

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

HAUSSAMEN PUBLICATIONS, INC.,

Plaintiff,

v.

No. D-307-CV-2016-01220
Honorable James T. Martin

CITY OF LAS CRUCES and THE MERCER
GROUP, INC.,

Defendants.

THE MERCER GROUP, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant The Mercer Group ("Mercer"), by and through its attorneys of record, hereby submits its Motion to Dismiss Plaintiff's "Original Complaint to Enforce the New Mexico Inspection of Public Records Act and For Writ of Mandamus" ("Complaint"). In support thereof, Mercer states as follows:

Introduction

Plaintiff's Complaint arises generally out of a professional services agreement ("Agreement") whereby Mercer, in exchange for a fixed payment, assisted in the search for the position of City Manager for the City of Las Cruces ("City"). Mercer collected, reviewed and evaluated application materials from interested candidates. Pursuant to the Agreement, Mercer then exercised its professional judgment to determine which candidates should be referred to the City of Las Cruces¹ for further consideration, and forwarded the application materials regarding only those candidates to the City of Las Cruces. Pursuant to the Agreement, these are the sole and only obligations of Mercer with regard to the applicants for the City Manager position. There is

¹ As used herein, "City" may refer to the City of Las Cruces or the Las Cruces City Council as contextually appropriate.

no requirement in the Agreement that Mercer provide records regarding applicants whose information was not forwarded to the City to the City. *See* Agreement, attached to Plaintiff's Complaint at Exhibit A; Proposal, attached to Agreement as Exhibit A, attached hereto as **Exhibit 1**.

Despite the fact that Mercer is a private corporation with no duty to maintain or disseminate the documents Plaintiff seeks, Plaintiff requests an order from this Court which 1) enforces the New Mexico Inspection of Public Records Act ("IPRA") against Mercer, and 2) compels Mercer, through the mechanism outlined in § 14-2-12, to disclose all applications for the position of City Manager of the City of Las Cruces. Plaintiff's Complaint must be dismissed as to Mercer because IPRA does not apply to Mercer under the facts alleged by Plaintiff.

I. Mercer Was Not Acting "On Behalf Of" The City Such That IPRA Would Apply To The Records Plaintiff Seeks

A. Plaintiff Complaint fails to state a claim upon which relief can be granted as to Mercer

New Mexico's IPRA applies, by its plain language, to "public bodies," which are defined as "the executive, legislative and judicial branches of the state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education." *See* NMSA 1978 § 14-2-6(F). Notably, private corporations who do business with public bodies are omitted from this definition. *Id.*

The phrase "public record" is likewise defined in the IPRA as "all documents, papers, letters, books...that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained." NMSA 1978 § 14-2-6(G).

Plaintiff has failed to plead any facts which would allow for the application of IPRA to Mercer, which Plaintiff acknowledges in its Complaint is a private entity and not a public body. *See* Complaint at ¶ 3. This alone is sufficient to warrant dismissal of Plaintiff's Complaint. Even construing Plaintiff's Complaint liberally, it does not state a claim upon which relief can be granted as to Mercer. Plaintiffs' Complaint does not provide the requisite factual information that would allow this Court to conclude that Mercer was acting "on behalf of" the City such that IPRA would apply to its records. Nor has Plaintiff plead facts to suggest that such records "relate to public business." This constitutes a "total failure to allege some matter essential to the relief sought" which warrants dismissal of Plaintiffs' Complaint pursuant to Rule 1-012(B)(6). *Las Luminarias of the N.M. Council of the Blind v. Isengard*, 1978-NMCA-117, ¶ 3, 92 N.M. 297. As a result, Plaintiff's Complaint should be dismissed on this basis.

B. Plaintiff's Complaint fails as a matter of law where Mercer is not maintaining any records which "relate to public business" "on behalf of" the City and is therefore not subject to IPRA

Even if the Court construes Plaintiff's Complaint as sufficient to potentially state a claim against Mercer, it is clear that as a matter of law, Plaintiff's contention that IPRA applies to Mercer is meritless. New Mexico courts construing the "on behalf of" language contained in the definition of "public record" have noted that "on behalf of" is undefined by the statute, and that IPRA "does not indicate whether every purportedly public document created or held by a private entity comes within the ambit of IPRA or whether there are any limitations to production of requested records." *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, ¶ 10. As a result, the New Mexico Court of Appeals has adopted a nine factor test to determine, on a case by case basis, whether a private corporation is maintaining records "on behalf of" a public body for purposes of IPRA, such that such records will be considered "public records." *Toomey*, 2012-NMCA-104, ¶

22. Those factors are 1) the level of public funding; 2) commingling of funds; 3) whether the activity was conducted on publicly owned property; 4) whether the services contracted for are an integral part of the public agency's chosen decision-making process; 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; 6) the extent of the public agency's involvement with, regulation of, or control over the private entity; 7) whether the private entity was created by the public agency; 8) whether the public agency has a substantial financial interest in the private entity; and 9) for whose benefit the private entity is functioning. *Id.* at ¶ 13; quoting *News & Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Gr., Inc.*, 596 So.2d 1029, 1031 (Fla. 1992).

As the *Toomey* court noted, the focus of the totality of factors analysis is whether “a private entity is doing more than just providing a specific contracted-for service to the public agency.” *Id.* at ¶ 15. Other courts who analyze the issue similarly have determined that in order for a private entity to be subject to a public records disclosure law, it must be the “functional equivalent of a public agency.” *Connecticut Humane Soc’y. v. Freedom of Info. Comm’n.*, 218 Conn. 757, 591 A.2d 395, 396-97 (1991).

In its “Motion to Dismiss or in the Alternative for Summary Judgment,” the City properly analyzed the application of the *Toomey* factors to the relationship between the City and Mercer. *See* City’s Motion, filed 6/29/2016, at ¶¶ 17-19. Mercer joins that analysis and incorporates it by reference herein. Mercer will not re-argue that analysis here, but emphasizes it is clear that Mercer was simply providing a contracted-for service to the City, rather than acting “on behalf of” the City in any way that would subject it to IPRA. The obligations of Mercer were explicitly laid out in the Agreement. Mercer undertook the search process by obtaining application materials from interested candidates. Pursuant to the Agreement, Mercer then evaluated and screened the

applications and created a matrix of prospective candidates it determined most closely matched the selection criteria for the City Manager position. This information was provided to the City. *See* Exhibit 1 at p. 3-4. Pursuant to the Agreement Mercer was not required to provide or disclose to the City any information about applicants who were not included in the matrix. *Id.* The City does not have access to this information under the Agreement or any other arrangement. *See State ex. Rel. Am. Ctr. For Economic Equality v. Jackson*, 2015-Ohio-4981, ___ N.E.3d ___, 2015 WL 7777323 (holding that where city *had access* to private entity’s records for purposes of monitoring performance, records were subject to disclosure under open records law). Since such information was not provided to the City, it is undisputed that the City *did not use this information* in performing its evaluation of candidates for the City Manager position. There is no legal or evidentiary basis to conclude that IPRA somehow applies to Mercer where it is plainly not maintaining, storing or otherwise keeping records “on behalf of” the City, and any such records were not used by the City in the evaluation process. Put another way, Mercer has provided everything to the City that it agreed to provide, and the City has provided everything responsive to Plaintiff’s IPRA request in its possession to Plaintiff. As a result, Plaintiff’s Complaint should be dismissed.

II. NMSA 1978 § 14-2-12 Does Not Apply to Mercer

Plaintiff seeks relief pursuant to NMSA 1978 § 14-2-12 in the form of a writ of mandamus compelling the City to “obtain” the requested documents from Mercer, or ordering Mercer to disclose the requested documents. *See* Complaint at p. 4. Plaintiff also seeks, presumably from both parties, the remedies contained in § 14-2-12(D), including damages, costs, attorney’s fees, and pre and post judgment interest. *See id.*

As discussed above, IPRA applies only to “public bodies” by its plain language. *See* NMSA 1978 § 14-2-6(F). Private corporations doing business with public bodies are specifically exempted from this definition. *Id.* There is no indication that the remedies available pursuant to § 14-2-12, including mandamus, are applicable to any entity other than “public bodies.” *See Faber v. King*, 2015-NMSC-015, ¶¶ 27-32 (discussing policy goals and purposes of IPRA’s enforcement provision, and concluding that transparency and accountability of *public entities* is primary purpose of §14-2-12) (emphasis added).

In addition, the remedies outlined in § 14-2-12 exist to “to enforce the provisions of the Inspection of Public Records Act.” § 14-2-12(B); (D). The only appropriate claimant to request such relief, apart from the Attorney General, is “a person whose written request has been denied.” § 14-2-12(A)(2). In the present case, Mercer has not been served with any request made pursuant to IPRA. It has not denied any such request. Therefore, it cannot be said to have wrongfully denied an IPRA request, and relief to “enforce” IPRA against Mercer is impossible. As a result, Plaintiff’s Complaint must be dismissed as to any attempt to “enforce” IPRA with regard to Mercer pursuant to § 14-2-12.

Conclusion

For the foregoing reasons, Defendant Mercer requests the Court grant its Motion and dismiss Plaintiff’s Complaint against it, and for other and further relief as the Court deems appropriate.

Respectfully submitted,

MILLER STRATVERT P.A.

By  _____

Cody R. Rogers

Joni L. Autrey

Attorneys for The Mercer Group, Inc.

3800 E. Lohman Ave., Suite H

Las Cruces, New Mexico 88011

Telephone: (575) 523-2481

Email: crogers@mstlaw.com

I HEREBY CERTIFY that on the
8th day of July, 2016, I filed the foregoing
pleading electronically through the
Odyssey File & Serve system, and caused
all counsel of record to be
served by electronic means.



Cody R. Rogers

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**CITY OF LAS CRUCES,
NEW MEXICO**

Proposal for Executive
Search Services for
the Position of

CITY MANAGER

August 12, 2015



August 12, 2015

VIA E-MAIL: rbabington@las-cruces.org

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Mr. Rusty Babington
City Attorney
City of Las Cruces
P. O. Box 20000
Las Cruces, NM 88004

Dear Rusty:

The Mercer Group, Inc. is most pleased to submit this proposal to assist the City of Las Cruces to recruit regionally and nationally and to develop exceptionally well-qualified candidates for the position of City Manager. We are most interested in assisting the City of Las Cruces with this critical project, and if selected to conduct the search, would have no difficulty beginning the project immediately and expediting our work to ensure a smooth process. The Mercer Group, Inc. has extensive experience in conducting City Manager searches in the New Mexico region and nationally. Our firm conducts many City Manager searches each year throughout the United States. We are especially well qualified to conduct this search for the City of Las Cruces having done consulting work for the City previously.

The purpose for engaging the services of an executive search firm is to seek out and recruit experienced candidates and to assist the City of Las Cruces in selecting highly qualified individuals who meet the profile and needs of the City and who might not otherwise apply. We have conducted recent searches for City Managers for several communities your size. We are quite familiar with the candidate pool.

This proposal from our firm should provide you with the overview information that you need relative to our firm's qualifications to conduct an executive search for a City Manager for the City of Las Cruces.

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Mr. Rusty Babington

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Our Approach

After reviewing written materials provided by City and meeting with the Mayor/City Council, with you and Robert Garza and others to determine the key selection criteria relative to the search, we will conduct the following steps:

1. Analyze the position and draft a Position Profile/Recruitment Brochure.
2. Recruit for the position on a regional and national basis.
3. Invite potential candidates to apply who meet the criteria established by the City.
4. Review and screen applications.
5. Conduct interviews and background checks of selected candidates.
6. Recommend a list of final candidates with reference and background reports, an Interview Guide, suggested questions and candidate evaluation forms.
7. Coordinate final interviews, conduct final background checks, negotiate an agreement with the selected candidate and follow-up.

1. Position Analysis

We will have extensive consultation with the Mayor, City Council, City Manager and City Attorney, with other key City staff and others selected by the governing body, as well as other individuals or groups (if you wish) to determine the City's vision/mission, goals and objectives, the needs and issues, requirements of the job, and to obtain information about the environment within which the position functions. In addition, we will spend a considerable amount of time at the beginning of the process with the appropriate City of Las Cruces personnel in order to determine the level of experience and training needed.

During this process, we will initiate individual interviews with the Mayor, City Council, City Manager and City Attorney, department heads and key staff, and others of the choice of the City Manager to identify expectations, perceptions, and concerns regarding the position.

Based on those meetings, we will prepare a draft position profile/recruitment brochure and review it with the Mayor, City Council, City Manager and City Attorney in order to arrive at a general agreement regarding the specifications for the position. The final position profile/recruitment brochure will include information about the City, the community, major issues to be faced, the position, and the selection criteria established the City.

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2. Recruitment Process

Because we have recently completed similar searches, we will first review our database to determine those candidates whom we may already know and/or already have on file who may meet the City's specifications.

Although this process is valuable, we will rely most heavily on our own contacts in the city administration field and on our own experience. In other words, through "networking", we will conduct a nationwide professional search for the best qualified candidates and invite them to apply for the position.

We will provide the Mayor, City Council and City Manager with several advertising alternatives with varying degrees of cost and their associated benefits. Based on our discussions with the Mayor, City Council and City Manager, we will place ads in professional journals, online at appropriate websites for the public safety field, and in various minority and women's publications to encourage applicants to apply.

3. Resume Review

We will review and analyze each applicant's background and experience against the position description criteria. We will acknowledge all resumes received and keep candidates informed of their status.

4. Candidate Screening

Criteria for the preliminary screening will be contained in the approved "Position Profile/Recruitment Brochure". They may include such items as education, technical knowledge, experience, certifications, accomplishments, management style, personal traits, etc. Screening of candidates against those criteria will be based on data contained in the resumes and other data provided by the candidates and on our knowledge of the organizations in which they work. At this stage, each must meet the minimum qualifications specified in the Position Profile/Recruitment Brochure.

We will be responsible for screening the applications received. This initial screening will be conducted by telephone and/or interactive video with the prospective candidate. We will conduct interviews with references who may know the candidate's background and expertise by telephone. Where feasible, we will also conduct personal interviews with top candidates.

Once the initial screening is completed, we will select the prospective candidates who most closely match the criteria established by the Mayor, City Council and City Manager. The output of this step in the process will be a matrix display of the top candidates showing

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how each rates against the selection criteria established by the Mayor, City Council and City Manager. This matrix will be reviewed with the Mayor, City Council and City Manager in a one-on-one meeting and their guidance obtained prior to proceeding. One contingency here is that the Mayor, City Council and City Manager may not approve of any of the candidates.

If that should occur, we would, of course, keep searching until the City's needs are clearly met.

After review by the Mayor, City Council and City Manager, we will personally interview each selected candidate utilizing various interview techniques. We will closely examine their experience, qualifications and achievements in view of the selection criteria and our professional expertise in evaluating the quality of such qualifications and achievements.

We also request that all candidates provide us, in writing, substantial information about their accomplishments and their management style and philosophy. This information will be verified and, at the Mayor, City Council and City Manager's option, may be further tested by having the finalists complete management and leadership style inventories. We interpret these instruments for the Mayor, City Council and City Manager as well.

5. Background Investigations

As part of our process in evaluating top candidates, we make detailed and extensive reference checks. In conducting these, it is our practice to speak directly to individuals who are now or have previously been in a position to evaluate the candidates' job performance.

We ask each candidate to provide us with a large number of references. We then network these references to other persons who know the candidate. In this way, we thoroughly evaluate each candidate. We have talked to as many as 23 references concerning a single finalist candidate. These references and evaluations are combined to provide frank and objective appraisals of the top candidates. We also verify past employment difficulties, if any, including reasonable due diligence on any legal action filed against current or former employers.

As part of our evaluation process, we verify undergraduate and graduate college degrees. We arrange for credit checks, criminal checks, and, as an additional option, can arrange for psychological (or similar) testing of the candidates that may be desired. As a part of this project we can provide the results of a Teleometrics Management Style Inventory on the finalist candidates. We can also conduct a Myers-Briggs analysis of the team with the new team member for team building purposes. We will recommend background investigation criteria to the Mayor, City Council and City Manager who will make the final decision on the specifics of the background check.

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6. Interview Process

Based on the preceding steps, a recommended list of finalists for the position of City Manager will be compiled. We will prepare a written summary on each finalist. The information will cover, but not be limited to, 1) present position, 2) total years experience, 3) salary requirements, 4) education, 5) previous positions held, 6) notable projects, 7) management style, 8) skills and abilities, 9) interests, and 10) professional goals.

This information will be presented to the Mayor, City Council and City Manager in a detailed written format combined with the results of the background investigation and candidate screening. We will make a recommendation on a group of five (5) to seven (7) finalists. The Mayor, City Council and City Manager shall make the final decision on which and how many candidates will be interviewed.

Our report will be presented in a meeting with the Mayor, City Council and City Manager in which we will discuss our recommendations and provide background information, sample questions and a rating form for the interviews. We can also assist the Mayor, Council and City Manager at no extra charge in conducting targeted selection and/or simulation processes with finalists, if desired.

In particular, we will explain which, if any, of the applicants specifically meet the total criteria established by the Mayor, City Council and City Manager or whether the final group simply represents the best available talent.

We will also provide the Mayor, City Council and City Manager with our recommendations relative to timing, sequencing, location, setting, format, and conduct of interviews with the finalists. We will provide information about trends in employment, employment contracts and agreements, relocation expenses, perquisites, appropriate role for spouses, receptions, etc. We will arrange schedules for top candidate interviews with the Mayor, City Council and City Manager and others of your choice and will coordinate the process.

7. Negotiation and Follow-up

We will also assist in the negotiation process relative to salary, benefits and other conditions of employment. We feel that we can be especially helpful because we have proposed a fixed fee rather than one based on a percentage of salary. One contingency here is that an agreement may not be able to be arranged. If that is the case, we will work with the Mayor, City Council and City Manager to select an alternate candidate.

We will properly handle any and all media relations. Unless otherwise directed, it is our standard practice to tell all media that we are working on behalf of the Mayor, City Council and City Manager and that any public statement should come directly from the Mayor and City Administrator. We will maintain confidentiality of candidate information,

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to the degree possible, under New Mexico law.

Finally, we will notify by letter all unsuccessful candidates who were not recommended for interview with the Mayor, City Council and City Manager of the final decision reached. We suggest, however, that it is more proper for the Mayor and/or City Manager to directly notify all unsuccessful candidates whom they interviewed of the final result.

Once the new City Manager has been on board for 30 days or so, we will conduct a session with the Mayor, City Council and with the new City Manager in order to establish mutual performance criteria and goals for the position. In this regard, we will work with the Mayor and City Council to define the role of the new City Manager within the City of Las Cruces.

We will follow-up periodically with the Mayor, City Council and the new City Manager during the first year in order to make any adjustments that may be necessary.

We will keep the Mayor, City Council and City Manager closely informed and involved in decisions concerning the search process at all times. We will prepare and send to the Mayor, City Council and City Manager bi-weekly e-mail updates and a formal progress report at the mid-point of the search. These reports will contain a progress report on the recruitment and specific steps to be taken to meet the Mayor, City Council's and City Manager's deadlines and an itemization of expenses incurred-to-date and expected to be incurred during each succeeding project step.

Support from the City will be needed, as follows:

- Arranging interviews with the Mayor, City Council, City Manager and key City staff
- Providing overall and departmental budget, organization charts and other documents
- Place of contact for the search
- Processing invoices for payment

Our approach is highly interactive and significantly involves the client in all important steps of the process.

Schedule

Our search process normally takes about 90 to 120 days from date of approval of the Position Profile/Recruitment Brochure by the client. The more time we have, within reason, of course, the more effectively we can conduct thorough evaluation and background checks on finalist candidates.

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Firm Qualifications and Staffing

Our firm is headquartered in the Atlanta Metropolitan area and has 20 branch offices throughout the United States. We will work from the Santa Fe, New Mexico office.

The principal consultant to be utilized for this engagement will be Mr. James L. Mercer, President/CEO of our firm. In total, Mr. Mercer has completed over 2000 searches for executives in the public sector and private sectors. The quality of our work is evidenced by the amount of repeat business which we receive from our clients.

Mr. Mercer possesses Bachelor of Science and Master of Business Administration degrees from the University of Nevada and is a former Assistant City Manager of Raleigh, North Carolina. He is a Certified Management Consultant (CMC), and previously served as VP/Partner with Korn/Ferry International (the world's largest executive search firm) and as Director of Management Consulting Services for Coopers & Lybrand. Mr. Mercer is President/CEO of The Mercer Group, Inc., a firm which he founded.

Mr. Mercer will serve as lead consultant on the project. Mr. Clark Wurzberger will serve as backup consultant to Mr. Mercer on the project. Mr. Wurzberger has over eighteen years of public sector experience. Mr. Wurzberger holds a Bachelor's Degree in English from San Diego State University. Mr. Wurzberger served for seven years as Senior Associate with Hughes, Perry & Associates (formerly Hughes, Heiss & Associates), a highly regarded California-based public sector management consulting firm providing executive search and other consulting services to local government clients in California and other states since 1974. Mr. Wurzberger specializes in public sector executive search.

Ms. Karolyn Prince-Mercer will also serve as backup consultant to Mr. Mercer on the project. Ms. Prince-Mercer received her Bachelor of Arts degree in History with minors in Art, Political Science and Education from the University of Nevada. She received her Doctor of Jurisprudence degree from Woodrow Wilson College of Law. She is licensed to practice law in New Mexico and in Georgia. Ms. Prince-Mercer is qualified to administer and evaluate Myers-Briggs Type Indicator materials. Ms. Prince-Mercer has been in management consulting for 19 years. She has experience working in executive search, compensation and classification, and organization and management studies.

We have a number of minority and women placements in key executive positions and are proud of that record.

Code of Ethics

Mr. Mercer is a Member and subscribes to the Code of Ethics of the International City/County Management Association and to the Institute of Management Consultants, USA.

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Guarantees

We offer several guarantees of our work. The four most important are:

1. We will keep working until the placement is made.
2. We will not recruit the placement for other positions without the City's permission.
3. We will not recruit any of your staff for two years from the date of the placement, without the City's permission.
4. If the selected candidate leaves your employ within the first two years, we will redo the search for expenses only.

Reasonable Fees

Our fees to conduct a search of this type are competitive and are \$16,500, plus out-of-pocket expenses not-to-exceed \$8,000. Items typical of a similar search with their typical costs are broken down below. Since the City of Las Cruces is a previous client of our firm and because of our location in Santa Fe, we are offering a discounted fee and expenses to the City of \$1500 on our professional services fee and \$2,000 on expenses.

Also, since we are conducting other consulting work around the country, expenses can be kept to a minimum.

Position Analysis	\$ 2,000
Advertising Campaign	3,000
Resume Review	1,750
Candidate Screening	4,000
Background Investigation.....	4,250
Interview Process	1,000
Negotiation and Follow-up.....	500
TOTAL FEE	\$16,500
Less Discount.....	1,500
DISCOUNTED FEE	\$15,000

Expenses, not-to-exceed out-of-pocket in the amount of \$6,000.00 are for consultant travel, lodging and per diem, telephone, correspondence, advertising, research, sourcing, reference and background investigation, and report preparation. Because newspaper advertising is often expensive we would like to discuss with the Mayor, City Council and City Manager the benefits of placing an ad before a decision is made to do so. It is anticipated that three trips will be made to Las Cruces as a part of this project.

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Because of our other ongoing consulting and search work and our experience, expenses should be kept to a minimum. The cost for final candidates to travel to interview with the Mayor, City Council and City Manager is not included. Such costs are typically paid by the client on a reimbursement basis, directly to the candidates. These costs are extremely difficult to estimate because they depend on where the candidates are located. Typically, out-of-state costs run about \$750 to \$1,000 per person.

The City of Las Cruces's liability to The Mercer Group, Inc. for services rendered under this agreement will not exceed the agreed upon price unless an increase is authorized by the Mayor, City Council and City Manager in writing.

We will submit monthly invoices for fees and expenses. It is our practice to bill one-third at the start of the search, one-third upon delivery of the semi-finalist candidate materials, and one-third upon delivery of the Final Report (Interview Guide with candidate information/materials). Each invoice is due and payable upon receipt. Expenses will be billed in addition and shown as a separate figure.

We will comply with all applicable laws, rules and regulations of federal, state and local government entities.

Our ability to carry out the work required will be heavily dependent upon our past experience in providing similar services to others, and we expect to continue such work in the future. We will, to the degree possible, preserve the confidential nature of any information received from you or developed during the work in accordance with our professional standards.

We assure you that we will devote our best efforts to carrying out the engagement. The results obtained, our recommendations and any written material provided by us will represent our best judgment based on the information available to us. Our liability, if any, will not be greater than the amount paid to us for the services rendered.

This proposal constitutes the agreement between us. It cannot be modified except in writing by both parties. Our agreement will be interpreted according to the laws of the State of New Mexico.

References

Below are references from recent city manager searches that you may ask about our qualifications and work product:

Town Councilmember Meg Casasanta, Chair
Town Manager Search Committee
Town of Rocky Hill
761 Old Main Street
Rocky Hill, CT 06067

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860-670-3107 or 860-258-2705
mcasasanta@rockyhillct.gov
Town Administrator search

Mayor Al King
City of Goldsboro
City Hall, 200 North Center Street
Goldsboro, NC 27530
919-580-4362
c/o mbrewer@city.goldsboro.nc.nc
City Manager search

Former Mayor Tom Beehan
City of Oak Ridge
200 W. Tulane Avenue
Oak Ridge, TN 37830
865-425-3432
tbeehan@cortn.org
City Manager search

Mayor Marilyn Hatley
City of North Myrtle Beach
1018 Second Avenue South
North Myrtle Beach, SC 29582
843-280-5526
City Manager search

Mr. Robert Farrar
Assistant City Manager
City of Bangor
73 Harlow Street
Bangor, ME 04401
207-992-4202
robert.farrar@bangormaine.gov
City Manager search

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Please contact me at 505-466-9500 (O) or 505-660-7725 (Cell) if you have questions or require additional information.

Thank you for the opportunity to present our qualifications. I will look forward to hearing from you.

Sincerely yours,

THE MERCER GROUP, INC.

James L. Mercer, President/CEO
Certified Management Consultant (CMC)