

**AGREEMENT FOR BEHAVIORAL ASSESSMENT ADMINISTRATION  
SERVICES**

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_ 2013, is by and between the City of Fort Lauderdale, a Florida municipality, ("City"), whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301-1016, and The HarBeck Company, Inc. a Texas corporation authorized to transact business in the State of Florida ("Company" or "Contractor").

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida, at its meeting of December 17, 2013, authorized the proper City officials to execute an Agreement between Company and City authorizing the purchase of behavioral assessment administration and related services for recruitment and staff development; and

WHEREAS, the Company is willing and able to furnish such services for the compensation and on the terms hereinafter set forth,

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the City and the Company covenant and agree as follows:

**I. TERM OF AGREEMENT**

The initial term of this Agreement shall be for one year from the date of this Agreement. The term may be extended, upon approval by both parties, for up to three (3) consecutive one (1) year terms, upon the same terms and conditions contained herein.

**II. SCOPE OF SERVICES/ COMPENSATION**

- A. Company shall provide to the City the goods and services set forth in the attached Proposal, which is incorporated as if fully set forth herein as Exhibit A hereto, in accordance with and in strict compliance with the terms and conditions of this Agreement.
- B. The Company agrees to provide the services and/or materials as specified in the Proposal at the cost specified in Exhibit A. The total cost of the services provided under this Agreement shall not exceed \$50,000. It is acknowledged and agreed by Company that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Company for Company's services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon Company's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Except as otherwise provided in the solicitation, no amount shall be paid to Company to reimburse Company's expenses.

### **III. METHOD OF BILLING AND PAYMENT**

Company may submit invoices for compensation no more often than monthly, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the goods provided.

City shall pay Company within forty-five (45) days of receipt of Company's proper invoice, as provided in the Florida Local Government Prompt Payment Act.

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the City's Contract Administrator. Payment may be withheld for failure of Company to comply with a term, condition, or requirement of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the City's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

### **IV. GENERAL CONDITIONS**

#### **A. Indemnification**

Company shall protect and defend at Company's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Company or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Company. The foregoing indemnity by Company includes indemnification for challenge to the validity or correctness of an assessment or test administered pursuant to this Agreement and provision of expert testimony by Company in defense of such assessments and/or tests. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Company under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

## **B. Intellectual Property**

Company shall protect and defend at Company's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Company's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the Company uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

## **C. Termination for Cause**

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Company's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to the City's satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

## **D. Termination for Convenience**

The City reserves the right, in its best interest as determined by the City, to cancel this contract for convenience by giving written notice to the Company at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Company shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Company acknowledges and agrees that he/she/it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Company, for City's right to terminate this Agreement for convenience.

### **E. Cancellation for Unappropriated Funds**

The City reserves the right, in its best interest as determined by the City, to cancel this contract for unappropriated funds or unavailability of funds by giving written notice to the Company at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Company is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

### **G. Environmental, Health and Safety**

Company shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Company shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Company. Company shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Company agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Company's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

### **H. Standard of Care**

Company represents that he/she/it is qualified to perform the Work, that Company and his/her/its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified companies under similar circumstances.

### **I. Public Records**

Absent an applicable exemption, all records made or received by the CITY in connection with this Agreement are public records.

Company shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- (b) Provide the public with access to public records on the same terms and

conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2013), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the Company upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

#### **J. Audit Right and Retention of Records**

City shall have the right to audit the books, records, and accounts of Company and Company's subcontractors that are related to this Agreement. Company shall keep, and Company shall cause Company's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Company and Company's subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Company or Company's subcontractors, as applicable, shall make same available at no cost to City in written form.

Company and Company's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Company and Company's subcontractors' records, Company and Company's subcontractors shall comply with all requirements thereof; however, Company and Company's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Company shall, by written contract, require Company's subcontractors to agree to the requirements and obligations of this Section.

The Company shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

**K. Public Entity Crime Act**

Company represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a Company, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a Company, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

**L. Independent Company**

Company is an independent contractor under this Agreement. Services provided by Company pursuant to this Agreement shall be subject to the supervision of the Company. In providing such services, neither Company nor Company's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Company or Company's agents any authority of any kind to bind City in any respect whatsoever.

**M. Non-Waiver**

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Company as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

**N. Assignment and Performance**

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, Company shall not subcontract any portion of the work required by this Agreement. City may terminate this Agreement, effective immediately, if there is

any assignment, or attempted assignment, transfer, or encumbrance, by Company of this Agreement or any right or interest herein without City's written consent.

Company represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Company shall perform Company's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Company's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event Company engages any subcontractor in the performance of this Agreement, Company shall ensure that all of Company's subcontractors perform in accordance with the terms and conditions of this Agreement. Company shall be fully responsible for all of Company's subcontractors' performance, and liable for any of Company's subcontractors' non-performance and all of Company's subcontractors' acts and omissions. Company shall defend at Company's expense, counsel being subject to City's approval or disapproval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Company's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Company's subcontractors or by any of Company's subcontractors' officers, agents, or employees. Company's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke at any time.

#### **O. Conflicts**

Neither Company nor any of Company's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Company's loyal and conscientious exercise of judgment and care related to Company's performance under this Agreement.

Company further agrees that none of Company's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Company is not a party, unless compelled by court process. Further, Company agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding

unless compelled by court process. The limitations of this section shall not preclude Company or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Company is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Company agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Company.

**P. Materiality and Waiver of Breach**

City and Company agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**Q. Compliance With Laws**

Company shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Company's duties, responsibilities, and obligations pursuant to this Agreement.

**R. Severance**

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

**S. Limitation of Liability**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Company hereby expresses its willingness to enter into this Agreement with Company's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to Company pursuant to this Agreement.



Accordingly, and notwithstanding any other term or condition of this Agreement, Company hereby agrees that the City shall not be liable to Company for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the City to Company pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

**T. Jurisdiction, Venue, Waiver, Waiver of Jury Trial**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

**U. Amendments**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or City Manager, as determined by City Charter and Ordinances, and Company or others delegated authority to or otherwise authorized to execute same on their behalf.

**V. Prior Agreements**

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

**W. Payable Interest**

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Company waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

**X. Representation of Authority**

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

**Y. Uncontrollable Circumstances ("Force Majeure")**

The City and Company will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

A. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

D. The non-performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Company will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

**Z. Scrutinized Companies**

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or services of \$1 million or more:

The Company certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria

as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The City may terminate this Contract at the City's option if the Company is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2013), as may be amended or revised.

IN WITNESS WHEREOF, the City and the Company execute this Contract as follows:

CITY OF FORT LAUDERDALE

By: \_\_\_\_\_  
City Manager

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

ATTEST

COMPANY

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Print  
Title:

(CORPORATE SEAL)

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ as \_\_\_\_\_ (title) for \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public, State of  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name  
of Notary Public)

Personally Known \_\_\_\_ OR Produced Identification \_\_\_\_  
Type of Identification Produced \_\_\_\_\_

EXHIBIT A

**THE HARBECK COMPANY, INC.**  
**"Providing Training and Consulting Since 1991"**  
**5600 West Lover's Lane #116-398 • Dallas, TX • 75209**  
**Phone: 214/363-6780**

**Kristin Tigner, PHR, IPMA-CP**  
 Talent Manager  
 City of Fort Lauderdale  
 Human Resources Department, 3rd Floor  
 100 N. Andrews Avenue  
 Fort Lauderdale, Florida 33301

Phone: (954) 828-5251 | Fax: (954) 828-5388 | E-mail: [ktigner@fortlauderdale.gov](mailto:ktigner@fortlauderdale.gov)

| QTY | ITEM                                | DESCRIPTION   | UNIT PRICE  |
|-----|-------------------------------------|---|---|
|     | Style of Influence Assessment (SOI) | <ul style="list-style-type: none"> <li>Behavioral Style Assessment</li> <li>This is the only profile on the market today that identifies what a person will actually do when on the job. This is not a personality profile but rather an assessment that determines how an individual will influence or impact others. This assessment was designed as a non-profit individual and team assessment.</li> <li>The goal of the SOI is to help employees learn how to avoid conflict, heighten efficiency, and improve service.</li> </ul> | \$375 each<br><br>Discounts of 15% when order count reaches 10 or more <u>per order</u> |
|     | Extended DISC Assessment            | <ul style="list-style-type: none"> <li>Personality Style Assessment</li> <li>his assessment identifies both natural and adapted style including "pressure reactions"</li> <li>Also includes team profiles for purposes of communication improvement and team building</li> </ul>  | \$225 each<br><br>Discounts of 15% when order count reaches 10 or more <u>per order</u> |
|     | Profiles XT (Job Fit Assessment)    | <ul style="list-style-type: none"> <li>Job Fit Test</li> <li>This assessment compares the candidate against the ideal job pattern and offers a percentage of fit against the ideal job candidate. This assessment does not compare a candidate against an average, but rather against excellence.</li> </ul>  | \$375 each<br><br>Discounts of 15% when order count reaches 10 or more <u>per order</u> |

|  |   |   |
|--|---|---|
| Coaching (On-Site)   | Individual development<br>Team and executive team development                                   | Daily fee for work on-site<br>\$2,400   |
| Coaching (Distance)  | <ul style="list-style-type: none"> <li>• Hourly rate for telephone or Web-Conference</li> </ul> | Does not include travel and lodging<br>Hourly rate for one-on-one distance coaching<br>\$275/hr |
| Contact for questions regarding billing: Rebecca Stallings 214/363-6780 <a href="mailto:rebecca@harbeck.com">rebecca@harbeck.com</a> |   |   |