

K22-1221



**SERVICE AGREEMENT AMENDMENT
FOR
ADA COMPLIANT FUNCTIONAL
TESTING**

Submitted to: New Orleans EMS

Date of Submission: 6/27/2022

Submitted by:

Richard W. Bunch, PhD, PT, CBES
CEO, WorkSaver Employee Testing Services, LLC

Trevor Bardarson PT, OCS, CBES
President / Manager, WorkSaver Employee Testing Systems, LLC

This First Amendment (the "Amendment") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "City or Client"), and Trevor Bardarson, President, and Manager (the "Contractor or WorkSaver"). The Amendment is effective as of July 14, 2022.

Whereas, on July 14, 2021, the City and the Contractor entered into a Service Agreement for the Contractor to provide physical agility testing for new hires and current employees of New Orleans EMS (the "Agreement").

Whereas, the City and the Contractor, each having authority to do so, desire to enter this Amendment to extend the Agreement for one (1) additional year, through July 13, 2023.

Now Therefore, for good and valuable consideration, the City and the Contractor amend the Agreement as follows:

- I. **Extension**: In accordance with Article (II), Section (B) of the Agreement, the term is extended for an additional one year from the Effective Date through July 13, 2023.
- II. **Maximum Amount**: The maximum aggregate amount payable by the City under this Agreement is \$15,000.00.
- III. **Standardized and Centralized Billing**: Client agrees and understands that WorkSaver Systems will be the only entity to be paid for services rendered in this contract. WorkSaver will provide centralized billing for all WorkSaver functional tests conducted within its WorkSaver Network.
- IV. **Fee Schedule**:
 - A. **Annual Administrative Fee**: (\$250) This flat annual fee covers administrative fees for annual statistical analyses, annual ROI reports, ongoing 24/7 administrative staff assistance, accommodation review support, monthly newsletters, and liability and errors and omissions insurance. This fee will be invoiced upon activation of this agreement and annually thereafter so long as the parties mutually agree to extend the term of this agreement in writing.
 - B. **On-site Job Physical Demand Validation (PDV)**: \$150/hour (with a minimum Day Rate of \$1200) plus travel-related expenses as required. Onsite consulting time exceeding eight (8) hours per day will incur an additional fee of \$150/hour, prorated on a quarterly hour basis.
 - 1) **Travel Expenses**: As required for the PDV process: Coach airfare round trip, rental car, fuel replacement, or cab or personal car use at current IRS rate, hotel reimbursement, and \$75 per diem

(including travel days). Travel Time Expense: \$600 per each travel day (i.e., arrival and departure days)

C. Creation of Functional Job Description and Customization of

WorkSaver Protocol: \$350/ job title. Collapsed Job Titles: Jobs with the same physical demands may be collapsed under one FJD. The fee for a collapsed FJD is \$350* + \$50 for each additional job title.

- 1) Any FJD that is created by collapsing several job titles that have the same or very similar physical demands into one master FJD (i.e., creation of one document covering several jobs under a single job classification) will require extra time to derive data and cross reference data from several job titles analyzed. The increased fee for the collapsed FJD reflects the extra time required to create the document.
- 2) Deliverables: Hard copy and electronic format (PDF formats).

D. Validation of Additional Testing Protocols*: ~~\$175~~ - \$185 per person

- 1) Involves testing incumbent employees to assess SME feedback on the validity of the test protocol. The Client should use when available, a test sample of both male and female employees. The Client can choose the number of employees to be used to engage in the PAT protocol validation tests. The greater the number of validation tests conducted, the stronger the support for test protocol validity. The minimum number of employees per validation study recommended are eight (8) employees per job title. If the Client does not have a sufficient number of employees in each job title to meet the minimum number of test subjects as recommended and described above, then the Client should use the number of employees available.

E. WorkSaver Job-Specific Physical Ability Test (PAT):

- 1) *New Hire PAT* (Post-offer, Pre-Placement): \$175 -\$185 per person (1-1.5 hours) *
- 2) *Return-to-Work PAT* (Post-injury or illness): \$225 per person (2-2.5 hours) *
- 3) *PAT for Cause*: \$225 per person (2-2.5 hours) *

The following terms and conditions are added to the Agreement:

XXVII. 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.

XXVIII. Non-Discrimination:

- a. **Equal Employment Opportunity:** In all hiring or employment made possible by or resulting from this Agreement, the Contractor (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, 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, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, 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, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, 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 the 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 these provisions.
- d. **Termination for Breach:** 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.

XXIX. Force Majeure:

- a. **Event:** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this

Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by the City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of the City, provided such event was not caused by the negligence nor misconduct of the City, by the failure of the City to comply with applicable laws, or by the breach of this Agreement.

- b. **Notice:** To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended.
- c. **Effect:** Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
 - i. Suspend this Agreement for a duration to be set by the City, not to exceed ninety (90) days. During such time of suspension, the parties will not be liable nor responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
 - ii. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.
- e. Notwithstanding Section C(i) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

- V. **Convicted Felon Statement:** The Contractor swears that it complies with City Code Section 2-8(c). No Contractor principal, member, or officer has, within the preceding five (5) 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.
- VI. **Non-Solicitation Statement:** The Contractor swears that it has not employed nor 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.
- VII. **Prior Terms Binding:** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.
- VIII. **Counterparts:** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Amendment, but all of which, when taken together, shall constitute one and the same agreement.
- IX. **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.

[SIGNATURES CONTAINED ON NEXT PAGE]

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

WORKSAVER EMPLOYEE TESTING SYSTEMS, LLC

BY: _____

TREVOR BARDARSON PT, OCS, CBES
PRESIDENT / MANAGER

FEDERAL TAX I.D.

CITY OF NEW ORLEANS

BY: _____

LATOYA CANTRELL, MAYOR

Executed on this 16th of December, 2022.

FORM AND LEGALITY APPROVED:

Law Department

By: _____

Printed Name: Tracy Tyle