

SEGAL WATERS CONSULTING **Agreement for Services**

This Agreement between The Segal Company (Western States) Inc., a **Maryland** corporation, d/b/a Segal Waters Consulting (hereinafter “Segal Waters”) and Shelby County Government (hereinafter the “Client”) is entered into as of **XXXXXX, 2016**.

Accordingly, and in consideration of the mutual premises and provisions hereof, the parties hereby agree as follows:

1. BASIC SERVICES

Segal Waters shall conduct a Job Classification that includes conducting a total compensation market assessment of existing County job classifications as compared to selected government geographical markets. The survey should capture pay range minimums, midpoints, and maximums as well as basic benefits (health; retirement; social security) as a percent of base salary. The market pay analysis should include pay variances per classification, as well as a description of the pay structure and pay advancement method of the other markets surveyed. The following steps shall include:

Step 1: Project Initiation - meet with the County’s Project Team, Stakeholders, and any other key advisors to the project. The purpose of the meeting is to:

- Confirm the goals and objectives of the study
- Discuss the County’s current compensation and classification structures, as well as the reasons for this project
- Finalize the timeline and specific dates for deliverables
- Clarify Segal Waters’ and the County’s roles in each project phase
- Establish parameters and protocols for keeping the Project Team updated and informed
- Identify data or information needed to support the overall assignment

Step 2: Total Compensation Market Assessment – conduct the total compensation market study, including the following:

- Identify benchmark job titles and draft brief job summaries for each benchmark title based on current job descriptions to assist with matching jobs consistently and appropriately.
- Identify comparable public sector employers to survey, research and establish contact information.
- Design and distribute a survey instrument for collecting the market information in MS Excel to collect benchmark job base pay ranges (minimum and maximum annual pay rates), supplemental pay practices, health care information, retirement programs, and other supplemental benefits and perquisites.
- Design a database in Microsoft Access to support our analysis. This database will become the property of the County upon completion of this project for your future analyses. Segal Waters will populate the database with the information collected from the data sources.
- Analyze the survey data to determine the County’s market position relative to the market average minimum, midpoint, and maximum pay rate for each benchmark job title as well as total compensation including base salary and annual employer’s cost of benefits. Segal

Waters will determine the market position for each job title and occupational group. To the extent that different employer groups or industry sectors are included in the study, we will segment our findings accordingly. In addition, if applicable, Segal Waters will geographically adjust market data for respondents outside of the metro area, using current cost of labor differentials from ERI Geographic Assessor.

- Develop one draft and one final report of the market study findings.

Step 3: Recommendations Development - based on the findings of the market study and with the guidance of the Project Team, we will then develop revised salary schedules for the County. For this step in the project, we will:

- Design recommended salary schedule(s)
- Recommend Pay Grade Assignments initially for benchmark jobs and then for non-benchmark jobs. We will review the grade assignments with the Project Team, highlighting situations that represent significant change.
- Determine Cost Impact after grade assignments and the structure are finalized. We will calculate the initial and long run cost of implementation working with the Project Team to determine the placement criteria.
- Assist with Implementation by developing an implementation schedule, drafting a check list of items that will need to be addressed prior to implementation, assist the County with supporting or defending study results, prepare presentation materials, and assisting with developing communication materials.

Step 4: Present Final Results to the County – Segal Waters will draft a presentation for the Project Team’s review, and then will finalize the document and deliver the presentation to the Commission, in conjunction with a senior member of the County’s Project Team.

2. ADDITIONAL SERVICES

From time to time, the Client may request or Segal Waters may propose in writing future services and the fees payable for such services. If such proposal is accepted by the parties, then such additional services will be governed by the terms and conditions of a written instrument signed by the parties.

3. RESPONSIBILITY OF CLIENT

To enable Segal Waters to perform the services contemplated herein, the Client agrees to promptly provide Segal Waters with such data, materials and other information as Segal Waters reasonably requests and all data needed to perform these services. Upon receipt of data, materials and other information, Segal Waters will review it for basic reasonableness and consistency and notify the Client of any concerns. Subject to its obligations in the preceding sentence, Segal Waters may rely upon such data, materials and other information provided to it by such parties as being accurate and complete. Consultant is not required to verify or audit any data or other information so provided, nor is it liable to the Client or others if such information is inaccurate, misleading or false.

4. PAYMENT TERMS

A. **Basic Services.** Segal Waters’ fee for providing the basic services described in Section 1 shall not exceed \$100,000. Segal Waters will bill the fixed fee associated with each project step upon completion. All expenses associated with materials, supplies and overhead for all tasks outlined in this proposal are included in our fixed fee.

| Project Step | Fixed Fee |
|--|------------------|
| <p>Step 1: Project Initiation</p> <p>Assumes we conduct one on-site meeting, one day of stakeholder interviews, as well as time associated with learning about the County's current compensation and classification structures, policies, and practices.</p> | \$5,000 |
| <p>Step 2: Total Compensation Market Assessment</p> <p>Assumes the following:</p> <ul style="list-style-type: none"> • Develop a customized total compensation market survey document with up to 100 benchmark job titles, to be distributed to no more than 12 public sector peer employers and three sources of private sector data for jobs relevant to the private sector • Individual analysis of sub-categories of jobs within Information Technology, Public Health Administration, and Public safety • One draft and one final report of the market study findings | \$80,000 |
| <p>Step 3: Recommendations Development</p> <p>Assumes the following:</p> <ul style="list-style-type: none"> • Develop pay schedule(s) to cover all jobs covered by the study, including specific recommendations for Information Technology, Public Health Administration, and Public Safety • Recommend grade assignments for all job titles covered by the study • Estimate the cost of implementing the recommended pay schedule, including recommendations regarding placement of each employee within the pay ranges, as well as one revised estimate based on Project Team's review and revisions • Assist with implementation – up to 8 hours • One on-site training session to Human Resources staff | \$10,000 |
| <p>Step 4: Present Final Results to the County</p> <p>Assumes we develop and deliver one on-site presentation to the County</p> | \$5,000 |
| TOTAL | \$100,000 |

Our proposed fee includes charges for all professional, analytic, and administrative services, as well as all expenses associated with materials, supplies, overhead, and travel for all tasks outlined in this proposal except as otherwise noted. We will bill the fixed fee associated with each project step upon completion. **Travel expenses shall be made in accordance with the Client's Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements and reimbursement rates. No travel advances will be made by County.**

B. **Additional Services.** Fees for mutually agreed upon additional services will be charged on a time charge basis at Segal Waters' current hourly rates listed below or, in some instances, may be charged on a project basis, in each case as set forth in a written instrument signed by the parties. Fees for additional services will be billed monthly in arrears unless otherwise agreed to by the parties in writing.

| Staff Member | Title/Role | 2016 Standard Hourly Rate |
|-------------------------|--|----------------------------------|
| Elliot R. Susseles, CCP | Senior Vice President, Practice Leader | \$450 |
| Patrick Bracken, CCP | Senior Consultant, Project Manager | \$285 |
| Ruth Ann Eledge, SPHR | Senior Consultant | \$315 |
| Liz Murray-Rust | Senior Compensation Analyst | \$235 |
| Greg Saylor | Compensation Analyst | \$210 |
| Luis Gonzales | Compensation Analyst | \$210 |
| Patrice Glasthal | Compensation Analyst | \$210 |

5. **NON-APPROPRIATION**

Funding for this Agreement between the Client and Segal Waters is dependent at all times upon the appropriation of funds by the organization authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then the Agreement may be terminated effective the last day for which appropriated funding is available.

6. **TERM OF AGREEMENT**

The term of this Agreement shall commence upon full execution of this agreement and continue in effect through June 30, 2017.

7. **TERMINATION OF AGREEMENT**

Either party may terminate this Agreement on thirty (30) days written notice to the other party. Segal Waters will continue to provide services hereunder to the effective date of any such termination and will cooperate with the Client to provide for an orderly transition of the Services to the Client at the time of any such termination. Notwithstanding the foregoing, in the event that the Client is not current in the payment of Segal Waters' invoices at the time that such notice is given, then Segal Waters may choose not to provide Services during the aforementioned thirty (30) day period. Segal Waters will render final billing to the Client after the date of any such termination, and the Client will pay the same in accordance with Section 4.

8. **PROFESSIONAL STANDARDS**

All Services will be performed by competent personnel with the care, skill, prudence and diligence under the circumstances that a prudent consultant would use in discharging its services and in accordance with applicable professional standards.

9. **CONFIDENTIALITY**

Both parties acknowledge that in the negotiation and performance of this Agreement, confidential and proprietary information of each has been and will be made available to the other. The parties agree to use reasonable efforts to maintain the confidentiality of such material, but in no event lesser than was used with like material of the receiving party and not to make any internal use of such material not required or permitted under this Agreement. Neither party will disclose the information to any third party without prior written authorization from the disclosing party. The information received by a receiving party will only be used by those of its employees, agents and consultants whose duties justify the need for access to the information provided and who have agreed to abide by the obligations of secrecy and limited use commensurate in scope with this Agreement. These obligations will apply to verbal information as well as specific portions of the information that are disclosed in writing or other tangible form and

marked to indicate its confidential nature. These obligations will not apply to any of the information which:

- i) Was known to the receiving party prior to receipt under this Agreement as demonstrated by the receiving party's records; or
- ii) Was publicly known or available prior to receipt under this Agreement, or later becomes publicly known or available through no fault of the receiving party; or
- iii) Is disclosed to the receiving party without restrictions on disclosure by a third party having the legal right to disclose the same; or
- iv) Is disclosed to a third party by the disclosing party without an obligation of confidentiality, unless such information must be retained by that party for that party to fulfill its legal or agreement obligations under this Agreement; or
- v) Is independently developed by an employee, consultant, or agent of the receiving party without access to the information as received under this Agreement; or
- vi) The receiving party is obligated to produce as required by law, lawfully issued subpoena, or court order, provided that the disclosing party has been given notice thereof and if there is sufficient time, an opportunity to waive its rights to seek a protective order or other appropriate remedy.

To the extent that particular information is subject to specific statutory confidentiality requirements, the requirements of such statute, rather than this section, shall be controlling.

10. INDEPENDENT CONTRACTOR

Segal Waters is an independent contractor. No provision of this Agreement or act of the parties hereunder pursuant to this Agreement will be construed to express or imply a joint venture, partnership, or relationship other than vendor and purchaser of the services. No employee or representative of Segal Waters will at any time be deemed to be under the control or authority of the Client, or under the joint control of both parties. Segal Waters is liable for all workers' compensation premiums and liability, and federal, state and local withholding taxes or charges with respect to its employees.

11. SUBCONTRACTORS

Any subcontractors to be utilized on this project will be subject to the Client's approval.

12. NO ASSIGNMENT

This agreement may not be assigned by either of the parties without the written consent of the other party.

13. FORCE MAJEURE

Segal Waters will not be liable for any delay in performance or inability to perform due to force majeure, including without limitation any acts of God, acts or omissions of the Client, major equipment failures, fluctuations or non availability of electrical power or telecommunications equipment, or other conditions beyond the control of Segal Waters. If Segal Waters' performance is delayed by force majeure, Segal Waters will discuss the situation with the Client and agree upon an extended period for performance. If an event of force majeure continues for more than thirty (30) days, either party may, at its option, terminate this Agreement and any Statements of Work thereunder. Segal Waters will render a final billing to the Client after the date of any such termination, and Client will pay the same in accordance with Section 4.

14. **THIRD PARTY BENEFICIARIES**

This Agreement is for the benefit of the parties to the Agreement and does not confer any rights or privileges upon any third parties.

15. **DISPUTE RESOLUTION**

A. **Mediation.** To the extent permitted by applicable laws, any disputes between the parties hereto are subject to mediation in accordance with the Judicial Arbitration and Mediation Service (“JAMS”) as a condition precedent to the commencement of any legal proceeding hereunder.

B. **Waiver of Jury Trial.** To the extent permitted by applicable laws, each party hereby waives any right to a trial by jury in any action, suit, or proceeding arising out of this agreement, or any other agreement or transaction between the parties.

C. **Notice.** In the event that either party believes that the other party has not complied with its obligations hereunder, such party shall send written notice of such non-compliance to the other party. In the event that such other party does not cure such non-compliance within thirty (30) days of the date of such notice, then the party sending notice may avail itself of the terms of Section 15A above.

16. **DAMAGES**

In no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability, or otherwise, will Segal Waters, or any of its respective directors, officers, employees or agents, be liable for (i) special, incidental, exemplary, punitive, consequential, or indirect damages, including without limitation lost sales, profits or revenue, or claims for such damages, (ii) any losses or damages connected with, or resulting from any software, hardware, or services provided by Segal Waters or any third party.

17. **CONFLICT OF INTEREST**

Segal Waters hereby affirms that there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a Conflict of Interest. A Conflict of Interest means that because of other activities or relationships with other persons, Segal Waters or its subcontractor is unable or potentially unable to render impartial assistance or advice to the Client, or Segal Waters’ objectivity in performing the agreement work is or might be otherwise impaired.

If an actual or potential Conflict of Interest arises subsequent to the date of this agreement, Segal Waters shall promptly make a full disclosure in writing to the Client of all relevant facts and circumstances. This disclosure shall include a description of actions that Segal Waters has taken and proposes to take to avoid, mitigate, or neutralize the action or potential conflict of interest. Segal Waters will continue performance of work under the agreement until notified by the Client of any contrary action to be taken.

18. **NON-DISCRIMINATION**

Segal Waters agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth the substance of this clause.

19. **AUDIT OF SEGAL WATERS' FEES**

Upon reasonable notice and during normal business hours, the Client reserves the right to audit or cause to be audited Segal Waters' books and accounts with respect to fees and expenses under this Agreement at any time during the term of this Agreement and for three years thereafter except for confidential or proprietary information or trade secrets of Segal Waters or any third party.

20. **NOTICES**

All notices, claims, and approvals given under this Agreement must be in writing and delivered in person, by first class or express mail or facsimile addressed a set forth below or such other address that a party gives by notice. Notice given in accordance with this subsection will be deemed given when received.

- A. If to the Client: Shelby County, Government
Deputy CAO
160 N. Main Street, 11th Floor
Memphis, TN 38103

- B. Copy to: Shelby County Attorney's Office
Contract Administration/Assistant County Attorney
160 N. Main Street, 11th Floor
Memphis, TN 38103

- C. If to Segal Waters: Consultant:
Patrick Bracken
Vice President and Senior Consultant
1920 N Street NW, Suite 400
Washington, DC 20036

- D. Copy to: General Counsel
The Segal Company
333 West 34th Street
New York, NY 10001-2402

21. **AMENDMENT OR MODIFICATION**

No amendment or modification of this Agreement shall be valid or binding unless set forth in writing and duly executed by the parties hereunder.

22. **ORDER OF APPLICATION OF CONTRACT AND SUPPORTING EXHIBITS**

In the event of a discrepancy or conflict between the terms of this Contract, the Request for Qualifications (Exh. "A"), **Segal Waters Proposal (Exh. "B")** and the Cost Proposal (Exh. "C"), the terms of this Contract shall control, followed by the Request for Qualifications, **Segal Waters Proposal** and lastly the Cost Proposal.

23. **RIGHTS IN DATA**

The County shall become the owner, and Segal Waters shall be required to grant to the County, or its successors, a perpetual, non-exclusive, non-transferable, royalty-free right, in the County's name, to use any deliverables provided by the Segal Waters under this Contract, regardless of whether they are proprietary to the Segal Waters or to any third parties.

24. SEVERABILITY

The invalidity, in whole or part, of any provision of this Agreement will not affect the remainder of that provision or this Agreement

25. WAIVER OF DEFAULT

Waiver by a party of any default by the other will not be deemed a waiver of any other default irrespective of whether such default is similar.

26. INSURANCE REQUIREMENTS

A. Segal Waters shall purchase and maintain, in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the County from claims which may arise out of or result from Segal Waters' operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts Segal Waters or subcontractor may be liable.

B. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. Shelby County Government, its elected officials, appointees and employees will be named as additional insured. Segal Waters will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements. All policies shall provide for thirty (30) days written notice to Client of cancellation or material change in coverage provided. If policy terms and conditions do not allow for notice to Client, Segal Waters will immediately notify Client and provide evidence of replacement coverage with no lapse.

i) Professional Liability Insurance - \$1,000,000.00 per claim/\$3,000,000.00 annual aggregate, indicating if coverage is on occurrence basis or claims-made.

ii) Commercial General Liability Insurance - \$1,000,000.00 limit per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 General Aggregate/\$2,000,000.00 Products-completed Operations Aggregate, indicating the coverage is provided on a claims-made or on an occurrence basis. The insurance shall include coverage for the following:

- a. Premises/Operation;
- b. Contractual Liability;
- c. Independent Contractors;
- d. Personal Injury.

iii) Workers Compensation and Employers' Liability Insurance – Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for \$1,000,000.00 per accident.

iv) Business Automobile Liability Insurance - \$1,000,000.00 each accident for property damage and personal injury. Coverage is to be provided on all owned/leased autos, non-owned autos and hired autos.

C. Segal Waters shall provide County with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

