

File ID: TMP-3233

Cover Memo

Meeting Type: City Council Regular Meeting Meeting Date: 8/10/2023

Department: Human Resources

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an agreement between the City of Huntsville and Biddle Consulting Group, Inc. for the right to use the TestGenius (which may include license for CritiCall and/or OPAC and/or C4 dispatching and skills testing) software.

Resolution No.

Finance Information:

Account Number: 1000-42-42100-515370-00000000

City Cost Amount: \$14,985.00

Total Cost: \$14,985.00

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Address: NA

Location: (list below)

District: District 1 District 2 District 3 District 4 District 5 D

Additional Comments: NA

Huntsville, Alabama

RESOLUTION NO. 23-

NOW THEREFORE BE IT RESOLVED by the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an agreement between the City of Huntsville and Biddle Consulting Group, Inc. for the right to use the TestGenius (which may include license for CritiCall and/or OPAC and/or C4 dispatching and skills testing) software on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as <u>"Agreement between the City of Huntsville, Alabama and Biddle Consulting Group, Inc.),"</u> consisting of a total of <u>three</u> (3) pages with the date of the <u>August 10, 2023</u>, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the <u>10th</u> day of <u>August</u> 2023.

President of the City Council of the City of Huntsville, Alabama

APPROVED this the <u>10th</u> day of <u>August</u> 2023.

Mayor of the City of Huntsville, Alabama Online TestGenius Terms of Use

1. GRANT OF LICENSE: Biddle Consulting Group, Inc. grants to the licensee the right to use the TestGenius (which may include license for CritiCall and/or OPAC and/or C4) Software (hereinafter referred to as "SOFTWARE"). Biddle Consulting Group, Inc. reserves all rights not expressly granted to LICENSEE in this legal document. The software is licensed for use by the licensee organization alone. This license may not be extended to any other organization. Unlimited Annual-License Grant. If the Customer has purchased an unlimited annual-license, Biddle Consulting Group, Inc., grants to the LICENSEE a nonexclusive license to access to the SOFTWARE by multiple authorized simultaneous users within the licensee organization. This Annual License Agreement allows the SOFTWARE to operate through the licensed time period and then cease to function. Annual relicensing will be necessary in order for continued use of the SOFTWARE. It is the responsibility of the licensee to export data that the licensee may wish to access later in the event that the licensee opts to allow an annual license to expire. The licensee is authorized to use the SOFTWARE for testing and/or training applicants or employees at the licensed organization only. It is an express violation of the license agreement to allow use of the SOFTWARE by any other unlicensed organization. As such, the licensee is not authorized to use the software as part of a "testing/certification service" for applicants or employees, unless expressly licensed for such use.

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5. INDEMNITY. Biddle Consulting Group, Inc. makes no representations, warranties or guaranties concerning the SOFTWARE's compliance with applicable discrimination and civil rights laws.

6. TERMINATION. This License is effective until terminated. Either party can terminate this Agreement by providing a written notice of termination to the other party. This License will terminate automatically without notice from Biddle Consulting Group, Inc. if the licensee fails to comply with any provision of this License.

7. GOVERNING LAW. The laws of the State of Alabama govern this Agreement.

8. ELECTRONIC SIGNATURE. The Parties agree that any form of electronic signature, including but not limited to signatures via facsimile, scanning, or electronic mail, may substitute for the original signature and shall have the same legal effect as the original signature.

LIMITED WARRANTY. Biddle Consulting Group, Inc. warrants that, for a period of thirty (30) days from the date of delivery, the SOFTWARE will perform substantially in accordance with the Operator's Manual and that the media on which the SOFTWARE is fixed will be free from defects in materials and workmanship under normal use and service. This Limited Warranty is void if failure of the SOFTWARE has resulted from accident, abuse or misapplication. This limited warranty provides the licensee specific legal rights.

CUSTOMER REMEDIES. Biddle Consulting Group Inc.'s entire liability and the licensee's exclusive remedy shall be repair or replacement of the SOFTWARE that does not meet Biddle Consulting Group Inc.'s Limited Warranty and which is returned to Biddle Consulting Group, Inc. with a copy of receipt. Any replacement SOFTWARE will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. THESE REMEDIES ARE NOT AVAILABLE OUTSIDE OF THE UNITED STATES OF AMERICA OR CANADA.

NO OTHER WARRANTIES. The foregoing warranties are in lieu of all other warranties, either express of implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose, with respect to the SOFTWARE, the accompanying written materials, and other media. Due to the myriad of factors that impact the outcomes of EEO-related litigation, BCG does not guarantee that the work done by its employees or officers or its products will bear successful outcomes in audits or litigation. BCG will at all times operate in a professional manner to provide the highest quality of service possible. No other warranty or representation, either expressed or implied, is included in the work prepared by BCG or its products. The parties agree that the aggregate liability of the BCG and any other persons or entities arising from performance of this Agreement on account of any and all injury or damage to person or property, any defect, error, omission, or professional negligence, including cost of defense and attorney fees, will be limited to a sum not exceeding the contract value. BCG's client or partner hereby releases and agrees hold the Consultant and its employees free and harmless from any such liability.

NO LIABILITY FOR CONSEQUENTIAL DAMAGES. In no event shall Biddle Consulting Group, Inc. or its suppliers be liable for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of the use of or inability to use the SOFTWARE, even if Biddle Consulting Group, Inc has been advised of the possibility of such damages.

Should there be any questions concerning this Agreement, contact BCG at 193 Blue Ravine Road, Suite 270, Folsom, CA 95630. www.biddle.com : www.testgenius.com : staff@biddle.com : 916-294-4250

Michael Callen, VP of Products Date: 7/25/2023

Customer Entity Name: City of Huntsville

Signature:

Date: ____







Tenya Green HR Admin Manager City of Huntsville (AL) Police & Fire

3-Year Renewal Quote with Payment Installments Each Year	
SUBSCRIPTION RENEWAL INFO	DATE INFO
TestGenius/CritiCall Skills Testing Allows your organization to administer an unlimited number of online tests to an unlimited number of dispatch job candidates, remotely and/or onsite.	Total Subscription Period: 8/26/23 – 8/25/26
Year 1 to be billed in the amount of \$4,995.00 on or before: 8/25/23	Year 1 Subscription Period: 8/26/23 – 8/25/24
Year 2 to be billed in the amount of \$4,995.00 on or before: 8/25/24	Year 2 Subscription Period: 8/26/24 – 8/25/25
Year 3 to be billed in the amount of \$4,995.00 on or before: 8/25/25	Year 3 Subscription Period: 8/26/25 – 8/25/26
Elite Premium Client Support Includes unlimited client & candidate support, training, updates & upgrades.	Included w/Total
Total Cost	\$14,985.00
Billing Terms	Net 30
Renewal Quote Valid Through	8/25/23

Renewal Approved By: _____

(please print)

Date:

Danny Thompson | TestGenius Client Relations