

RESOLUTION NO. 09-660

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH PUBLIC SAFETY TESTING, INC TO PROVIDE POLICE TESTING SERVICES TO THE BLACK DIAMOND CIVIL SERVICE COMMISSION FOR THREE YEARS

WHEREAS, the Black Diamond Police Department, directly and through the Civil Service Commission, tests, evaluates, ranks and hires law enforcement positions in the performance of its public safety functions; and

WHEREAS, the City desires to retain the services of a skilled provider for the testing services for our public safety applicants; and

WHEREAS, the City has selected Public Safety Testing, Inc. to provide the services of written and physical ability testing for the City's public safety applicants; and

WHEREAS, Public Safety Testing, Inc. is willing and able to perform the above mentioned services;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is authorized to execute the Subscriber Agreement between Public Safety Testing, Inc. and the City of Black Diamond, and said agreement is attached hereto as Exhibit A and by reference incorporated herein.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 17TH DAY OF DECEMBER, 2009.



Howard Botts, Mayor

Attest:


Brenda L. Martinez, City Clerk

SUBSCRIBER AGREEMENT

WHEREAS, Public Safety Testing, Inc. is a skilled provider of testing services to police, fire, and other public safety agencies, and

WHEREAS, the subscriber public agency, either directly or through a civil service commission, tests, evaluates, ranks and hires law enforcement and/or firefighters and/or other public safety positions in the performance of its public safety functions, and

WHEREAS, the subscribing public entity desires to join in a Subscriber Agreement, NOW, THEREFORE,

Public Safety Testing, Inc. (the "Contractor") and the City of Black Diamond, a municipal corporation of the state of Washington (hereinafter "Subscriber") do enter into this Subscriber Agreement under the terms and conditions set forth herein.

1. Description of Basic Services. This Agreement begins January 1, 2010. The Contractor will provide the following services to the Subscriber:
 - 1.1 Advertising and recruiting assistance, application processing, and administration of written examinations and physical ability tests for (check all that apply):
 - Entry-level Police Officer
 - Lateral/Experienced Police Officer
 - Firefighter
 - Firefighter/Paramedic
 - 1.2 Report to the Subscriber the scores of applicants, with all information necessary for the Subscriber to place passing applicants upon its eligibility list, and rank them relative to other candidates on appropriately constituted continuous testing eligibility lists. Contractor will report "raw" test scores to the Subscriber – no preference points will be factored into applicant scores and it is the Subscriber's responsibility to factor veteran's preference points in accordance with applicable federal and state laws.
 - 1.3 Written examination scores will be reported to the Subscriber as a percentage score (based on 100%) and physical ability test scores will be reported as "Pass" or "Fail".

The passing score for written examinations is set by the test developer at 70%. If Subscriber requires a different passing score, please check the box below and note the required passing score:

Subscriber's passing score is: _____%

- 1.4 Appear in any administrative or civil service proceeding in order to testify to and provide any and all necessary information to document the validity of the testing process, to participate in the defense of any testing process conducted by the Contractor pursuant to this Agreement and to otherwise provide any information necessary to the Subscriber to evaluate challenges to or appeals from the testing process. The Contractor shall appear without additional charge. The Subscriber shall pay the reasonable cost of travel and appearance for any expert witness deemed necessary by the Subscriber to validate the testing process, including but not limited to, representatives of any company which holds the copyright to any testing material and whose testimony or appearance is deemed necessary to validate the process.

Provided, however, Contractor shall not be required to appear at its cost nor to defend in any administrative or court proceeding arising from our out of a claim or challenge relating to Subscriber's use of other testing process(es) or out of Subscriber's attempt to establish multiple or blended eligibility lists for the same position based in whole or in part on other testing process(es). "Other testing process(es)" means any test or testing process other than those provided by the Contractor under this Agreement.

- 1.5 Term & Fees. The Subscriber elects (select all that apply):

- A one (1)-year subscription at the following rates:
 Police Officer (entry &/or lateral) testing at \$600
- A three (3)-year subscription at the following rates:
 Police Officer (entry &/or lateral) testing at \$450 for Year 2010 and \$700 annually for Years 2011 and 2012.

- 1.6 Payment. Subscriber shall pay an amount equal to twenty-five percent (25%) of the annual fee set forth above quarterly for services rendered in the previous quarter and for basic services including but not limited to, software relating to online application, advertising formats, previously advertised scheduling of test dates, model civil service rules, testing systems, as well as ongoing testing and recruitment, and any and all other work developed at the cost of the Contractor prior to or contemporaneous with the execution of this Agreement. Payment shall be made within 45 days of receipt of invoice.

2. Additional Services. In addition to the services provided under this Agreement, the Subscriber may, at its sole discretion, elect to purchase additional services from the Contractor. Such services shall be requested by and contracted for pursuant to separate written agreement.

3. Acknowledgements of Subscriber. The Subscriber understands and acknowledges, and specifically consents to the following stipulations and provisions:
 - 3.1 Because applicable civil service law prohibits having multiple eligibility lists for the same class of hires, this Agreement is an exclusive agreement for these services.
 - 3.2 The written and physical agility scores of any applicant shall be valid for 15 months from the date of certification by the Contractor or 12 months from the date of placement upon the Subscriber's eligibility list, whichever first occurs, following the report of the Contractor, and rules compatible with continuous testing shall be adopted. The Subscriber shall review its applicable hiring processes, advertisements, personnel policies and civil service rules (as applicable) to ensure compliance with the provisions of this Agreement.
 - 3.3 An applicant may, in addition to the Subscriber's eligibility list, elect to have his/her score reported to and subject to placement on the eligibility list of any other Subscriber. Nothing in this Agreement shall be interpreted to prohibit the use of an applicants' score for consideration in or processing through any other subscriber's hiring and/or civil service eligibility process. The Subscriber agrees that if an applicant is hired by another agency through this service, the applicant's name shall be removed from Subscriber's eligibility list.
 - 3.4 The Subscriber specifically understands and acknowledges that the Contractor may charge a reasonable application fee from any and all applicants.
 - 3.5 The Subscriber is encouraged to and may also conduct advertising as it deems necessary to support/enhance recruiting efforts. The Subscriber shall link PublicSafetyTesting.com on its agency's website, if it so maintains one.
 - 3.6 Public Safety Testing views recruiting as a partnership with the Subscriber. The Subscriber agrees to actively participate in recruiting efforts for positions within the Subscriber agency.
 - 3.7 The Subscriber agrees to keep the Contractor up-to-date as to the agency's hiring status, minimum and special requirements, all information appearing on the agency's PST website profile and the names of any candidates hired through these services.
4. Testing Standard and Warranty of Fitness for Use. All testing services conducted under this Agreement shall be undertaken in accordance with the provisions of the Washington State Civil Service Statutes, Chapter 41.08 and 41.12 RCW, or the terms of other applicable statute as the Subscriber shall notify the Contractor that the Subscriber must meet. Tests shall also be conducted in accordance with the general standards established by the Subscriber; the Subscriber shall be responsible for notifying the Contractor of any unusual or special process or limitation. The test utilized, the proctoring of the test and any and all other services attendant to or necessary to provide a valid passing or failing score to the Subscriber shall be conducted in accordance with generally accepted practice in the human

resources, Civil Service and Public Safety Testing community. The Subscriber may monitor the actions and operations of the Contractor at any time. The Contractor shall maintain complete written records of its procedures and the Subscriber may, on reasonable request, review such records during regular business hours. Any and all written materials, and the standards for physical fitness testing utilized, shall comply with all applicable copyrights and laws. The Contractor expressly agrees and warrants that all tests and written materials utilized have been acquired by the Contractor in accordance with the appropriate copyright agreements and laws and that it has a valid right to use and administer any written materials and tests in accordance with such agreements and laws. If Subscriber uses or authorizes the use of other testing process(es) this warranty shall be null and void.

5. Independent Contractor. The Contractor is an independent contractor. Any and all agents, employees or contractors of the Contractor, shall have such relation only with the Contractor. Nothing herein shall be interpreted to create an employment, agency or contractual relationship between the Subscriber and any employee, agent or sub-contractor of the Contractor.
6. Indemnity and Hold Harmless. The parties agree and hold harmless each other, their officers, agents and employees in accordance with the following provisions:
 - 6.1 The Contractor shall indemnify and hold harmless the Subscriber, its employees and agents from any and all costs, claims or liability arising from:
 - 6.1.1 Violation of any copyright agreement or statute relating to the use and administration of the tests or other written materials herein provided for;
 - 6.1.2 Any cost, claim or liability arising from or out of the claims of an employee, agent or sub-contractor to the end that the Contractor shall be an independent Contractor and the Subscriber shall be relieved of any and all claims arising from or relating to such employment relationships or contracts between the Contractor and third parties;
 - 6.1.3 The alleged negligent or tortious act of the Contractor in the provision of services under this Agreement.
 - 6.1.4 This indemnity shall not apply to any administrative or court proceeding arising from or out of any process in which the Subscriber has utilized or authorized other testing process(es).
 - 6.2 The Subscriber shall indemnify and hold harmless the Contractor, its officers, agents and employees from any and all cost, claim or liability arising from or out of the alleged negligent or tortious act of the Subscriber in the provision of services hereunder.
7. Termination. This Agreement terminates on the last day of December 201~~2~~2. The Contractor and the Subscriber may withdraw from this Agreement at any time for any reason with 90 days written notice, provided, however, that the provisions of paragraphs 1.4, 4, 5 and 6 shall remain in full force and effect following the

termination of this Agreement with respect to, and continuing for so long as any applicant tested by the Contractor remains on the eligibility list of the Subscriber.

7.1 If the Subscriber elects to terminate this Agreement prior to the termination date specified in section 7, Subscriber shall pay the Contractor an early termination fee. The purpose of this early termination fee is to cover the direct and indirect costs of refunding and or rescheduling applicants that had signed up to test for the Subscriber. The early termination fee is one-third (33%) of the annual subscriber fee as noted in Section 1.5 of this Agreement. The early termination fee is in addition to any other fees agreed to by this Agreement.

8. Entire Agreement, Amendment. This is the entire Agreement between the parties. Any prior agreement, written or oral, shall be deemed merged with its provisions. This Agreement shall not be amended, except in writing, at the express written consent of the parties hereto.

This Agreement is dated this 17th day of DEC, 2009.

CITY OF BLACK DIAMOND, WA

By:

Howard Batts

Print:

Howard Batts

Its:

Mayor

Contact:

Black Diamond Police Dept.

Address:

P.O. Box 599

City/State:

Black Diamond, WA 98010

Telephone:

253-431-1012

PUBLIC SAFETY TESTING, INC.

By:

Jon F. Walters, Jr.

Print:

Jon F. Walters, Jr.

Its:

President

Jon Walters

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