

CONTRACT FOR COMPENSATION STUDY FOR POLICE AND FIRE DEPARTMENTS

This contract is dated, made, and entered into as of the 4th day of February, 2016, by the City of Durham ("City"), a N.C. municipal corporation, and The Segal Group (Eastern States), Inc. doing business as Segal Waters Consulting ("Contractor"), a private corporation owned by its active officers, with its principal place of business in Addison, Texas.

Sec. 1. Background and Purpose. The purpose of this contract is to have the Contractor conduct a comprehensive compensation study of the City's Police and Fire Pay Plans and their associated pay administration policies, as outlined in the attached Exhibit A. Segal Waters Consulting Proposal for a Comprehensive Compensation Study for Police and Fire Departments, dated December 21, 2015 and Exhibit B. Segal Waters Consulting Revised Cost Proposal for a Comprehensive Compensation Study for Police and Fire Departments, dated February 1, 2016. The salary structures for the Police Department and Fire Department have not been adjusted since the implementation of their current pay plans in 2009. The tangible deliverables expected include, but are not limited to, providing the City's Human Resources Department with the following:

- Recommended pay plans for Police and Fire that support internal equity and maintain external competitiveness;
- Recommended policies, procedures and guidelines for ongoing effective salary administration and pay plan maintenance.

The resulting recommendations will address existing salary relationships between employees and will offer approaches to establish and maintain pay equity. The recommendations will also provide a methodology for fair and equitable pay progression for ranked personnel.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's. The Contractor shall perform a comprehensive compensation study for the City of Durham Police and Fire Departments covering all sworn personnel and job titles. The Contractor will provide services as outlined in the attached original proposal, dated December 21, 2015, at a cost and with additional services as outlined in the revised cost proposal dated February 1, 2016.

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. 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. 4. Contractor's Billings to City. Compensation. The Contractor will submit an invoice to the City for the amounts to be paid pursuant to this contract upon completion of each of the Project Steps as written on page 2 of the Segal Waters Consulting Revised Cost Proposal for a Comprehensive Compensation Study for Police and Fire Departments dated February 1, 2016.

Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. 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 Contractor's total payment for services is not to exceed \$75,000. This 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 the proposal except as otherwise noted. Travel expenses for meetings scheduled less than one week in advance will be charged additionally. If a scheduled meeting is cancelled by the City, any non-refundable travel expenses will be billed to the City at Contractor's cost.

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

Sec. 5. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants

and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (the "City Project Manager") determines that the Contractor has failed to pay all Subcontractors in a timely manner as required by Sub-section 5 (a), the City may withhold from progress or final payments to the Contractor the sums estimated by the City Project Manager to be

- (i) the amount of interest due to any and all Subcontractors under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to any and all Subcontractors, up to, but not exceeding, 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The City Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the City Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the City Project Manager reasonably requires, including notarization if so specified.

(e) The City of Durham understands that costs and penalties may be incurred if agreed upon meeting and training schedules are changed to compensate Contractor for pre-purchased travel arrangements and the reservation of a consultant's time. Cancellations may result in an assessment of up to 100% of the Contractor's cost of the deliverable for that day.

Sec. 6. Insurance. Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract, the coverage terms and limits indicated below. Compliance with the insurance requirements denoted in this Section, as well as the City's review and acceptance of insurance maintained by Contractor, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

Insurance will be required as follows:

Commercial General Liability: Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Additional Insured: Contractor agrees to endorse the City as an Additional Insured on the aforesaid Commercial General Liability policy. The Additional Insured endorsement shall read 'City of Durham as its interest may appear'.

Certificate of Insurance: Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverages, limits and endorsements required by this Section are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor's insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
Attn: (Alethea Hardy)
Human Resources Department
101 City Hall Plaza
Durham, NC 27701

Police and Fire Compensation Study Contract between the City of Durham and The Segal Group (Eastern States), Inc. doing business as Segal Waters Consulting

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham's Risk Manager.

Sec. 7. Performance of Work by City. If the Contractor fails to perform the Work as set forth in Section 2, the City may, in its discretion, 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. 8. Exhibits. The following exhibits are made a part of this contract:

Exhibit A. Segal Waters Consulting Proposal for a Comprehensive Compensation Study for Police and Fire Departments, dated December 21, 2015

Exhibit B. Segal Waters Consulting Revised Cost Proposal for a Comprehensive Compensation Study for Police and Fire Departments, dated February 1, 2016

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 9. Notice. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices shall be given by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows:

To the City:

Alethea Hardy
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919) 560-4969
Email: alethea.hardy@durhamnc.gov

To the Contractor:

Linda Wishard
Segal Waters Consulting
5057 Keller Springs Road, Suite 110
Addison, TX 75001-6316
The fax number is (214) 481-0460
Email: lwishard@segalco.com

(b) Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, personal delivery, UPS, Federal Express, or a designated delivery service. If the notice or other communication is sent by 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 United States Postal Service or upon actual delivery, whichever first occurs.

(c) Email Notice to be Provided Additionally. In addition to providing notice as stated in sub-section (a), the parties shall also send notice by email to the designated individual.

Sec. 10. 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 subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "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. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 11. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP) and throughout the life of this contract. This section (titled "Trade Secrets; Confidentiality") 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. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

Sec. 12. 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 and the section of this contract titled Trade Secrets and Confidentiality, if any, 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 one hundred dollars as a TFC fee and 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.

Sec. 13. E-Verify compliance under 143-133.3. The Contractor and its Subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). This E-Verify compliance under 143-133.3 section is intended to apply to only the contracts to which NCGS 143-133.3(a) applies and shall be construed in accordance with that statute. Any clause in this contract included under the authority of NCGS 160A-20.1(b) shall be of no effect; provided, however, to the extent (if any) required to comply with NCGS 143-129(j), a clause in this contract requiring the Contractor and its Subcontractors to comply with the requirements of Article 2 of Chapter 64 shall remain in effect if this contract is subject to NCGS 143-129. This E-Verify compliance under 143-133.3 section is valid only if House Bill 318, which was ratified on 29 September 2015, is signed into law by the Governor of North Carolina.

Sec. 14. 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 estop, 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) 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.

(g) 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.

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

(i) 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

Police and Fire Compensation Study Contract between the City of Durham and The Segal Group (Eastern States), Inc. doing business as Segal Waters Consulting

definition in this contract will not apply to the extent the context requires otherwise.

(j) 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.

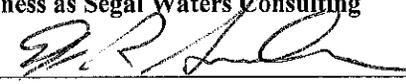
(k) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a Deputy or Assistant City Manager without City Council action.

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.

CITY OF DURHAM

The Segal Group (Eastern States), Inc. doing business as Segal Waters Consulting

By: _____

By:  _____

Name: _____

Name: ELLIOTT R. SABELLO

Title: _____

Title: SR. VICE PRESIDENT

Date: _____

Date: 2/8/16

ATTEST: