shall have insurance that meets the following minimum requirements.

1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident  
Bodily Injury by Disease - \$500,000 each employee  
Bodily Injury by Disease - \$500,000 each policy limit

2. Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Job General Aggregate
\$1,000,000	Personal and Advertising Injury

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

B. Insurance required under A 3 above of this contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.

C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and

demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.