

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

NATIONAL TESTING NETWORK, INC.

THIS FIRST AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and the **National Testing Network, Inc.** represented by Carl Swander, PhD., (the “**Contractor**” or “**NTN**”). The City and the Contractor may sometimes be referred to individually as a “**Party**” or collectively as the “**Parties**.” The Amendment is effective as of August 3, 2020 (the “**Effective Date**”).

RECITALS

WHEREAS, the City sought to hire a firm or individual that would host and administer online New Orleans Police Department (“**NOPD**”) recruitment tests through ntnexams.com on behalf of the New Orleans Civil Service Department (the “**Department**”); and

WHEREAS, the Contractor has the requisite expertise, qualifications, and certifications in place, and is available for the performance of those professional services;

WHEREAS, on and effective August 3, 2019, the City and the Contractor entered into a Professional Services Agreement to provide said services (the “**Agreement**”); and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to extend the Agreement for an additional one (1) year through August 2, 2021, to amend the maximum aggregate amount of compensation, and to modify terms and conditions in accordance with the City’s new ERP system (“**BRASS**”) and/or recent ordinances approved by the New Orleans City Council.

NOW THEREFORE, for good and valuable consideration, the City and the Contractor amend the Agreement as follows:

1. **Invoices.** Article I Section E entitled “Invoices” is deleted in its entirety and replaced, as follows:

E. Invoices.

1. *The Contractor must submit no less than one final invoice (unless otherwise mutually agreed to by parties to this Agreement in writing) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information: contract or purchase order number issued by the City, the name of the city department to be invoiced, a short description of the services to be performed for each invoice.*

2. *All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.*
3. *The City may require changes to the form or the content of the invoice. The City may also require additional supporting documentation to be submitted with invoices.*

2. **Payment.** Article III Section B entitled "Payment" is amended by adding Subsection 7 at the end thereof, as follows:

7. *Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that all goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.*

3. **Rate of Compensation.** The rate of compensation described in Article IV Section A of the Agreement is deleted in its entirety and replaced, as follows:

1. *The City will pay the Contractor in accordance with the following rate: a yearly fee in the amount of \$1,500 made payable by the City to the Contractor upon the Contractor's completion of all deliverables and as otherwise set forth in Article I Section E and Article III Section B of the Agreement, as amended.*

4. **Maximum Amount.** The maximum aggregate amount of compensation described in Article IV Section B of the Agreement is increased by \$1,500.00 to an amount not to exceed \$3,000.00.

5. **Extension.** In accordance with Article V Section B of the Agreement, the term is extended for an additional one (1) year from the Effective Date through August 2, 2021.

6. **Additional Miscellaneous Provisions.** The following terms and conditions are reaffirmed and/or added to the Agreement:

PERFORMANCE MEASURES

A. **Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. **Failure to Perform.** If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

7. Convicted Felon Statement. The Contractor swears that it complies with City Code § 2-8(c). No Contractor principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

8. Non-Solicitation Statement. The Contractor swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.

9. Prior Terms Binding. Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

10. Electronic Signature and Delivery. The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be

created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Amendment.

11. Compliance with the City's Hiring Requirements – Ban the Box. (i) The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary. (ii) Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement. (iii) This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect. (iv) The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

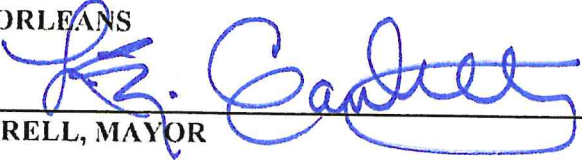
12. Cost Recovery. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations."

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[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Amendment.

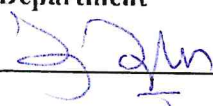
CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 8TH of January, 2020.

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

NATIONAL TESTING NETWORK, INC.

BY: 
CARL SWANDER, PH.D. PRESIDENT/CEO

TAX I.D. 

[END OF AGREEMENT]