

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

MEMPHIS PUBLISHING COMPANY,)
doing business as *The Commercial Appeal*,)
and LOUIS GRAHAM,)

Petitioners,)

v.)

No. CH-16-1074-1

CITY OF MEMPHIS and)
INTERNATIONAL ASSOCIATION OF)
CHIEFS OF POLICE, INC.,)

Respondents.)

**PETITION FOR ACCESS TO PUBLIC RECORDS AND
TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS**

**TO THE HONORABLE CHANCELLORS OF THE
CHANCERY COURT FOR THE THIRTIETH JUDICIAL DISTRICT:**

Pursuant to the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-503 and 10-7-505 (“the Act”), Petitioners Memphis Publishing Company, doing business as *The Commercial Appeal*, and Louis Graham (collectively, “MPC”) petition this Court for access to certain public records and to obtain judicial review of the actions of officials of Respondents City of Memphis (“the City”) and International Association of Chiefs of Police, Inc. (“IACP”) in denying Petitioners access to those records and state as follows:

INTRODUCTION

1. Law enforcement and public safety are the highest priorities of any local government. Local government officials are, and should be, fully accountable to citizens for their performance on law enforcement and public safety. Tennessee law provides its citizens tools to

ensure the accountability of local government officials, and primary among these tools is a citizen's right to see public records.

2. Here, the City of Memphis and the recruiter it hired to find and evaluate candidates for the City's new Chief of Police have willfully refused to allow Memphis citizens access to clearly public records – the applications of those under consideration for the highest law enforcement position in the City. These refusals were made in blatant disregard of decades of settled Tennessee law and in disregard for the most basic notions of accountability of public servants.

3. These applications are public records and should be made immediately available to the public, and the City and its recruiter should bear the costs of this lawsuit and efforts to gain access under the Tennessee Public Records Act.

FACTS

4. Petitioner Memphis Publishing Company is a corporation organized and existing under the laws of Delaware and authorized to do business and doing business in Tennessee. Its principal place of business is at 495 Union Avenue, Memphis, Shelby County, Tennessee. MPC publishes *The Commercial Appeal*, a daily newspaper of general circulation throughout Memphis and the surrounding area. Petitioner Louis Graham is the Editor of *The Commercial Appeal*.

5. Petitioners are Tennessee citizens whose requests to exercise their rights under the Act of access to public records, personal inspection of public records, and copies of public records have been denied by Petitioners.

6. Respondent City of Memphis ("City") is a municipal corporation and a governmental entity organized under the laws of the State of Tennessee. The City may be served

with process by serving the Mayor of the City of Memphis, Jim Strickland, in care of the Office of City Attorney, 125 North Main Street, Room 336, Memphis, Tennessee 38103.

7. Respondent International Association of Chiefs of Police, Inc. (“IACP”) is a corporation organized under the laws of the State of Virginia. Its principal office address is at 44 Canal Center Plaza, Suite 200, Alexandria, Virginia 22314. IACP may be served with process by serving its Registered Agent: CT Corporation System, 4701 Cox Road, Suite 285, Glen Allen, Virginia 23060.

8. This Court has subject matter jurisdiction of this petition and venue is proper in this Court under Tenn. Code Ann. § 10-7-505(b).

9. The City of Memphis is currently in the process of searching for and hiring a new Chief of Police.

10. Among its activities, IACP offers its services as a uniquely effective national recruiter for executives and administrative personnel in police, law enforcement, security, and related organizations. IACP offers to perform these services for pay and advertises its capability to perform these services on its public website.

11. IACP offered these services to the City of Memphis to perform a national search for a new Chief of Police of the City of Memphis, to recruit candidates for this position, and to evaluate candidates for this position. As a result, the City of Memphis contracted with IACP to perform a national search as part of its efforts to recruit and hire a new Chief of Police for the City of Memphis. A true and correct copy of this contract, entitled “Professional Services Agreement,” is attached as **Exhibit 1**.

12. The proposal made by IACP to the City to enter into this Professional Services Agreement was attached by the parties as an exhibit to the Professional Services Agreement.

(This proposal is included as a part of **Exhibit 1**.) This proposal describes a “Resume Receipt and Review” process, which includes the collection of application materials, including resumes, from applicants for the position of Chief of Police. According to the proposal, the best ten to twenty candidates would then be chosen by IACP for “Semifinalist Screening,” and then approximately six finalists would be selected and presented by IACP to the City as “finalists” for the position of Chief of Police.

13. Thus, as an essential and integral part of the services IACP contracted to provide the City of Memphis, the City requested, and IACP agreed, to solicit, invite, request, accept, and evaluate the applications and resumes of individuals from all over the country who would be interested in being considered for employment by the City of Memphis as its next Chief of Police.

14. On information and belief, if the City of Memphis had not hired IACP or another similar outside contractor to assist it in its search for a new Chief of Police, the City would have itself performed the functions of soliciting, inviting, requesting, accepting, and evaluating the applications and resumes of individuals interested in being considered for employment by the City of Memphis as its next Chief of Police.

15. On information and belief, the City of Memphis has routinely performed these functions in connection with the recruitment and hiring of other City employees.

16. On information and belief, the City of Memphis has performed these functions for other employee positions through or under the supervision of the City’s Division of Human Resources. Indeed, the City’s contract with IACP was signed, on behalf of the City by, among others, Alexandria Smith, Director of the City’s Division of Human Resources.

17. Upon information and belief, IACP has solicited, invited, requested, and accepted applications for the position of Chief of Police of the City of Memphis.

18. Upon information and belief, IACP currently has these applications in its possession.

19. In the course of his reporting on the City of Memphis's search for a new Chief of Police, Ryan Poe, a reporter for *The Commercial Appeal* employed by MPC, requested from both the City and IACP copies of all applications for the position of Chief of Police of the City of Memphis ("Applications"). True and correct copies of these requests are attached as collective **Exhibit 2**.

20. On June 13, 2016, Mr. Poe sent an email to Ursula Madden, Chief Communications Officer of the City of Memphis, stating in part: "Do you have an ETA on when I could get those police director applications I requested late last week?"

21. Ms. Madden replied: "IACP is handling the application process for the City, so we do not have them in our possession and will not be giving them out for media to review."

22. On June 20, 2016, Mr. Poe sent another email to Ms. Madden, stating, in part:

Ursula, I wanted to follow up on a question I asked Friday: Could you give me an estimated time when my request for the director applicants will be fulfilled? It didn't sound like it would be, but I got a notice saying more time was needed, but that didn't provide the usual estimated completion date. The city is actually required by open records law – see 10-7-503(b)(iii) – to provide an estimated time.

23. In response, Ms. Madden wrote: "Sorry, we don't have any documents responsive to your request."

24. On June 13, 2016, Mr. Poe attempted to contact IACP to make a public records request for the Applications. Mr. Poe left a voice mail message for Sarah Guy at IACP and sent her an email stating in part:

Hey, Sarah. As I mentioned in my voicemail message just now, I'm trying to get the police director applications received by the IACP on behalf of the city of Memphis. That information is public (see below for legal details), and I was told by city spokeswoman Ursula Madden (901-302-0316, ursula.madden@memphistn.gov) that IACP – and not the city – has the applications. Even so, IACP is still responsible for providing those, either to me directly or via the city.

25. Mr. Poe received no response to his voice mail and email to IACP.

26. Under the Tennessee Public Records Act, including Tenn. Code Ann. § 10-7-505(f) and case law interpreting the Act, the City has the authority to request from IACP, and to receive from IACP, the Applications.

27. The Professional Services Agreement also provides that “the City is expressly empowered to demand and disclose any and all records and documents....”

28. From June 13 through 17, 2016, counsel for MPC engaged in correspondence and telephone communication with the City Attorney of the City of Memphis, reconfirming MPC's public records request for the Applications, requesting that the City request or obtain the Applications from IACP so as to make them available under the Act, and requesting any factual or legal justification the City may have had for its refusal to do so.

29. Throughout these communications, the City of Memphis, through its City Attorney, refused to take any action to honor its obligations under the Tennessee Public Records Act, and specifically refused to request or obtain the Applications from IACP so as to make them available under the Act.

30. On June 23, 2016, counsel for MPC wrote the City Attorney of the City of Memphis and IACP Deputy Executive Director Gwen Boniface. (Ms. Boniface signed the Professional Services Agreement between the City of Memphis and IACP on behalf of IACP, indicating her position as Deputy Executive Director of IACP.) In this correspondence, MPC

again reconfirmed its public records request for the Applications and demanded that the City and IACP each comply with the Act and produce copies of Applications. In that letter, MPC again identified the public records requested, advised that the City and IACP had identified no legitimate basis under Tennessee law for refusing to provide access to the Applications, and reminded the City and IACP of the Act's provision providing for certain penalties for willful and knowing refusal to provide access to a public record, including an award of attorney fees and expenses. A true and correct copy of this correspondence is attached as **Exhibit 3**.

31. On June 24, 2016, Gerard P. Panaro, General Counsel of IACP, responded to counsel for MPC's June 23, 2016, written demand, refusing to comply with MPC's request for the access to the Applications.

CLAIM FOR RELIEF

32. As of the filing of this petition, MPC has not been provided access to or copies of the Applications.

33. Upon information and belief, the Applications are in the actual physical possession of IACP.

34. The Applications are in the possession, custody, or control of the City of Memphis.

35. The Applications are public records under the Act, and none of the exceptions to the Act are applicable. Thus, any failure to allow access to the Applications by the public, including MPC, is a violation of the Act.

36. Under Tenn. Code Ann. § 10-7-503(a)(1)(A) and under case law interpreting the Act, the Applications are "documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless

of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency” and are, therefore, public records under the Act.

37. To the extent that the Applications are in the possession of IACP, under case law interpreting the Act, IACP is the functional equivalent of a government agency for purposes of its work under the Professional Services Agreement and, therefore, the Applications are public records subject to the access requirements of the Act.

38. Notwithstanding the fact that the City of Memphis may not have the Applications in its actual physical possession at present, under the Act, including Tenn. Code Ann. § 10-7-503(a)(6) and case law construing the Act, and pursuant to the Professional Services Agreement, the City has the authority to obtain possession of the Applications and to direct the production of the Applications by IACP.

39. Alternatively, under Tenn. Code Ann. § 10-7-503(f), the Applications are “records, employment applications, credentials and similar documents obtained by any person in conjunction with an employment search for ... any chief public administrative officer” and are thus public records subject to the access requirements of the Act, pursuant to that section.

40. MPC’s repeated requests for access to the Applications have not been honored. The City and IACP, therefore, have each failed and refused to grant MPC access to the Applications in violation of the Act.

41. The City and IACP knew, and continue to know, that the Applications are public records and have willfully refused and failed to disclose them.

42. Petitioners have incurred substantial costs in connection with obtaining the Applications, including attorney fees and expenses.

PRAYER FOR RELIEF

WHEREFORE, Petitioners Memphis Publishing Company and Louis Graham pray that this Court:

1. Immediately issue an order requiring Respondents the City of Memphis and International Association of Chiefs of Police, Inc. (“IACP”) to appear before this Court within ten days and show cause, if any they have, why this petition should not be granted, as provided by Tenn. Code Ann. § 10-7-505(b);
2. Grant Petitioners a declaratory judgment that all applications for the position of Chief of Police of the City of Memphis (“Applications”) are public records under Tennessee law, whether in the hands of the City of Memphis or IACP, and that Respondents’ failure to grant access by the public to these public records constitutes a violation of the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-503 *et seq.*;
2. Grant Petitioners a declaratory judgment that Respondents City of Memphis and IACP willfully refused to grant access to the Applications as public records;
3. Order Respondents to immediately make available to MPC copies of the Applications made for the position of Chief of Police of the City of Memphis;
4. Grant Petitioners their reasonable costs and attorney fees pursuant to Tenn. Code Ann. § 10-7-505(g);
5. Grant Petitioners discretionary costs under Tenn. R. Civ. P. 54;
6. Grant Petitioners such equitable relief as may be necessary to secure the purposes and intentions of the Act and specifically Tenn. Code Ann. § 10-7-505, including, if necessary, the exercise of the full injunctive remedies and relief available to the Court; and
7. Grant Petitioners such further relief to which they may be entitled.

ADAMS AND REESE LLP

By: 

LUCIAN T. PERA (Tenn. BPR No. 11641)

J. BENNETT FOX, JR. (Tenn. BPR No. 26828)

Crescent Center

6075 Poplar Avenue, Suite 700

Memphis, TN 38119

Phone: (901) 524-5275

Facsimile: (901) 524-5375

Attorneys for Petitioners

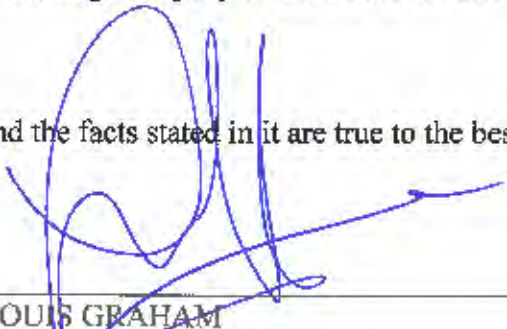
*Memphis Publishing Company and
Louis Graham*

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

LOUIS GRAHAM, being duly sworn, states:

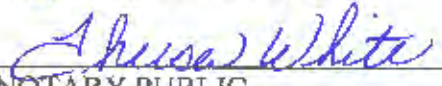
1. I am employed by Memphis Publishing Company as the Editor for *The Commercial Appeal*.

2. I have reviewed this petition, and the facts stated in it are true to the best of my knowledge, information, and belief.



LOUIS GRAHAM

Subscribed and sworn to before me this 27th day of June, 2016.



NOTARY PUBLIC

My Commission Expires:

Jan. 24, 2017



FIAT AND SHOW CAUSE ORDER

TO THE CLERK AND MASTER:

Issue the following Show Cause Order:

Against respondents the City of Memphis and International Association of Chiefs of Police, setting a hearing for Friday, July 8, 2016, at 1000 m, and requiring Respondents to appear at that time and show cause, if any they have, why this Petition should not be granted.

JIM KYLE

CHANCELLOR

Date: JUN 28 2016

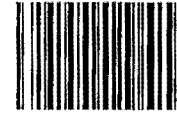
Time: 3:30 p.m.

A TRUE COPY-ATTEST
Donna L. Russell, Clerk & Master
By Donna L. Russell
D.C. & M.

Exhibit 1



DIVISION OF FINANCE



To: Honorable Mayor Jim Strickland

From: Eric S. Mayse, Purchasing Agent *ESM*

Date: February 29, 2016

Subject: Contract # 33116 - INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

Please find attached the above referenced contract for the Mayor's signature. This document does not require City Council approval.

Purpose: Negotiated agreement for professional services (Nationwide Police Executive Search) between the city of Memphis and International Association of Chiefs of Police, Inc.

Financial Commitment: This is a negotiated agreement. There is no financial obligation .

Contracting Authority: By Home Rule Amendment 1852, Section 14, BE IT FURTHER ORDAINED, That the power to contract (other than by franchise agreements) shall remain with the Mayor.

After approval, please return all documents to the Purchasing Department for further processing.

Should you have any questions, please advise.

Attachment

City of Memphis



**JIM STRICKLAND
MAYOR**

DIVISION OF FINANCE

TENNESSEE

3/01/2016

City Contract # 33116

**International Association of Chiefs of Police, Inc.
44 Canal Center Plaza
Suite 200
Alexandria, VA 22314**

Dear Sir or Madam:

We are enclosing, herewith, an executed copy of a negotiated contract between the City of Memphis and the International Association of Chiefs of Police, Inc. for the division of Human Resources for assistance in conducting an executive search for a Chief of Police.

This copy is for your files.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eric Mayse".

**Eric Mayse
Purchasing Agent**

cc: City Comptroller



PURCHASING
CONTRACT CHECK-OFF SHEET
 (To be attached to each file)

FY16

Division _____ *HR*
 Requisition No. _____ *19614*
 Request for Quote No. _____
 Purchase Order No. _____ *33110*
 Initials/Date _____ *fyf 2/26/16*

NEGOTIATED CONTRACTS	YES	NO	N/A
RFP Required			✓
Scoring criteria attached			✓
Does Purchasing have original proposals			✓
Check award recommendation information	✓		
Check scope of services	✓		
Check term of contract/extension clauses	✓		
Check and enter Not To Exceed Amount	✓		
Check contract amount	✓		
Check source of funds/POETA	✓		
Check insurance requirements	✓		
Have you received tax exempt ruling letter from IRS or Memphis			✓
Shelby County Business Tax Receipt/License			✓
Copy of License & Establish Date - Shelby County 222-3059			✓
Check signatures	✓		
Copy of insurance/endorsement to clerk			N/A

Term: negotiable between parties involved.
Amount: Estimated
COI: 1/1/16 - 1/1/17



**BID & CONTRACT AGENDA SHEET /
PURCHASE ORDER BID AWARD RECOMMENDATION FORM**

DIVISION	SERVICE CENTER	DATE
Human Resources	180101	02/25/16

1. BID REJECTION

For purchase/construction of	RFQ#
Explanation of rejection	
Request to Readvertise / Rebid	

2. CONTRACT AWARD RECOMMENDATION

<input type="checkbox"/> Low	<input type="checkbox"/> Best*	<input type="checkbox"/> Only	<input checked="" type="checkbox"/> Negotiated
Contractor	International Association of Chiefs of Police, Inc.		
Address	44 Canal Center Plaza, Suite 200, Alexandria, VA 22314		
For	Nationwide Police Executive Search		

***Justification for rejection of low bids attached**
Number of bids received (attach two copies of bid tabulation)

3. CHANGE ORDER/AMENDMENT/ENCUMBRANCE/FINAL PAYMENT (Contracts Only) Contract # 33116

Contractor	
Address	
For	

<input type="checkbox"/> Extension	Original Contract Amount	Final Payment Due
<input type="checkbox"/> Change Order	Previous C.O. Total	Retainage
<input type="checkbox"/> Cancel Contract #	Previous Amend./Encum. Total	
<input type="checkbox"/> Transfer to PO/REQ #	C.O.#	Attached
<input type="checkbox"/> Amendment	Amend.#	Attached
<input checked="" type="checkbox"/> Encumbrance	Encumbrance Amount \$40,000	
<input type="checkbox"/> Capital Acquisition	Adjusted Contract Amount	

4. COST AND SOURCE OF FUNDS

FY 2016						
Fund 0111	Service Center 100101	Account 052528	0000000	000000	000000	
Grant/CIP	Project #	Task #	Award #			
Exp Type	Exp. Org					

Fund	Service Center	Account	0000000	000000	000000
Grant/CIP	Project #	Task #	Award #		
Exp Type	Exp. Org				
Contract Amount					
Special Instructions					

5. CHECKED AND APPROVED BY

Service Center Approval	<i>[Signature]</i>	Date	2/25/16
Division Director	<i>[Signature]</i>	Date	2/25/16
City Engineer	<i>[Signature]</i>	Date	
Chief Administrative Officer	<i>[Signature]</i> D. Thomas	Date	3/1/16

6. FUNDING/PURCHASING APPROVAL

Funds are available	Date
Funds to be appropriated/transferred	Date
Purchasing Agent	<i>[Signature]</i> Date 2/29/16

Note: Return B&C Agenda Sheet within ten (10) days
Return PO Bid Award Recommendation Form within five (5) days

REBID 19614 *[Signature]* 2/26/16

PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF MEMPHIS AND
INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC.
FOR EXECUTIVE SEARCH ASSISTANCE

CONTRACT NUMBER: 33116

PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF MEMPHIS
AND
INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC.
FOR EXECUTIVE SEARCH ASSISTANCE

This Professional Services Agreement (the "Agreement") is made and entered into this 1st day of March, 2016 by and between the CITY OF MEMPHIS (the "City") and the INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC. (the "Contractor").

WITNESSETH

WHEREAS, the City, by and through its Human Resources Division, has the need for assistance in conducting an executive search for a Chief of Police; and

WHEREAS, the services stated herein are eligible professional services pursuant to the City of Memphis Purchasing Policies and Procedures; and

WHEREAS, the Contractor has the knowledge and expertise to provide such services; and

WHEREAS, the parties desire to enter into an agreement setting forth the terms and conditions under which the Contractor shall provide said services.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties desire to enter into this Agreement and hereby agree as follows:

SCOPE OF WORK

SCOPE OF SERVICES. The Services to be provided in connection with this Agreement shall include, but not be limited to, those items listed in the Contractor's proposal letter entitled "IACP Executive Search Services/ A Proposal for the City of Memphis, Tennessee," which is attached hereto and incorporated herein as Exhibit A (the "Services"). In the event of any inconsistency between the proposal and this writing, with respect to the scope of work, the proposal shall govern.

TERM AND COMPENSATION

TERM. This Agreement shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the City in accordance with applicable ordinances, laws and regulations.

The Term of this Agreement shall commence on the date of final execution of the Agreement, which final execution shall serve as Contractor's formal written notice to proceed, and shall end upon all services herein having been provided by the Contractor to the City (the "Term"), subject to the availability and appropriation of funds to finance the same and the successful operation of the program. The Agreement may be amended or extended upon mutual agreement of the parties.

COMPENSATION. The City agrees to compensate the Contractor for the provision of Services in the amount of **Forty Thousand Dollars (\$40,000.00)**, plus direct reimbursable expenses, as follows:

- (a) **Twenty Thousand Dollars (\$20,000.00)** upon commencement of work.
- (b) **Twenty Thousand Dollars (\$20,000.00)** upon completion of all services due under the Agreement.
- (c) Should the City choose to exercise the "Assessment Center Option" described in Exhibit A, and additional **Five Thousand Dollars (\$5,000.00)** upon completion of all services due under the Agreement.
- (d) Direct expenses associated with executive search services subject to reimbursement include those incurred by IACP staff and consultants for travel, including airfare, auto – personal and rental, subsistence traveling to, from, and while on-site, lodging, and travel-related miscellaneous expenses. City will reimburse IACP only for coach-class airfare, rental of full-size or smaller auto (excluding luxury), and lodging and meals in accordance with GSA rates. Requests for reimbursement must be supported by receipts or other documentation.
- (e) The City also agrees to pay job-candidate interviewers an honoraria (provided use of such interviewers are approved in advance by the City), in an amount not to exceed **Four Hundred Dollars (\$400.00)** per interviewer per day. The City and Contractor will jointly agree in advance to the total number of interviews and honoraria to be provided, and Contractor may not make any honoraria commitments without prior approval from the City.

INVOICES. The Contractor shall submit to the City original invoices, or copies of original invoices certified as such by the Contractor, on the Contractor's letterhead and in form and substance acceptable by the City and with all necessary supporting documentation. The invoice shall describe the services provided, reflect any applicable terms of payment, and show the contract number to which it relates. Unless the contract number is shown on the invoice, it may be returned to the Contractor.

Invoices shall be submitted to:

**City of Memphis
Human Resources Division
125 N. Main Street, Room 406
Memphis, Tennessee 38103
Attn: Alexandria Smith, Chief of Human Resources**

The City shall use its best efforts to remit payment based on the Contractor's invoice within thirty (30) days after receipt of accurate invoice and approval by the City. The City is not obligated to pay, and may withhold from payment, any amounts the City has in dispute with the Contractor based on the Contractor's non-performance, unsatisfactory performance or negligent performance of any services hereunder.

TRAVEL EXPENSES. The City will reimburse travel expenses as outlined in Compensation Section (d) above. No travel advances will be made by the City.

TAX PAYMENTS. The City of Memphis is exempt from Federal Excise, State and Local Taxes on all purchases and upon request, will issue tax exemption certificates to the Contractor. Contractor shall be solely responsible and liable for any taxes and business license fees assessed or imposed by any government having jurisdiction over the work and/or goods to be provided herein.

PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK. The payment of an invoice shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein, and the City's payment shall not relieve the Contractor from its obligation to replace or

correct any work that does not conform to this Agreement, even if the unsatisfactory character of such work may have been apparent or detected at the time such payment was made. Work, data or components that do not conform to the requirements of this Agreement shall be rejected by the City and replaced by the Contractor, without delay or additional cost to the City.

If the Contractor receives payment from the City for a service or reimbursement that is later disallowed or rejected by the City or another governmental entity on the basis of audit or monitoring, the Contractor shall promptly refund the disallowed amount to the City upon the City's request. At its option, the City may offset the amount disallowed from any payment due to the Contractor under this Agreement or any other agreement.

FINAL CONTRACT INVOICE. The Contractor shall submit to the City a final invoice within forty-five (45) calendar days from the termination date of the Agreement, for any services provided pursuant to this Agreement. The Contractor further acknowledges and agrees the City will not be responsible for any Contractor invoices, pertaining to this Agreement, submitted to the City after the final invoice. The Contractor shall close out its accounting records at the end of the Agreement period in such a manner that reimbursable expenditures and revenue collections are NOT carried forward.

GENERAL TERMS AND CONDITIONS

INCORPORATION OF WHEREAS CLAUSES. The foregoing whereas clauses are hereby incorporated into this Agreement and made a part hereof.

TITLE & RISK. The title and risk of loss of any goods hereunder shall not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery. The Contractor shall assume all liability and responsibility for delivery of such goods in good condition to the City.

PATENT INDEMNIFICATION. The Contractor warrants that any goods/services furnished hereunder do not infringe or violate any patent, trademark, copyright, trade secret, or any other proprietary right of any third party; that it shall defend all suits that may arise with respect thereto; and that it shall indemnify, defend, save and hold harmless the City, its officials, employees, agents, successors and assigns, from and against all liabilities, suits, claims, damages, costs or expenses, including without limitation attorney and expert witness fees, for or by reason of any actual or alleged claim the goods/services purchased by City hereunder infringe any patent, copyright, or is a violation of trade secret disclosure laws, whether by reason of the Contractor's purchase or otherwise. This indemnification obligation shall survive the expiration or termination of this Agreement.

TRANSPORTATION CHARGES/F.O.B. DELIVERY. All pricing is F.O.B. destination, in which Contractor shall be responsible for freight, transportation costs, and all incidental charges, unless delivery terms are specified otherwise in the bid and agreed to by the City. In the event shipping other than FOB destination is allowed by the City, The City agrees to reimburse the Contractor for transportation costs in the amount specified in the Contractor's bid, or actual costs, whichever is lower, provided the City shall have the right to designate what method of transportation shall be used to ship the goods.

SHIPMENTS. Substitutions will not be accepted, unless otherwise specified herein. Partial shipments may be allowed unless otherwise stated in writing by City, however, full shipment of all items ordered hereunder must be completed by the date specified in this Agreement or this Agreement will be subject to cancellation by the City. The Contractor shall not ship excess quantities without the City's prior written approval.

ENTIRE AGREEMENT. This Agreement, including the attached exhibits, constitutes the full and final understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of the Agreement.

STANDARD OF PERFORMANCE. All services by the Contractor shall be performed in compliance with the specified requirements, in a manner satisfactory to the City, and in accordance with the generally accepted business practices and procedures of the City and pursuant to the governing rules, practices and regulations of the industry, based on the type of services performed hereunder.

HEADINGS. Titles and headings used herein are for the convenience of reference only and shall be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

MODIFICATION AND AMENDMENT. This Agreement shall be amended or modified only by a written document signed by the parties hereto, and executed with the same formalities as this instrument, in accordance with applicable laws and regulations.

CONFIDENTIALITY. (a) The City agrees to provide Contractor with all information, access to files and records, and use of all institutional facilities that may be reasonably necessary to Contractor in the performance of this Agreement. While performing work under this Agreement, the Contractor may gain access to proprietary and/or confidential information that, if disclosed to third parties, may be damaging to the City or its officials or employees. Such information shall include materials considered to be confidential information as a matter of law (e.g., personnel records), and shall also include (i) all materials in any form developed or created by the City related to funding and financial and business information; (ii) the terms, conditions and pricing contained herein; and (iii) any other information that the Contractor has been advised by the City is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in the Contractor's possession prior to disclosure by the City; (ii) information generally available to the public or that becomes available to the public through a source other than the City, or (iii) information that was rightfully obtained by the Contractor from a third party who is under no obligation of confidentiality to the City with respect to such information. The Contractor agrees that it will accept and hold confidential information obtained from the City in confidence at all times during and after termination of this Agreement. The Contractor shall neither use nor disclose such information, except as provided in this Agreement or as required by law, without the prior written permission of the City.

(b) In the event that the City or its affiliates, its and their directors, members, officers, employees, consultants, independent contractors, agents, advisors (including, without limitation, financial advisors, counsel and accountants) and controlling persons ("Representatives") are required by applicable law or regulation or by legal process to demand or disclose any information received from or created by the Contractor, , City agrees that it will and will cause its Representatives to provide Contractor with prompt notice of such request or requirement in order to enable Contractor to seek an appropriate protective order or other remedy, to take steps to resist or narrow the scope of such requirement (and City will and will cause its Representatives to consult and cooperate fully with Contractor in taking any such steps), and/or to waive compliance in whole or in part, with the terms of this agreement.

(c) Notwithstanding anything contained herein to the contrary, the City is expressly empowered to demand and disclose any and all records and documents in order to prosecute and defend any and all claims, lawsuits and administrative proceedings filed on behalf of, or against, the City, its commissions, officers, employees, and agents. Contractor will cooperate fully with the City in the City's prosecution or defense of any claim or suit.

(d) The parties acknowledge and agree that a breach of this section by either party will cause the innocent party irreparable injury and damage; therefore, the parties expressly agree that the innocent party shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement. The parties agree that they will disclose confidential information only to those persons who have a right to know, and each party shall require its employees, agents, and subcontractors to comply with the requirements of this provision and the requirements of the provisions herein below titled "Public Statements" and "Rights in Data."

PUBLIC STATEMENTS. The Contractor shall not make any announcement, release any information, or authorize or participate in any interview concerning this Agreement and the goods and/or services required

herein, without obtaining prior written consent from the City. The Contractor shall require its employees, agents, and subcontractors to comply with the requirements of this provision. This provision shall survive the expiration or termination of this Agreement.

RIGHTS IN DATA. (a) The Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type produced under this Agreement, and required to be delivered to the City pursuant to this Agreement, whether or not the same is accepted or rejected by the City, shall remain the property of the City and shall not be published by the Contractor or any other party without the express prior written consent of the City. The City acknowledges that the only deliverables it is entitled to under this Agreement are the final reports, nor shall City be entitled to any other information developed, created or authored by the Contractor, whether oral or written (including electronic), and regardless of the form the information is in or the manner in which or the time at which it was created, including, but not limited to, raw data, drafts, mental impressions, work product, any information that was given to Contractor with a promise or expectation that such information would be kept confidential (including all interview and evaluation material provided by, developed by, or given to the Contractor with a promise and expectation of privacy or confidentiality), all analyses, compilations, data, studies, notes, interpretations, memoranda, extracts or other documents prepared by the Contractor or its Representatives.

(b) In implementing the foregoing, the Contractor hereby grants and assigns to the City all rights and claims of whatever nature, whether now or hereafter, arising in and to any and all of such final reports, and shall cooperate fully with the City in any steps the City may take to obtain copyrights, trademark or like protections with respect thereto. The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property and copyright of all documents from the Contractor to the City upon the Contractor's delivery of such documents and/or information to the City or upon completion of the work pursuant to the Agreement, whichever occurs first. The Contractor shall not construe such transfer as a grant for usage nor can the Contractor revoke it.

EMPLOYMENT OF CITY WORKERS. The Contractor shall not engage, on a full, part-time or any other basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of the City.

CONTRACTOR'S PERSONNEL. The Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all work performed under this Agreement shall be supervised by the Contractor. Contractor will make its personnel aware of and cause them to comply with the City's policies that have been made known to Contractor while performing pursuant to this Agreement. The Contractor further certifies that all of its employees assigned to perform any work hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Contractor who, in the opinion of the City, is incompetent, whose conduct becomes detrimental to the work, or whom the City deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per the City's request. Upon such request, the Contractor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training. Contractor is responsible for the acts or omissions of its personnel under or relating to this Agreement.

The Contractor shall be solely liable and responsible for providing all employee compensation and benefits to, or on behalf of, all persons performing work pursuant to this Agreement. The City shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, health, welfare and disability benefits, Federal and local taxes, or other compensation, benefits or taxes for any personnel provided on behalf of the Contractor. In addition, the Contractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

INDEPENDENT CONTRACTORS. Nothing in this Agreement shall be deemed or construed to represent that the Contractor, or any of the Contractor's officers, employees or agents, are the agents, representatives, or employees of the City. The Contractor acknowledges that it is an independent contractor over the details and means for performing the services hereunder. Anything in this Agreement

which may appear to give the City the right to direct the Contractor as to the details of the performance of its obligations hereunder or to exercise a measure of control over the Contractor is solely for purposes of compliance with local, state and federal regulations and means the Contractor will follow the desires of the City only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by the Contractor that neither it nor its officers, employees or agents shall hold itself out contrary to the terms of this paragraph, and the City shall not be liable for any representation, act or omission of the Contractor contrary to the provisions hereof.

TERMINATION.

1. It shall be cause for the immediate termination of this Agreement if, after its execution, the City determines that either:
 - a. the Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
 - b. the Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the City's consent or approval; or
 - c. the Contractor has filed bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the Contractor's assets.
2. The City may cancel/terminate this Agreement, in whole or in part, upon providing written notice to the Contractor of the City's intention to terminate the Agreement as a result of Contractor's failure to provide the goods and/or services specified under this Agreement or in violation(s) of any of the terms herein, and the Contractor has failed to cure such breach within ten (10) business days of such notice. The City may reject the goods and/or services and cancel this Agreement for any goods/services rendered or to be rendered hereunder. At its option, City may return the rejected portion of such goods to Contractor at its expense or hold the same for such disposal as Contractor shall indicate. In the event of any such rejection/termination, the City shall, at the City's option, have the right to obtain like goods and/or services elsewhere or to take over the work and prosecute the same to completion, both at the Contractor's expense; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, etc. as may be on the site of the work and necessary therefore. The Contractor shall be liable to the City for any loss, damage, or additional cost incurred thereby, including but not limited to any difference between the cost for procuring such like services and the price specified herein, attorneys' fees and court costs.
3. Notwithstanding the foregoing or any section herein to the contrary, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor, for the purpose of setoff, until such time as the exact amount of damages due the City from the Contractor is determined.
4. The City may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving ten (10) business days prior written notice to the Contractor. In the event a purported termination for cause by the City is in error, then such termination may, at the City's sole discretion, be deemed to be a termination for convenience under this section. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation, as determined by the City, for any satisfactory authorized work performed in accordance with the Agreement up to the termination date; but in no event shall the City be liable to the Contractor for expenses incurred after the termination date. All goods accepted by City or services completed by the Contractor prior to the Termination Date shall be documented and all tangible work documents shall be transferred to the City prior to payment for services rendered, and shall become the sole property of the City. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall not be compensated for any anticipatory profits, or other damages of any description, that have not been earned as of the date of termination.
5. The Contractor shall deliver to the City all hard copy and electronic files maintained on behalf of the City within thirty (30) calendar days of termination of this Agreement. Upon reasonable request, the City reserves the right to obtain such information prior to the termination of this Agreement.

COMPENSATION FOR CORRECTIONS. No compensation shall be due or payable to the Contractor pursuant to this Agreement for any of the services performed by the Contractor to correct services, when such corrections are required as a direct result of negligence by the Contractor to properly fulfill any of its obligations herein.

CITY'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION

THEREOF. If evidence is produced before the final settlement of all or any balances that the Contractor has failed to pay laborers employed on its work or failed to pay for materials used therein, or if the City has reason to suspect the same, the City may withhold such balances and upon evidence satisfactory to the City as to the amount due for such labor and materials. The City, acting as the agent of the Contractor, may settle and pay for the same and charge the amounts to the Contractor and deduct the same from the said balance or balances.

REMEDIES CUMULATIVE. All remedies available to the City herein are cumulative and shall be in addition to all other rights and remedies provided by law. The termination, expiration, or suspension of this Agreement shall not limit the City from pursuing other remedies available at law or in equity.

SUBCONTRACTING, ASSIGNMENT or TRANSFER. The Contractor shall not subcontract, assign, delegate or transfer all or part of its rights, responsibilities, or interest under this Agreement without the prior written consent of the City. Any purported assignment, transfer, or delegation in violation of this Section shall be voidable by the City. No subcontracting, assignment, delegation or transfer shall relieve the Contractor from performance of its duties hereunder; neither shall the City be responsible for the fulfillment of the Contractor's obligations to its transferors or subcontractors. Upon request of the City, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the transfer. At any time, City may, in its sole discretion, revoke its prior approval of a subcontractor and direct Contractor to replace such subcontractor or perform the services that were being performed by such contractor itself if the City finds in its reasonable judgment that (i) such subcontractor's performance is materially deficient or otherwise unacceptable to City; (ii) good faith doubts exist concerning the subcontractor's ability to render future performance because of changes in the subcontractor's ownership, management, financial condition, or otherwise; or (iii) there have been one (1) or more material misrepresentations by or concerning the subcontractor. The City reserves the right to terminate the Agreement if Contractor, in whole or in part, is acquired by another entity during the term of this Agreement.

In the event the Contractor is allowed to sublet any part of the Agreement, the Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractor and of the persons employed or directly or indirectly employed by the subcontractor as he is for the acts and omissions of persons employed by Contractor.

The City recognizes that Contractor will engage the use of external consultants as part of this process. For the purposes of this Agreement, external consultants engaged by the Contractor are considered staff, and they are subject to all provisions of this Agreement which would otherwise apply to full-time employees of Contractor. Use of consultants by Contractor is not considered subcontracting under this Agreement.

CONFLICT OF INTEREST. Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations.

The Contractor covenants that it has no public or private interest, and shall not acquire any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer, official, agent or employee of the City in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee,

subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement. For breach or violation of this provision, the City shall have the right to recover or withhold the full amount of such gratuities.

COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

GENERAL COMPLIANCE WITH LAWS. The Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain and maintain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses shall be made available to the City, upon request.

The Contractor is assumed to be familiar with and shall comply with all applicable federal, state, and local laws, ordinances, and regulations in performing any of its obligations under this Agreement, including but not limited to ~~the City of Memphis Living Wage Ordinance~~, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA), and the Americans with Disabilities Act (ADA). The Contractor shall promptly notify the City of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict.

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NON-DISCRIMINATION. The Contractor hereby agrees to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the Contractor's employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, State or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event the Contractor fails to comply with the City's non-discrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by the City.

The City reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. The Contractor's failure or refusal to do so shall be cause for termination of this Agreement in accordance with the terms of this Agreement.

EMPLOYMENT OF ILLEGAL IMMIGRANTS. The Contractor hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event the Contractor fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this Agreement may be canceled, terminated or suspended in whole or in part by the City, and the Contractor may be prohibited from contracting to supply goods and/or services to the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the City.

SEVERABILITY. If any terms or provisions of this Agreement are held to be illegal, invalid or unenforceable as a matter of law, such provision shall be fully severable, and the remaining provisions of

this Agreement shall remain in full force and effect and continue to be binding and shall not be affected by such provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, the parties may negotiate in good faith to replace such provision with a valid, legal and enforceable provision that most closely approximates the parties' original intent.

NO WAIVER OF CONTRACTUAL RIGHT. No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto. No delay or failure of the City to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver or relinquishment of the City's right to subsequently enforce and compel strict compliance with such provision or any other provision herein or in any document related hereto and specifically identified as a waiver of any succeeding breach thereto or of any other provision herein contained.

SUBJECT TO FUNDING. This Agreement is subject to availability and annual appropriation of funds by the Memphis City Council. In the event sufficient funds for this Agreement are not available or appropriated by the Memphis City Council for any of its fiscal period during the term hereof, then the City shall immediately terminate this Agreement upon written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed up to the termination date. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount that have not been earned as of the date of termination.

CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISE. The Contractor shall take affirmative action to ensure that small, minority-owned and women-owned businesses which have been certified by the City are utilized when possible as sources of supplies, equipment, construction and services.

PUBLIC RECORDS. Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by the Contractor, the Contractor understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act, and any reports, data or other information supplied to the City regarding services performed hereunder may be subject to disclosure as a public record in accordance with the laws of the State of Tennessee.

In the event that the City or its Representatives are required by applicable law or regulation or by legal process to demand or disclose any information received from or created by Contractor, the City agrees that it will and will cause its Representatives, upon the City becoming aware of such requirement or demand, to provide Contractor with prompt notice of such requirement or demand in order to enable Contractor to seek an appropriate protective order or other remedy, and/or to take steps to resist or narrow the scope of such requirement (and the City will and will cause its Representatives to consult and cooperate fully with Contractor in taking any such steps).

Notwithstanding anything contained herein to the contrary, the City is expressly empowered to demand and disclose any and all records and documents in order to prosecute and defend any and all claims, lawsuits and administrative proceedings filed on behalf of, or against, the City and/or its Representatives.

ORGANIZATION STATUS AND AUTHORITY. The Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

The execution, delivery and performance of this Agreement by the Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Contractor, any provision of any indenture, agreement or other instrument to which the Contractor is a party, or by which the Contractor's respective

properties or assets are bound, in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

Each person executing this Agreement represents that: he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents and execution of the Agreement was duly and regularly authorized by the party's governing body.

WARRANTY. The Contractor warrants to the City that all goods/work shall be free from defects in design and faulty or improper workmanship and shall be in strict compliance with the terms of this Agreement. This warranty shall be effective for a period of not less than one year from the date of acceptance by the City of such goods and/or services as satisfactorily complete, and shall be in addition to all other warranties, express, implied or statutory. The warranty shall survive the termination or expiration of this Agreement.

RECORDS AND AUDITS. The Contractor shall make and keep as the same accrue, full and complete books, documents, accounting records and other evidence that specifically relate to this Agreement, in accordance with generally accepted accounting principles. The Contractor shall retain such records, and shall make same available to the City, upon reasonable request, during the term of this Agreement, and for a minimum period of three (3) full years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required three-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved. Copies of said records shall be furnished to the City upon request.

Upon reasonable notice, the Contractor shall permit the City, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter the Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by the Contractor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

DISPUTE RESOLUTION. In the event of any dispute(s), controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate.

Any dispute concerning a question of fact in connection with this Agreement between the Contractor and the City shall be referred in successive order for resolution, first to the City Purchasing Agent, second to the City Attorney, and thirdly to the Mayor of the City of Memphis, whose decision regarding same shall be final.

FORCE MAJEURE. The City shall not be deemed in default hereunder, nor shall the City be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts, governmental authorities or acts of nature or other similar cause beyond its control.

SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

NOTICES. All notices and other communications required or permitted to be given hereunder shall be written and hand delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed *via* certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand delivery, on the date of

delivery; (ii) if by fax, on the day the fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery *via* U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein:

To the CITY:

City of Memphis
Human Resources Division
125 N. Main Street, Room 406
Memphis, Tennessee 38103
Attn: Alexandria Smith, Chief of Human Resources
Fax: 901-576-6482

With copy, if requested,
to:

City Attorney
125 N. Main, Room 336
Memphis, TN 38103
Attn: Bruce McMullen, Chief Legal Officer/City Attorney
Fax: 901-636-6531

To the CONTRACTOR:

International Association of Chiefs of Police, Inc.
44 Canal Center Plaza, Suite 200
Alexandria, Virginia 22314
Attn: Gwen Boniface, Deputy Executive Director
Fax: 703-836-4718

NO THIRD PARTY BENEFICIARY. This Agreement is entered into solely between, and may be enforced only by, City and Contractor. Unless otherwise specified herein, this Agreement shall not be deemed to create any rights in third parties, including suppliers or customers of either party.

SERVICE MARKS. The Contractor agrees that it shall not, without City's prior written consent, use the name, service mark or trademarks of the City.

NUMBER AND GENDER. Unless the context requires otherwise, (i) use of a specific gender imports the other gender(s); and (ii) use of the singular imports the plural and vice versa.

SURVIVAL. The parties hereto acknowledge that provisions that require or contemplate performance or observance after expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and continue in full force and effect.

DRAFTER. This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by both parties such that any ambiguities in this Agreement shall not be construed against either party.

COUNTERPARTS. This Agreement may be signed in multiple counterparts and/or counterpart signature pages, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile, and any such signature shall have the same legal effect as an original.

CITY LIABILITY. The City shall have no liability except as specifically provided in this Agreement. The City, by execution of this Agreement, assumes no liability for damages caused to persons or property by reason of Contractor providing services herein or for injury to any employee, agent or subcontractor of the Contractor performing under this Agreement.

INDEMNIFICATION. CONTRACTOR agrees to use its good faith best efforts to cooperate with the City in the defense of a claim made against the City or its agents, servants or employees in connection with the executive job search contemplated hereunder, the hiring decision which results therefrom, or any other matter related thereto. Furthermore, Contractor agrees to indemnify and hold the City harmless from and against all third party claims brought against the City for damages or loss directly arising from the act or omission of Contractor, its agents, servants or employees in connection with the services provided hereunder, but only to the extent such damage or loss is found to have been the fault of Contractor, its agents, servants or employees. This obligation shall survive the expiration or termination of this Agreement. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, defend, save and hold harmless the City or its elected or appointed officials, officers, employees, agents, assigns, and instrumentalities as herein required.

The City reserves the right to appoint its own counsel regarding any matter defended hereunder, at its own expense. The Contractor acknowledges that the City has no obligation to provide legal counsel or defense to the Contractor, its employees or subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this Agreement against the Contractor as a result of or relating to obligations under this Agreement. The City shall have no obligation for the payment of any judgments or the settlement of any claims asserted against the Contractor or its subcontractors or employees as a result of or relating to the Contractor's obligations hereunder, unless such payment is ordered by a court or other adjudicatory body, or is pursuant to a settlement agreement between the parties.

The Contractor shall immediately notify the City c/o City Attorney; 125 North Main, Suite 336; Memphis, TN 38103, of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

LIVING WAGE. In accordance with the City of Memphis Code of Ordinances sections ~~5-4-14 through 5-4-23~~, commonly referred to as the Living Wage Ordinance, as amended, ~~certain businesses~~ holding a service or service-related contract with the City of Memphis shall pay its employees performing work on said contract a minimum hourly wage. Unless otherwise exempted, ~~the Contractor~~ agrees to follow and comply with the requirements of said Ordinance, as amended. The Contractor further agrees to provide certified payrolls and affidavits associated with this Agreement, in accordance with Ordinance 5-4-17, to the City of Memphis c/o Manager, Prevailing Wage Office; 125 N. Main St., Room 1B-18; Memphis, TN 38103. *me*

GOVERNING LAW, JURISDICTION AND VENUE. The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, without regard to conflicts of laws principles. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

INSURANCE.

Contractor shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. Contractor shall furnish the Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City and licensed in the state of Tennessee.

If any of the Insurance Requirements are non-renewed at the expiration dates, payment to Contractor may be withheld until those requirements have been met, or at the option of the City. The City may pay the renewal premiums and withhold such payments from any monies due Contractor.

Each certificate or policy shall require and state in writing the following clauses:

Contractor shall provide notice to the City within three (3) business days following receipt of any notice of cancellation or material change in Contractor's insurance policy from Contractor's insurer. Such notice shall be provided to City by registered mail, to the following addresses:

**City of Memphis
Attn: Risk Management
2714 Union Extended, Suite 200
Memphis, TN 38112**

**City of Memphis
Attn: Purchasing Agent
125 North Main, Room 354
Memphis, TN 38103**

The Certificate of Insurance shall state the following: "The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies." The additional insured endorsements shall be attached to the Certificate of Insurance.

WORKERS COMPENSATION:

The Contractor shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Minimum Limits of the State of Tennessee and shall require all subcontractors to do likewise.

Employers Liability	\$100,000	Each Accident
	\$500,000	Disease – Policy Limit
	\$100,000	Disease – Each Employee

AUTOMOBILE LIABILITY:

Covering owned, non-owned and hired vehicles with Minimum Limits of:

\$1,000,000 Each Occurrence – Combined Single Limits

COMMERCIAL GENERAL LIABILITY:

Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage with Minimum Limits of:

\$2,000,000	General Aggregate
\$2,000,000	Products & Completed Operations
\$1,000,000	Personal & Advertising
\$1,000,000	Each Occurrence (Bodily Injury & Property Damage)
\$ 50,000	Fire Damage any One Fire
\$ 5,000	Medical Expense any One Person

PROFESSIONAL LIABILITY:

Contractor shall maintain such coverage for at least three (3) years from the termination or expiration of this Agreement with Minimum Limits:

\$2,000,000	Each Claim
\$2,000,000	Aggregate

PROPERTY INSURANCE:

Contractor shall be responsible for maintaining any and all property insurance on its own equipment and shall require all subcontractors to do likewise. Contractor shall require all subcontractors to carry insurance as outlined above, in case they are not protected by the policies carried by Contractor.

Contractor is required to provide copies of the insurance policies upon request.

TIME OF ACCEPTANCE. The terms of this Agreement are subject to acceptance by the City within twenty-one (21) days of the date of execution by Contractor. Failure of the City to execute this Agreement within said twenty-one (21) day period will void this Agreement, unless said twenty-one (21) day period is extended by mutual consent of the City and Contractor and made a part of this Agreement.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement, effective as of the day and year first above written.

CITY OF MEMPHIS

By: 
James S. Strickland, Jr., Mayor

Jim Strickland P.W.Y.

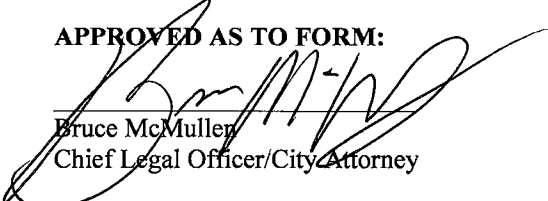
International Association of Chiefs of Police, Inc.

By: 
Gwen Boniface, Deputy Executive Director

DIVISION OF HUMAN RESOURCES

By: 
Alexandria Smith, Director

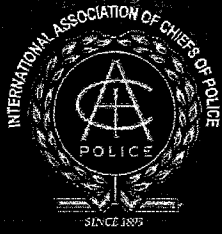
APPROVED AS TO FORM:


Bruce McMullen
Chief Legal Officer/City Attorney

Attest:


Eric Mays 3/3/16
Comptroller Deputy

Exhibit A



IACP Executive Search Services

A Proposal for the City of Memphis, Tennessee

The International Association of Chiefs of Police (IACP) offers the most comprehensive and thorough police executive search process available. We take pride in working closely with the client agency and its stakeholders during all stages of the transition process. A nationwide IACP executive search process typically follows the work plan outlined below. However, the IACP is always able to tailor its services to meet the needs and requirements of the client agency.

I. JOB AND CANDIDATE PROFILING

At the very outset, specific criteria will be established in cooperation with hiring officials to define qualifications of the ideal candidate. Criteria typically include management style; policing philosophy; minimum education; minimum level of law enforcement command experience; demonstrated ability to work with stakeholders in pursuit of common goals; unquestionable record of integrity; and demonstrated leadership, management, team building, and program implementation skills.

Job Analysis. An on-site job analysis will be conducted. The analysis will produce a comprehensive list of tasks, duties, and responsibilities for the next chief. The analysis will specify additional critical knowledge, skills, and abilities required to perform effectively as a police leader and manager.

The contemporary police chief is properly expected to lead. He or she is expected to

- promote professional ethics and values.
- foster support for the agency.
- ensure that stakeholders are satisfied with police services.
- establish objectives.
- achieve those objectives successfully.
- create and maintain an effective and motivated police force.
- manage resources productively.
- observe professional police principles.
- function productively with external agencies.
- remain accountable to the governing body.

The leadership role must be fulfilled in a way that satisfies not only the many constituencies both inside and outside of the police agency. Failure to do so usually results in conflict, acrimony, and frustration. The IACP job analysis will concentrate on all of the foregoing dimensions and requirements in the police, government, and service community settings. The result of the job

analysis is a comprehensive position profile that will guide recruitment and initial screening efforts.

Profiling Methodology. Our profiling methodology includes interviews with a cross section of individuals from various constituencies. These normally include elected and appointed leaders, heads of other departments, police labor officials, members of the police agency, and members of the community served.

Our methodology also entails an examination of factors and trends that condition the client's policing environment. Factors and trends of significance are policing style, serious and less serious crime, service community attitudes and complaints, police resources, staff characteristics, urgent problems, and significant accomplishments and department assets. Prime candidates will insist on such information when seriously considering applying for the job. The information also enables us to appraise candidate qualifications.

The IACP concentrates heavily on discovering and, if necessary, formulating, specific goals and objectives the new chief will be expected to achieve, problems to be solved, and innovations sought. Our view is that the thoroughness of job profiling dictates the effectiveness of the entire search process. Accordingly, the IACP focuses substantial attention at this initial phase of the process.

II. RECRUITMENT MARKETING & ADVERTISING

The IACP offers unparalleled reach into the law enforcement community and will leverage our considerable avenues of information transfer to support the client's recruitment effort. Specific examples include:

Promotional Recruitment Brochure. The IACP will develop and distribute a full-color recruitment brochure describing the position, the hiring agency, and the jurisdiction designed to elicit responses from the best possible applicants. This brochure will be converted into a full page advertisement for publication in the IACP's monthly magazine, *Police Chief*, contingent upon the magazine's production schedule.

The IACP Network. Using our nationwide network of governmental and police executives, the IACP will proactively search for (cold source) ideal candidates. The IACP will discuss this position with individuals across the country whose professional judgment is respected and solicit their recommendations. The IACP is uniquely qualified through its position in the law enforcement community to identify and recruit the most dynamic and highly qualified law enforcement executives.

Internet and Email. An ad will be prominently posted on www.DiscoverPolicing.org, the official career center of the IACP and an award-winning police recruitment website. In addition, awareness of the job will be promoted through a series of email notices sent directly to IACP members, including prominent placement in the *IACP News* biweekly e-newsletter with a

distribution of 33,500. Finally, the announcement will be shared through the IACP's social media outlets, including Facebook and Twitter with a combined following of 20,000+.

Diversity Recruitment. We will provide notices to and solicit candidate recommendations from diversity-oriented groups like the National Organization of Black Law Enforcement Executives, the Hispanic American Command Officers Association, the National Center for Women and Policing, and the National Association of Women Law Enforcement Executives. The IACP understands the importance of diversity and works hard to ensure an inclusive recruitment process.

III. APPLICANT SCREENING, EVALUATION & SELECTION

Resume Receipt and Review. The IACP will acknowledge receipt of application materials from candidates and conduct an initial review of all resumes and cover letters. Applicants are categorized based on their basic qualifications relative to the needs of the department as identified through the job analysis. Evaluation factors will include:

- Experience as a chief or at a command level, including consideration of breadth and depth of experience.
- Patterns of employment, including frequency of job changes and gaps in employment.
- Experience in an agency or environment similar to the client agency.
- Demonstrated record of accomplishments in areas of specific relevance to the client.
- Evidence of formal education and specialized leadership training such as the FBI National Academy.
- Written communication skill and the extent to which the candidate expresses an understanding of the department and is able to present and correlate his or her qualification to the needs of the agency.

This initial review process will involve independent ratings by multiple evaluators and will identify the best candidates (approximately 10-20 semifinalists) for initial screening.

Semifinalist Screening. Initial screening will involve internet checks and structured telephone interviews tailored to the agency's job. We have found that at this stage, thorough questioning of the candidate and an internet search provide adequate information to form an accurate picture of the candidate's history. Based on the results of the initial screening, the IACP will recommend a group (approximately six) of the most highly qualified candidates for further on-site evaluation. Brief dossiers on each recommended finalist will be provided summarizing the candidate's resume and the results of the telephone interviews. The IACP will confer with agency officials to review the results of the semifinalist screening and discuss the recommended finalists.

Finalist Evaluation. The IACP will assist with evaluation of the finalists, including development of an interview process, scheduling, coordination of finalist travel arrangements, and on-site administration. The IACP recommends an independent structured interview process

with IACP-trained law enforcement interviewers, augmented by one or more client interview panels. For the IACP interview, we will develop interview questions designed to reveal comparative strengths and weaknesses of the finalists and the best match among candidates and the job. Questions are based on the job analysis as well as knowledge of the department and its policing environment. The IACP panel runs parallel to any interviews planned by the hiring authority. The IACP will schedule, coordinate, and facilitate the interview process, including arrangement of candidate travel, and will assist in question development for the agency panel as needed.

Assessment Center Option. At your option, an assessment center will be conducted to evaluate the managerial and administrative capabilities of the final group of six candidates. In an assessment center, candidates participate in a series of individual and group exercises that simulate critical aspects of the target job. Trained assessors observe each candidate's performance and evaluate their behavior on predefined dimensions that relate to success in the specific job in question

Selection. Immediately following the evaluation process, the IACP search team will facilitate a meeting between IACP subject matter experts and agency selection officials. Candidate strengths and weaknesses, as revealed by all efforts undertaken, will be documented and discussed at length with participants in all panels sharing their observations and feedback. Following this intense dialogue, clients are generally prepared to make a well informed hiring decision at the conclusion of this meeting. IACP will notify non-selected candidates at appropriate stages in the process.

On-site Background Investigation. Our experienced investigators will conduct a thorough on-site background investigation of the selected candidate. A candidate's current supervisor and subordinates, leaders in the community, labor representatives, and others who know the candidate will be contacted and interviewed at length. Records concerning civil suits, financial status, driving history, etc., will be obtained. The entire career of the candidate is considered and controversies in previous jobs are investigated as necessary.

IV. TIMELINE

The typical executive search can be completed within four to six months. While this time frame was designed to produce work that meets IACP quality standards, we are happy to work to accommodate individual agency needs. The following table outlines the major activities of an IACP search and the estimated timeframe to complete each.

Activity	Estimated Timeframe
Contract Execution	-
Onsite Visit - Job/Candidate Profile	2 weeks of contract execution
Open Job; Begin Recruitment Marketing and Advertising	Immediately following on-site; continue for 30 – 60 days
Review resumes, make first cut	2 weeks after job closes
Conduct initial screening / phone interviews; select finalists; Deliver finalist dossiers	2 weeks after making first cut
Develop interview questions or assessment exercises; Schedule and conduct on-site evaluation for finalists.	2.5 weeks after phone interviews
Conduct background on candidate; Negotiate offer	2 weeks after on-site interviews

V. QUALIFICATIONS

The IACP is a non-profit 501c(3) corporation, chartered in the District of Columbia and headquartered in Alexandria, Virginia. The IACP is the world's leading association of law enforcement executives with over 25,000 members in over 100 countries. Headquarters staff comprises approximately 100 professionals engaged in a variety of activities, from grant management and research to training and technical assistance. The association's mission is simple: to serve the police leaders of today and develop the leaders of tomorrow. Assisting agencies with the identification and placement of that leadership helps us attain that goal. The IACP differs from private firms who are in the business of offering executive search services. We are motivated by our commitment to improving law enforcement leadership and professionalism across the country. Further, we concentrate our efforts exclusively on police and law enforcement matters. We do not diffuse our interests and capacities.

Since the association began its program of field consulting in 1935, it has conducted hundreds of management surveys, technical assistance projects, staff studies, planning projects, and has provided contract training and testing services for jurisdictions of all sizes and types. The IACP's Executive Search Service was established in 1986 in response to urgings of local government officials, chiefs, and potential chiefs. Since that time, the same veteran team of resident professional staff and associate consultants has assisted scores of police organizations with the important task of identifying future leadership. Project team resumes are available upon request.

PROJECT TEAM

The IACP executive search project team is composed of resident professional staff and associate consultants – outside experts who routinely assist our professional staff. Each member of the team has special expertise in the executive search and assessment center processes. They work together successfully, making this a well-integrated, smoothly functioning veteran team.

- **Kim Kohlhepp** (M.A.) will serve as project manager for the search project. As Deputy Director of IACP's Training and Professional Services Directorate, Mr. Kohlhepp is responsible for the design and administration of promotional tests, assessment centers, and the selection of police chiefs. In this capacity, he has served hundreds of federal, state, and local law enforcement agencies. He annually manages and lectures at the IACP's Assessment Center Workshop and is coordinator of the IACP Psychological Services and Police Physicians Sections. He is an editorial advisor for *Police Chief Magazine* and manages IACP's award-winning www.DiscoverPolicing.org career center. Mr. Kohlhepp has earned a Master of Arts degree in industrial/organizational psychology at the University of Nebraska at Omaha, where he previously served as an instructor. ***Project Role: Project management; process development and administration.***



- **Mitchell Weinzetl** (Ed. D.) joined the IACP in 2015, as a Senior Program Manager in the Training and Professional Services Division. In this role, Dr. Weinzetl manages and oversees the association's professional services portfolio to include management studies, staffing studies, and other technical assistance engagements. Dr. Weinzetl previously served as an Assistant Professor and Director of the Public Safety Executive Leadership Master's program in the school of Criminal Justice Studies at St. Cloud State University in Minnesota. Dr. Weinzetl retired from public service in 2014 with over twenty-six years of policing experience, including twenty years of formal leadership experience, seventeen of which were as a chief of police. He holds a Doctorate Degree in Higher Education and Adult Learning, a Master's Degree in Organizational Management, a Bachelor's Degree in Organizational Management and Communication, and Associate of Applied Science Degree in law enforcement. Dr. Weinzetl is a lifelong learner and educator and he has instructed hundreds of police officers and police executives in the areas of supervision, leadership development, and a variety of policing skills. Dr. Weinzetl has served on several boards of directors on a local, state, and federal level. He is a past president of the Minnesota Chiefs of Police Association, and he is the author of *Acting Out – Outlining Specific Behaviors and Actions for Effective Leadership*, as well as several journal articles. Dr. Weinzetl has been a presenter at the IACP annual conference and he served as an adjunct faculty member for the International Association of Chiefs of Police Leading by Legacy program



for five years. **Project Role:** *Project management; process development and administration.*

- **Jessie Lee** (Ph.D.), is a lead assessor and field consultant with the IACP supporting the association's professional services, including selection processes for agency chief executives and senior management officers. Dr. Lee recently transitioned from three years of full time service with the IACP in this capacity. Previously, for 10 years he served as Executive Director of NOBLE, the National Organization of Black Law Enforcement Executives, a 3,800 member professional association which, among many other activities, conducts law enforcement management and policy evaluations. Pertinent experience includes 20 years with the Delaware River Port Authority, rising to Operations Commander. Dr. Lee is a graduate of the FBI National Academy and the Northwestern University Staff and Command College. **Project Role:** *candidate screening; process development and administration*



- **Joseph C. Blackburn** (M.B.A.), has over 35 years of comprehensive experience in law enforcement management at the state and local level. Chief Blackburn has been an assessor and senior field associate for the IACP Professional Services in management studies and selection processes for agency chief executives. Chief Blackburn retired from the Pennsylvania State Police after serving in every rank from Trooper to Lieutenant Colonel. He also served as Chief of Police in a suburban community and Pennsylvania's third largest city. Blackburn has been an adjunct instructor for the Northwestern University Center for Public Safety and the Penn State Justice and Safety Institute. He has conducted assessments of the administrative and management practices of the national police of El Salvador and Honduras for the Department of Justice, and conducted studies and managed projects related to the Police Transformation Project in the Republic of Trinidad & Tobago. **Project Role:** *candidate screening; process development and administration.*



VI. REFERENCES

The IACP has assisted scores of agencies in their search and assessment of new chief executives. Below is a sampling of our recent clients.

AGENCY	CONTACT PERSON	NATURE OF SERVICE COMPLETION DATE
<i>Rutland, VT</i> Population: 16,500	Larry Jensen Chair, Police Commission City of Rutland 7 Tuttle Meadow Drive Rutland, VT 05701 (802) 755-6526 lgjensen@aol.com	Comprehensive executive search for police chief September 2015 July 2012
<i>Frederick, MD</i> Population: 67,000	Shawn Ross Director of Human Resources City of Frederick 101 North Court Street Frederick, MD 21701 (301) 600-1879 sross@cityoffrederick.com	Comprehensive executive search for police chief July 2015
<i>Greenville, NC</i> Population: 90,000	Barbara Lipscomb City Manager City of Greenville 200 W. Fifth St Greenville, NC 27834 (252) 329-4642 blipscomb@greenvillenc.gov	Comprehensive executive search for police chief July 2015 November 2012 April 2006
<i>Henderson, KY</i> Population: 28,000	Connie Galloway HR Director City of Henderson 222 First St Henderson, KY 42420 (270) 831-1200 ext. 2204 cfgalloway@cityofhendersonky.org	Police chief assessment center April 2014 March 2007
<i>Sykesville, MD</i> Population: 4,500	Dawn Ashbacher Town Manager Town of Sykesville 7547 Main Street Sykesville, MD 21784 (410) 795-6390 dashbacher@sykesville.net	Comprehensive executive search for police chief December 2013

IACP Executive Search Services

AGENCY	CONTACT PERSON	NATURE OF SERVICE COMPLETION DATE
<i>New Smyrna Beach FL Population: 25,000</i>	Carol Hargy Human Resources Director City of New Smyrna Beach 210 Sams Avenue New Smyrna Beach, FL 32168 (386) 424-2111 chargy@cityofnsb.com	Comprehensive executive search for police chief April 2013
<i>Washington Metropolitan Transit Authority</i>	Rod Dones Talent Acquisitions Manager WMATA 600 Fifth St, NW, 7th floor Washington, D.C. 20001 (202) 962-9819 ext 29819 rdones@wmata.com	Comprehensive executive search for police chief March 2013
<i>National Railroad Passenger Corporation (Amtrak)</i>	Barry Melnkovic Chief Human Capital Officer Human Resources, Diversity Initiatives Labor Administration National Railroad Passenger Corporation 60 Massachusetts Avenue, NE Washington, DC 20002 (202) 906-2216 barry.melnkovic@amtrak.com	Comprehensive executive search for police chief October 2012
<i>Delaware River & Bay Authority Transit system</i>	Charlotte L. Crowell Chief HR Officer Delaware River & Bay Authority New Castle, DE 19720 (302) 571-6397	Comprehensive executive search for police chief August 2012 - Deputy Police Administrator July 2010 - Police Chief
<i>West Palm Beach, FL Population: 101,000</i>	Patrick J. Cooney Director of Human Resources City of West Palm Beach 401 Clematis Street West Palm Beach, FL 33407 (561) 494-1006 pcooney@wpb.org	Comprehensive executive search for police chief May 2012

VII. COST

The IACP prices its professional services on a fixed fee for service basis. Below are the proposed fees associated with providing the services described herein to your organization. The IACP is always ready to tailor its services to your agency's needs and financial abilities. The proposed price can be adjusted, therefore, to accommodate variations in scope of services, either greater or lesser.

PROFESSIONAL SERVICES	COST
Comprehensive Executive Search Flat Fee <i>(includes Structured Interview and on-site background investigation of finalist)</i>	\$40,000 plus travel expenses
ADDITIONAL COSTS	
Interviewer/Assessor Honoraria	\$3,600 maximum <i>(\$400/day x 3 assessors x 3 days). May be less if regional assessors will serve as a professional courtesy.</i>
Candidate and Interviewer Travel	Variable <i>IACP will coordinate travel arrangements with expenses reimbursed by your agency if incurred by the IACP.</i>
Assessment Center (optional)	\$5,000

The flat fee outlined above is inclusive of all developmental and administrative costs except travel expenses and assessor honoraria. **Travel for IACP staff and consultants, assessors, and candidates are not included** and will be paid directly by your agency or reimbursed if incurred by the IACP. **Interviewer/assessor honoraria (if any) are also not included** in the proposed costs and will be the responsibility of your agency.

Generally, one half of the fixed fee is billed upon contract initiation. The remainder of the fixed fee and reimbursable expenses are billed upon project completion. This customary arrangement is subject to negotiation.

VIII. CONTACT

Kim Kohlhepp
Deputy Director, Training and Professional Services
International Association of Chiefs of Police
44 Canal Center Plaze, Suite 200
Alexandria, VA 22314
kohlheppk@theiacp.org
Direct: 703-647-7237
Main line: 800-THE-IACP



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/24/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hodge, Hart & Schleifer, Inc. 8401 Connecticut Avenue Suite 600 Chevy Chase MD 20815	CONTACT NAME: Lorraine Tallman	
	PHONE (A/C No. Ext): (240) 644-6000	FAX (A/C No.): (240) 644-6011
	E-MAIL ADDRESS: ltallman@hhsinsurance.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Charter Oak Fire Ins Co	25615
	INSURER B: Travelers Indemnity Co of Amer	25666
	INSURER C: Travelers Indemnity Co	25658
	INSURER D: Travelers Casualty Co of CT	36170
	INSURER E: AXIS SURPLUS INSURANCE CO	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 2016.2.24 COI2016 & E&O REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBROGATION	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X	6803860P088	1/1/2016	1/1/2017	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					GENERAL AGGREGATE \$ 2,000,000
B	AUTOMOBILE LIABILITY	X	BA-431R8254	1/1/2016	1/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
						\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB	X	ISF-CUP-431R8254	1/1/2016	1/1/2017	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB					AGGREGATE \$ 5,000,000
	<input type="checkbox"/> CLAIMS-MADE					\$
	DED RETENTION \$					\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A	ITUB-596Y632-4	1/1/2016	1/1/2017	<input checked="" type="checkbox"/> WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH)					OTHER
	If yes, describe under DESCRIPTION OF OPERATIONS below					
						E.L. EACH ACCIDENT \$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	Professional Liability		ECN000033941501	6/25/2015	6/25/2016	\$2,000,000 limit Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required) Those usual to the Insured's Operation. See supplemental page

CERTIFICATE HOLDER

CANCELLATION

City of Memphis
Human Resources Division
Attn: Alexandria Smith
125 N. Main St, Rm 406
Memphis, TN 38103

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Lorraine Tallman/LT

COMMENTS/REMARKS

ADDITIONAL CERTHOLDER TEXT:

The following is added as an Additional Insured for General Liability and Automobile Liability subject to the policy terms but only with respect to work performed by the insured when required by written contract or permit on the effective date of services.

Additional Insured: City of Memphis

Exhibit 2

From: Madden, Ursula [mailto:ursula.madden@memphistn.gov]
Sent: Monday, June 13, 2016 11:33 AM
To: Poe, Ryan <poe@commercialappeal.com>
Subject: Re: Police director applications

Ryan,

IACP is handling the application process for the City, so we do not have them in our possession and will not be giving them out for media to review.

Ursula

Sent from my iPhone

On Jun 13, 2016, at 10:50 AM, Poe, Ryan <poe@commercialappeal.com> wrote:

Hey, Ursula. Thanks for inviting me to the MWBE team meeting today. Sounds like there are lots of interesting ideas being considered.

I was wondering: Do you have an ETA on when I could get those police director applications I requested late last week? Seems like there's growing momentum to end the search and hire Rallings after recent events.

Also, do you have time to grab lunch/coffee sometime soon – maybe next week? No topic in mind, although I may run a few ideas for stories by you.

Thanks for letting me know,

Ryan Poe | Reporter
Memphis government & politics

[InforMemphis](#) | politics & policy team
901-268-5074 (cell)
poe@commercialappeal.com
Follow me on Twitter: [@ryanpoe](#)
<image001.jpg>

From: Madden, Ursula [mailto:ursula.madden@memphistn.gov]
Sent: Monday, June 20, 2016 12:26 PM
To: Poe, Ryan <poe@commercialappeal.com>
Subject: RE: Estimated FOIA due date

Hi Ryan,

Sorry, we don't have any documents responsive to your request.

Thanks,

Ursula

From: Poe, Ryan [mailto:poe@commercialappeal.com]
Sent: Monday, June 20, 2016 11:30 AM
To: Madden, Ursula
Cc: Communications
Subject: Estimated FOIA due date

Ursula, I wanted to follow up on a question I asked Friday: Could you give me an estimated time when my request for the director applicants will be fulfilled? It didn't sound like it would be, but I got a notice saying more time was needed, but that didn't provide the usual estimated completion date. The city is actually required by open records law -- see 10-7-503(b)(iii) -- to provide an estimated time.

Thanks,

Ryan Poe | Reporter
Memphis government & politics

[InforMemphis](#) | politics & policy team
901-268-5074 (cell)
poe@commercialappeal.com
Follow me on Twitter: [@ryanpoe](#)



informemphis |

THE COMMERCIAL APPEAL |



From: Poe, Ryan
Sent: Monday, June 13, 2016 1:19 PM
To: 'guy@theiacp.org' <guy@theiacp.org>
Subject: Memphis director search

Hey, Sarah. As I mentioned in my voicemail message just now, I'm trying to get the police director applications received by the IACP on behalf of the city of Memphis. That information is public (see below for legal details), and I was told by city spokeswoman Ursula Madden (901-302-0316, ursula.madden@memphistn.gov) that IACP – and not the city – has the applications. Even so, IACP is still responsible for providing those, either to me directly or via the city.

Could you help me out? I'm primarily interested in the finalists, if any have been selected yet, but would like to receive all applications if not.

Thanks,

Ryan Poe | Reporter
Memphis government & politics

[InforMemphis](#) | politics & policy team
901-268-5074 (cell)
poe@commercialappeal.com
Follow me on Twitter: [@ryanpoe](#)



From The Commercial Appeal's attorney, Lucian Pera:

Just about the oldest case under the Tennessee Public Records Act (Board of Education v. Memphis Publishing Co., 585 S.W.2d 629 (1979) (attached)), held that job applications for the schools superintendent position in the hands of the school board were public record. There's just no doubt that job applications for the police director position (or any other documents such as email and the like about that search) are public records in

the hands of the City. The current Attorney General reaffirmed that position in May 4, 2016, opinion (Tenn. Op. Atty. Gen. No. 16-16 (May 4, 2016) (attached)).

For many years, documents that would be public records in the City's hands have been held to be public records when they were in the hands of the City's agents. For example, in the case about Beale Street tenant subleases – that is, the leases by which the bars and other merchants on Beale Street once leased their premises (all of which is City property) from Beale Street Development Corp. (BSDC leased the property directly from the City) were public records. And, the courts ruled, any citizen could have access to them as public records even when they were in the hands of private agents of the city – there, John Elkington's private , for-profit company that was the City's leasing agent and Brad Foster, an assistant City Attorney who worked on the subleases for the City and had copies. That's Creative Restaurants, Inc. v. City of Memphis, 795 S.W.2d 672 (Tenn. Ct. App. 1990).

The Tennessee Supreme Court extended that logic in the Cherokee decision (Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc., 87 S.W.3d 67 (Tenn. 2002)) which said that the records of private entities were the "functional equivalent" of government were public records. It's hard to imagine a more clearly government function than hiring a police director, so any search firm or other outfit hired to do that function for the City would clearly fall under Cherokee. The May 2016 AG opinion also makes that clear in the context of a school board's use of a private search firm to find a new superintendent. There, the opinion specifically mentions the use of the Tennessee School Boards Association or the Tennessee Organization of School Board Superintendents to perform this function.

I cannot imagine that the City's use of the IACP would not be treated the same way by any court.

Best,

Lucian

Lucian T. Pera

Partner

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Exhibit 3



June 23, 2016

Attorneys at Law

Alabama
Florida
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

BY EMAIL and U.S. MAIL

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City Attorney
City of Memphis
125 N. Main St. Room 336
Memphis, TN 38103

Ms. Gwen Boniface
Deputy Executive Director
International Association of Chiefs of Police, Inc.
44 Canal Center Plaza, Suite 200
Alexandria, VA 22314

Lucian T. Pera
Direct: 901.524.5278
E-Fax: 901.524.5378
lucian.pera@arlaw.com

**Re: Outstanding Request for Records under Tennessee Public Records Act –
Applications for Director of Memphis Police Department**

Dear Mr. McMullen and Ms. Boniface:

Our firm represents Memphis Publishing Company, the publisher of *The Commercial Appeal*, Memphis' daily newspaper.

Our reporter, Ryan Poe, has requested from each of your organizations, the City of Memphis and the International Association of Chiefs of Police ("IACP"), copies of all applications made for the position of Director of the Memphis Police Department. Copies of these two public records requests are attached.

Our reporter is entitled to access to these documents, which are clearly public records under the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-503(a) and (f). I write today to re-confirm those outstanding requests, to request once more that you honor them, **and to inform you that my client intends to bring suit under the Act if copies of these applications are not made available to my client by Friday, June 24, 2016, at 5:00 p.m.**

We understand that the City of Memphis has contracted with the International Association of Chiefs of Police for certain recruiting services in connection with the City search for a new police director. The Professional Services Agreement includes a Public Records provision stating IACP's understanding that the City is "a governmental entity subject to the State of Tennessee Public Records Act," and that the City is entitled to "demand and disclose any and all records and documents" under the Agreement. The proposal to the City attached to the Professional Services Agreement describes a "Resume Receipt and Review" process, which

includes the collection of application materials including resumes from applicants for the position. According to the proposal, the best 10-20 candidates will then be chosen for “Semifinalist Screening,” and then approximately six finalists are selected and presented to the City.

Under well-settled Tennessee law, all of these applications (not just the finalists selected by IACP), are public records subject to the access requirements of the Act, whether in the City’s hands or in the hands of an agent of the City.

First, under the Tennessee Supreme Court’s 2002 decision in *Memphis Publ’g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67 (Tenn. 2002), the IACP is, for purposes of its contracted work in recruiting a new Memphis police director, the “functional equivalent” of a government agency. Thus, all of its records concerning this work are public records subject to the access requirement of the Act. To be clear, however, the public record request at issue here seeks only any applications, including resumes, submitted for the position of Memphis police director.

The *Cherokee* decision held that records in the hands of a private, non-governmental, not-for-profit corporation were public records because that company was the “functional equivalent” of government. That company had contracted with the Tennessee Department of Human Services to perform certain functions related to government-subsidized child care services in Shelby County. Before that contract, the services at issue in *Cherokee* had been performed by TDHS; after the contract was terminated, those services were again performed by TDHS. If the governmental functions outsourced by TDHS led to the private company in *Cherokee* being found to be the “functional equivalent” of a government agency, then the recruitment and selection of applicants, semifinalists and finalists for the position of director of the Memphis Police Department are certainly governmental functions now being performed by a private organization, and that organization should be considered the “functional equivalent” of government.

There can simply be no doubt that applications for the critical public position of police director of a city police department are public records. The very first reported decision under the Act held that applications and personnel files of applicants for the position of superintendent of the Memphis City Schools were public records. *See Board of Education v. Memphis Publishing Co.*, 585 S.W.2d 629 (Tenn. 1979).

Further, they are public records whether in the hands of the City or its agent, even if that agent is a private organization whose records are not otherwise subject to the Act. The *Cherokee* decision was only the culmination of a long line of Tennessee decisions squarely holding that public records in the hands of agents of a Tennessee governmental entity are public records, whether in the hands of government employees or private agents. For example, in *Creative Restaurants, Inc. v. City of Memphis*, 795 S.W.2d 672 (Tenn. Ct. App. 1990), subleases of public property in the Beale Street Historic District were held to be public records subject to the access

requirement of the Act, even though they were not in the City's direct possession, but in the possession of two different agents of the city – the City's leasing agent contracted to lease that public property to bars, restaurants, nightclubs, and other businesses, and an assistant City attorney engaged to do legal work for the City concerning the subleases. These records were public records *in the hands of these agents*, even though the leasing agent was a privately-owned for-profit company and the assistant City attorney was a lawyer in private practice with a private law firm contracted to do City legal work. Regardless of the application of *Cherokee*, the applications at issue here are public records in the hands of the IACP under *Creative Restaurants* and other similar precedent.

A brief review of other states' treatment of the "functional equivalent" test demonstrates further support for this position. For example, in *State ex. rel. Gannett Satellite Info. Network v. Shirey*, 678 N.E.2d 557 (Ohio 1997), the City of Cincinnati contracted with a private consultant to assist the city in hiring a safety director. While the consultant agreed to provide the city with a list of final applicants, all other applications and resumes collected would remain the sole property of the private consultant and would not be subject to public review. The Ohio Supreme Court determined that all of the application documents, not just those of the finalists, were subject to disclosure under Ohio's public records act, noting that had the city undertaken the task without hiring the private consultant, the records would have been subject to disclosure. The court concluded that the city could not circumvent the public records laws by contracting with a private company, further stating "to hold otherwise, governmental entities could conceal information concerning the hiring of important public officials from the public by merely delegating this uniquely public duty to a private entity."

Second, and independently, the very language of the Act itself make clear that these applications are public records, no matter whose hands they are in. The Act provides:

All records, **employment applications**, credentials and similar documents **obtained by any person** in conjunction with an employment search for a director of schools **or any chief public administrative officer** shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. For the purposes of this subsection (f), the term **"person" includes a natural person, corporation, firm, company, association or any other business entity.**

Tenn. Code Ann. § 10-7-503(f) (emphasis added). With respect to school superintendents, the Tennessee Attorney General has very recently made clear that this statute requires that records of independent, private groups hired by Tennessee school boards to recruit new superintendents are public records. Tenn. Op. Att'y Gen. No. 16-16, 2016 WL 2764126 (May 4, 2016). The Attorney General specifically opined that such records in the hands of the Tennessee School Boards Association and the Tennessee Association of School Superintendents, when hired for this purpose, were public records. But the coverage of the statute is far broader than school superintendents, expressly covering "any chief public administrative officer." The director of the

Bruce A. McMullen, Esq.
Ms. Gwen Boniface
June 23, 2016
Page 4

Memphis Police Department – in effect, the chief executive officer commanding the entire City police department – is just such a “chief public administrative officer.”

These applications are public records, and both of your organizations bear legal responsibility for making them available under the Tennessee Public Records Act.

The Tennessee Public Records Act requires that the custodian of public records promptly make public records available “at all times during business hours.” Tenn. Code Ann. § 10-7-3(A)(2)(A) and (f). Further, should your organization fail or refuse to produce these requested records, we will pursue all of our client’s legal remedies, including seeking our client’s attorney fees and expenses, on the grounds that these records are public and that your organizations knew that they were public and willfully refused to disclose them. *See* Tenn. Code Ann. § 10-7-505(g). Do note that the fees provision of the Act expressly authorizes an award of fees and expenses against an agent of the City.

We do hope to hear from you each before **Friday, June 24, 2016, at 5:00 p.m.**, so as to avoid the necessity for legal action.

Thank you for your consideration.

Very truly yours,



Lucian T. Pera

From: Madden, Ursula [mailto:ursula.madden@memphistn.gov]
Sent: Monday, June 13, 2016 11:33 AM
To: Poe, Ryan <poe@commercialappeal.com>
Subject: Re: Police director applications

Ryan,

IACP is handling the application process for the City, so we do not have them in our possession and will not be giving them out for media to review.

Ursula

Sent from my iPhone

On Jun 13, 2016, at 10:50 AM, Poe, Ryan <poe@commercialappeal.com> wrote:

Hey, Ursula. Thanks for inviting me to the MWBE team meeting today. Sounds like there are lots of interesting ideas being considered.

I was wondering: Do you have an ETA on when I could get those police director applications I requested late last week? Seems like there's growing momentum to end the search and hire Rallings after recent events.

Also, do you have time to grab lunch/coffee sometime soon – maybe next week? No topic in mind, although I may run a few ideas for stories by you.

Thanks for letting me know,

Ryan Poe | Reporter
Memphis government & politics

[InforMemphis](#) | politics & policy team
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poe@commercialappeal.com
Follow me on Twitter: [@ryanpoe](#)
<image001.jpg>

From: Madden, Ursula [mailto:ursula.madden@memphistn.gov]
Sent: Monday, June 20, 2016 12:26 PM
To: Poe, Ryan <poe@commercialappeal.com>
Subject: RE: Estimated FOIA due date

Hi Ryan,

Sorry, we don't have any documents responsive to your request.

Thanks,

Ursula

From: Poe, Ryan [mailto:poe@commercialappeal.com]
Sent: Monday, June 20, 2016 11:30 AM
To: Madden, Ursula
Cc: Communications
Subject: Estimated FOIA due date

Ursula, I wanted to follow up on a question I asked Friday: Could you give me an estimated time when my request for the director applicants will be fulfilled? It didn't sound like it would be, but I got a notice saying more time was needed, but that didn't provide the usual estimated completion date. The city is actually required by open records law -- see 10-7-503(b)(iii) -- to provide an estimated time.

Thanks,

Ryan Poe | Reporter
Memphis government & politics

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From: Poe, Ryan
Sent: Monday, June 13, 2016 1:19 PM
To: 'guy@theiacp.org' <guy@theiacp.org>
Subject: Memphis director search

Hey, Sarah. As I mentioned in my voicemail message just now, I'm trying to get the police director applications received by the IACP on behalf of the city of Memphis. That information is public (see below for legal details), and I was told by city spokeswoman Ursula Madden (901-302-0316, ursula.madden@memphistn.gov) that IACP – and not the city – has the applications. Even so, IACP is still responsible for providing those, either to me directly or via the city.

Could you help me out? I'm primarily interested in the finalists, if any have been selected yet, but would like to receive all applications if not.

Thanks,

Ryan Poe | Reporter
Memphis government & politics

[InforMemphis](#) | politics & policy team
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Lucian

Lucian T. Pera

Partner

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