

**CONTRACT FOR POLICE JOB TASK ANALYSIS AND  
PROMOTIONAL ASSESSMENT SERVICES FOR  
THE CITY OF DURHAM POLICE DEPARTMENT**

This contract is made and entered into as of the 8<sup>th</sup> day November, 2011, by the City of Durham ("City") and Ergometrics and Applied Personnel Research, Inc., ("Contractor"), a corporation organized and existing under the laws of the State of Washington.

**Sec. 1. Background and Purpose.** The City needs to hire a Consultant to provide services, as an independent contractor, for the purpose of conducting a job task analysis for police classifications and assignments and a promotional assessment center that will determine promotions with its Police Department for the ranks of Corporal, Sergeant and Lieutenant.

**Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's.** The Contractor shall perform the Work described in the City's Request for Proposal (RFP), Police Job Task Analysis and Promotional Assessment Services, Section 5.01, titled "Scope of Work", and Section 5.02, titled "Deliverables," (Attachment A) and the Contractor's Proposal (Attachment B) including all subsections therein. In addition, the following Deliverables are included:

(a) In addition to the Contractor's proposal clause indicating using a "broader sample" for Job Task Analysis (JTA) on page 10 of Attachment A, the Contractor will send an electronic copy of the JTA questionnaire to all employees in each classification and assignment and incorporate responses into the JTA project.

(b) Candidate orientations to the promotional process will be provided as outlined in Attachment B, plus include additional sessions as mutually agreed between the City and the Contractor. In lieu of additional sessions, the Contractor may provide and pay all costs for recording the orientation, respond to the candidates' questions from the recorded orientations, and disseminate those questions and answers to all candidates.

(c) An appeal process will be incorporated into the written test processes wherein candidates who dispute test items will have an opportunity immediately following the test to note their dispute. Contractor will investigate each appeal and will either verify the disputed item is correct or provide a remedy to resolve the dispute.

(d) Candidate Feedback Reports will include the information outlined in Attachment B and, in addition, include candidate score in each activity, the highest score for each activity, the lowest score for each activity, the average score for each activity, the overall candidate score, the highest overall score, the lowest overall score, and the average overall score.

(e) The Final Report to the Chief of Police will include the information outlined in Attachment B and, in addition, include a ranked list of all candidates and their scores for each activity, and their overall scores. The ranked list will be provided in two formats, one that includes candidate names, and one that excludes the names.

(f) The Contractor will provide the City with all calculations used to determine final scoring so that the City may audit the results.

(g) An exit survey will be sent to all candidates with the questions outlined in Attachment B or other questions as agreed upon mutually between the City and the Contractor.

Unless mutually agreed upon by the parties, the Work shall be performed and provided in accordance with the Project Schedule (Attachment C). The delivery date for all job task analyses except for Police Lieutenant, Police Sergeant and Police Corporal may be extended to a date mutually agreed upon by the City and the Contractor.

The Contractor shall not publish or disclose to third parties in any way whatsoever, any information, results, conclusions, studies or other data of any kind arising directly or indirectly from the Contractor's performance under this Agreement without prior review by the City of the final proposed publication or disclosure draft, and written permission from the City to publish or disclose such draft or portion thereof. The City shall not be obligated to give such permission.

It is conceivable that all or part of the information, results, conclusions, studies or other data arising out of the performance of this Agreement by the Contractor may be utilized by the City in litigation. If expert testimony from the Contractor is requested by the City, the Contractor will provide these services should this need develop. Payment for such expert testimony shall not be covered by this Agreement but shall be subject to subsequent appropriation of necessary funds by the City. In the event that the City is required to respond to a grievance, administrative hearing, legal action, or other proceeding arising out of a promotional process, the City and the Contractor agree that in those actions where there is no issue between the City and the Contractor regarding the quality of services provided by the Contractor, then the City agrees to pay the Contractor three hundred dollars (\$300.00) per hour for any services that the Contractor is asked to render in defense of the promotional process including court appearances, testifying before a grievance board, or providing written documentation. Payment for this service will be made at the conclusion of the services rendered. In actions where there is a material dispute between the City and the Contractor regarding the quality of services provided to the City by the Contractor, there will be no Contractor fee paid for appearances, testifying before grievance boards, or providing written documentation.

In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

**Sec. 3. Term of Agreement.** The term of the Agreement shall commence upon the date on which this contract was made and entered into and shall terminate at the end of five (5) months therefrom, unless extended by either party or otherwise

terminated in accordance with the terms of this agreement. Both parties agree that in the performance of the terms, conditions, and requirements of this Agreement by the Contractor, time is of the essence.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor's Billings to City. Compensation. The City shall pay the Contractor the sum of \$169,425 for all Work pursuant to this contract as follows:

\$56,475-Upon this contract being fully executed;

\$56,475-Upon the City's review and approval of written examination (test) and assessment center exercises;

\$56,475-Upon final receipt of all Contractor's Work product to the City.

Prior to the issuance of any payments by the City, the Contractor shall send an invoice to the City for the amount to be paid pursuant to this contract. Each invoice shall document and describe to the reasonable satisfaction of the City the Work being invoiced. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec 6. Trade Secrets. The Contractor will provide all materials used in the administration of all areas of contracted services for job task analysis and promotional assessment. The City will own said materials and the City shall have the exclusive full copyright to all such materials. The contractor shall provide all materials used in the development and administration of the job task analysis, the written examination, and the assessment process for each rank as requested by the City in Attachment A. Such materials are the property of the City and shall be retained in the possession of the City with the following exception:

Excepting reports required by Section 2(d) and (e) of this contract, Contractor owns and retains all right, title, and interest in the *FrontLine Promote* Products, Updates and Documentation, and any modifications thereto expressly authorized by this Agreement, and any related patents, trade secrets, copyrights, trademarks and other intellectual property rights therein (collectively, "Proprietary Rights"), regardless of any participation or collaboration by City in the design, development or implementation of any such Products, any applicable Policy or Updates or Documentation. Products and Updates mean all inventions, improvements, discoveries (whether or not patentable),

databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents and subcontractors, either individually or jointly with others in the performance of this contract. Documentation means the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this contract. All materials are protected by United States copyright laws and international treaty provisions. The City is not authorized to copy any video or audio tapes without express permission of the Contractor. Printed materials may only be copied in accordance with the terms of this Agreement or with express permission from the Contractor.

Sec. 7. Insurance. Contractor shall maintain insurance not less than the following:

**Commercial General Liability**, covering:

- Premises/operations
- Products/completed operations (two years minimum, from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than \$2,000,000 per occurrence, with an annual aggregate on not less than \$4,000,000.

**Commercial Auto Liability**, covering:

- Symbol 1, all vehicles
- Combined single limit of \$2,000,000
- City of Durham must be named additional insured

**Professional Liability**, covering:

- Covering claims arising out of professional advisement / consultation services performed in connection with this contract
- Self-insured retentions/deductibles in excess of \$25,000 must be approved by the City Finance Director
- Combined single limit not less than \$1,000,000 per occurrence; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review of City Finance Director

**Workers' Compensation Insurance**, covering:

- Statutory benefits;
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

**Insurance shall be provided by:**

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A-, VII or better.

**Insurance shall be evidenced by a certificate:**

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:  
City of Durham, NC, 101 City Hall Plaza, Durham, NC, 27701
- The insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in Section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Attachments. The following attachments are made a part of this contract:

Attachment A, City's Request for Proposal (RFP), Police Job Task Analysis and Promotional Assessment Services containing twelve (12) pages.

Attachment B, Contractor's Proposal for Police Job Task Analysis and Promotional Assessment Services, City of Durham containing fifty-six (56) pages.

Attachment C, Project Schedule, containing two (2) pages.

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control. If a conflict arises between a supplemental term or condition included in Attachment B and a term or condition of Attachment A, the term or condition of Attachment A will prevail.

**Sec. 10. Notice.**

(a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, e-mail, Federal Express, or certified United States mail, return receipt requested, addressed as follows:

**To the City:**

Kathleen S. Koechling  
Personnel Services Manager  
Durham Police Department  
505 West Chapel Hill Street  
Durham, NC 27701  
The phone number is 919-560-4402 x29155  
E-mail is kathy.koechling@durhamnc.gov

**To the Contractor:**

Carl Swander  
President  
Ergometrics and Applied Personnel Research, Inc.  
18720 33<sup>rd</sup> Avenue West  
Lynnwood, WA 98037  
The phone number is 425-774-5700  
E-mail is carl@ergometrics.org

(b) **Change of Address. Date Notice Deemed Given.** A change of address, phone number, e-mail address or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by email. If the notice or other communication is sent by Federal Express or United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the carrier or upon actual delivery, whichever first occurs.

**Sec. 11. Indemnification.**

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) **Definitions.** As used in subsection "a" above, "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, and interest and reasonable attorneys' fees assessed as part of any such item. "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

(c) **Other Provisions Separate.** Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) **Survival.** This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

**Sec. 12. Miscellaneous**

a) **Choice of Law and Forum; Service of Process.** (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) **Waiver.** No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) **Performance of Government Functions.** Nothing contained in this contract shall be deemed or construed so as to in any way stop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) **Severability.** If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) **Assignment. Successors and Assigns.** Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out

of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the

Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

### Sec. 13. Termination for Convenience ("TFC").

(a) *Procedure.* Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice.

(b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate.

(c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor for all Work performed except to the extent previously paid for.

Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST: CITY OF DURHAM

\_\_\_\_\_ By: \_\_\_\_\_

Pre-audit certificate, \_\_\_\_\_

ERGOMETRICS AND APPLIED PERSONNEL RESEARCH, INC.

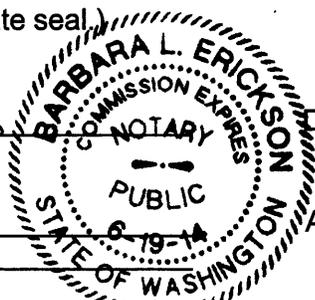
ATTEST:



By: \_\_\_\_\_  
Carl Swander, President

(Affix corporate seal)

Barbara L. Erickson  
Secretary Notary



Date: 9/27/11

State of Washington  
County of Snohomish

ACKNOWLEDGMENT BY CORPORATION

I, Barbara L. Erickson a notary public in and for the aforesaid county and state, certify that Carl Swander personally appeared before me this day and stated that he is President of Ergometrics and Applied Personnel Research, Inc., a corporation, and that by authority duly given and as the act of the corporation, he signed the foregoing contract with the City of Durham and the corporate seal was affixed thereto. This the 27<sup>th</sup> day of September, 2011.