

# Sample Contract

## INVESTMENT CONSULTING AGREEMENT

Date

Board of Trustees  
XYZ Pension Fund  
Address

Re: **Investment Consulting Services Agreement**

Dear Trustees:

This retainer letter (“Agreement”) describes the agreement between Segal Advisors, Inc. (“Segal Advisors”) and the XYZ Pension Fund (“Fund”) regarding the provision by Segal Advisors of investment consulting services to the Fund, subject to the terms and conditions set forth herein, including the fee for such services and other related matters.

### **Term**

The term of this Agreement shall be from \_\_\_\_\_ through \_\_\_\_\_. The Agreement will be automatically renewed at the expiration of any term unless either party provides to the other party thirty- (30) days written notice of its intent to not renew the Agreement. Segal Advisors reserves the right to request a fee increase at any time.

### **Services To Be Provided To The Fund**

Segal Advisors will provide the services checked below. The frequency with which each service will be provided and a more detailed description of each service are set forth in the attachments to this Agreement.

- ☐ Attendance at Board Meetings (Attachment 1);
- ☐ Establishment and ongoing review of Investment Policy Statement (Attachment 2);
- ☐ Establishment and ongoing review of asset allocation policy (Attachment 3);

- ☐ Review of investment managers (Attachment 4);
- ☐ Assist in investment manager search and selection (Attachment 5);
- ☐ Evaluation of investment performance (Attachment 6);
- ☐ Review and evaluation of custodial services (Attachment 7);
- ☐ Review and evaluation of brokerage and trading practices (Attachment 8);
- ☐ Review of proxy voting guidelines (Attachment 9);
- ☐ General consulting (Attachment 10).

## **Fees**

The fee for the above services will be \$\_\_\_\_\_ per year to be billed on a [quarterly basis payable in advance/monthly basis payable in arrears or advance]. All invoices for fees shall be payable within thirty (30) days of receipt.

## **Fund Information**

The Fund agrees to provide, or instruct its staff accountants, consultants, actuaries, trustees, investment advisors and managers, and legal counsel (the “Other Professionals”) to provide Segal Advisors with any and all necessary and appropriate information, including accounting reports and Plan documents, as requested by Segal Advisors from time to time.

The Fund agrees and understands that in providing its services under the Agreement, Segal Advisors will rely on the information provided by the Fund and the Other Professionals. Segal Advisors shall not be required to verify or audit any information so obtained and shall not do so, unless it has agreed to do so under a supplementary written agreement.

## **Segal Advisors’ Responsibility and Liability**

Segal Advisors’ advice to The Fund pursuant to this Agreement is limited to providing data, analysis of such data, reports and recommendations. The Fund retains absolute discretion over, and responsibility for, deciding what, if any, action to take with respect to any report or recommendation and for the implementation of any such decisions. ***Segal Advisors will make its recommendations and prepare its reports based upon information obtained by it from a wide variety of public and private sources***, including, in the case of investment managers, copies of their Form ADVs and periodic questionnaires, and commercially marketed databases in which investment managers participate. Although the information collected by Segal Advisors is believed to be reliable, Segal Advisors cannot verify or guarantee the accuracy or validity of such information or the uniformity of the manner in which such information was prepared. The Fund understands that the prior performance of an investment manager or a mutual fund is not necessarily indicative of such investment manager or mutual fund’s future results.

If the Fund requests that Segal Advisors provide assistance in the selection of an investment manager, commingled investment fund or a mutual fund, Segal Advisors may recommend investment managers or mutual funds which appear to be suitable for the Fund. Segal Advisors shall not be liable for the conduct or investment performance of any investment manager, investment fund or mutual fund recommended by Segal Advisors and selected by the Fund.

Segal Advisors shall have only those responsibilities set forth in this Agreement and shall have no responsibility to manage the Fund's assets or exercise any investment discretion with respect to the Fund's assets. In addition, Segal Advisors and its employees shall not be responsible for rendering any legal advice to the Fund or prepare for the Fund any legal, accounting or actuarial document.

The Fund acknowledges that Segal Advisors' recommendations (i) are not binding on the Fund and (ii) should not serve as the primary basis for decisions with respect to the investment and management of Plan assets. The Fund acknowledges that in performing services under this Agreement, Segal Advisors acts in a fiduciary capacity to the extent provided by the Employee Retirement Income Security Act of 1974 ("ERISA") and other applicable law. In performing non-fiduciary services under this Agreement, Segal Advisors will act in accordance with the highest standards of the investment consulting industry.

Segal Advisors represents that it is qualified to perform all of the services covered by this Agreement. In the event that Segal Advisors determines that it does not have the qualifications to perform any of the services required under this Agreement (for example with a particular class of investments), Segal Advisors shall notify the Fund and, upon request, assist the Fund in identifying a qualified service provider.

### **Termination of Agreement**

This Agreement may be terminated at will upon thirty (30) days written notice by either party to the other and termination will become effective upon receipt of such notice. The Fund should send such notice of termination to:

Segal Advisors, Inc.  
One Park Avenue  
New York, NY 10016  
Attn: Senior Vice President/Manager

Copy to:  
Segal Advisors, Inc.  
One Park Avenue  
New York, NY 10016  
Attention: General Counsel

Upon termination of this Agreement, any fees paid in advance will be prorated and the Fund will be entitled to a refund from the date of termination through the end of the billing period. To the extent that there are amounts owed by the Fund to Segal Advisors upon the date of termination of the Agreement, Fund agrees to immediately pay such amounts to Segal Advisors without further notice or demand therefore. Anything herein to the contrary notwithstanding, the Fund

shall have the right to terminate this Agreement, without penalty, within five (5) business days of the date of execution of this Agreement by the Fund and to receive a full refund of any amounts prepaid to Segal Advisors.

## **General**

### **(a) Modification of Agreement**

This agreement constitutes the entire contract between the parties regarding the furnishing of investment consulting services by Segal Advisors and no modification or amendment hereto shall be valid unless it is in writing and signed by the parties.

### **(b) Assignment of the Agreement**

Segal Advisors shall make no assignment of this Agreement without the prior written consent of the Fund.

### **(c) Registration**

Segal Advisors, Inc. is registered with the Securities and Exchange Commission ("SEC") and files a disclosure statement (Form ADV) with the SEC. The Fund acknowledges that not less than forty-eight (48) hours prior to entering into this Agreement it has received copies of Part II of the ADV for Segal Advisors, as amended to date, or a separate brochure which Segal Advisors represents contains the same information as is in such Part II. Otherwise, should the Fund receive the Form ADV Part II or brochure upon execution of this Agreement, the Fund has five (5) days to cancel this Agreement.

### **(d) Conflicts of Interest/Code of Ethics**

Segal Advisors has provided the Fund with a written disclosure about its potential conflicts of interest, which includes information about any material financial, referral or other relationships or arrangements (including any such relationship or arrangement with investment managers or other service providers to the Fund) that create or may create a conflict of interest for Segal Advisors and also describes the policies and procedures that Segal Advisors has in place to address these potential conflicts of interest. The Fund acknowledges that it has received and reviewed a copy of this written disclosure before entering this Agreement. If during the term of this Agreement Segal Advisors selects or recommends any investment manager or other service provider for the Fund where there exists a compensation or business relationship or arrangement between such investment manager or service provider and Segal Advisors, Segal Advisors will disclose such relationship and any conflicts that may be created. In any situation in which the interests of the Fund may be in material conflict with the interests of Segal Advisors or with those of other clients of Segal Advisors, Segal Advisors will immediately inform the Fund of these conflicts.

Segal Advisors has adopted a written code of ethics and other policies and procedures designed to avoid violations of the Advisers Act. A copy of these policies will be provided to the Fund upon request.

### **(e) Governing Law; Waiver of Jury Trial**

Except to the extent superseded by federal law, (i) any disputes between the parties hereto are subject to mediation in accordance with the Judicial Arbitration and Mediation Service ("JAMS") as a condition precedent to the commencement of any legal proceeding hereunder, (ii) the validity, interpretation, enforceability, and performance of this Agreement will be governed by the laws of the State of New York and (iii) the parties agree to waive any right to a trial by jury in any action, suit, or proceeding arising out of this Agreement. Unless otherwise agreed by the parties, any dispute, controversy or claim arising out of or to enforce the terms of this Agreement may be brought in the appropriate federal or state court in the State of New York.

**(f) Notice**

Any notice to be given pursuant to this Agreement shall be sent on behalf of Segal Advisors to:

Mr./Ms.  
Fund Administrator  
XYZ Pension Fund  
Address

On behalf of the Fund to:

Segal Advisors, Inc.  
One Park Avenue  
New York, NY 10016  
Attn: Senior Vice President/Manager

Copy to:  
Segal Advisors, Inc.  
One Park Avenue  
New York, NY 10016  
Attention: General Counsel

**(g) Severability and Waiver**

If any provision of this Agreement is found to be illegal or otherwise unenforceable, that provision shall be severed and the remainder of this Agreement will remain in full force and effect. The waiver of any right or election of any remedy in one instance does not affect any rights or remedies in other instances. A waiver is effective only if stated in writing and signed by an authorized representative of both parties.

If this Agreement reflects our mutual understanding, please return one original signed by an authorized signatory or signatories, as indicated in the space provided below.

We look forward to assisting you in the future development of your investment program.

Sincerely,

**Segal Advisors, Inc.**

Consultant

ACCEPTED AND AGREED TO ON BEHALF OF  
**XYZ Pension Fund**

By:\_\_\_\_\_

Date:\_\_\_\_\_

By:\_\_\_\_\_

Date:\_\_\_\_\_

## ***Attachment 1***

### **Attendance at Board Meetings**

A representative of Segal Advisors will attend regular scheduled (monthly, quarterly, semi-annual, annual) Trustees' meetings and up to \_\_\_\_ special meetings as requested.

## ***Attachment 2***

### **Investment Policy Statement**

We will assist the Trustees in the establishment of investment policy, guidelines and objectives. We will provide a draft written investment policy statement for consideration by the Trustees. The investment policy statement provides a business plan for the investment of the Fund assets. It contains a general expression of the Fund's investment philosophy and a clear delineation of the investment responsibilities of the Fund's fiduciaries. The statement will reference asset allocation targets and ranges, performance measurement standards, permissible investment vehicles, portfolio limitations and restrictions, communications and reporting procedures, proxy voting guidelines and individual manager guidelines.

We will review the investment policy statement annually and recommend for the Trustees' consideration any change that we believe to be appropriate.

## ***Attachment 3***

### **Asset Allocation Policy**

We will assist the Trustees in the development of an asset allocation policy. This will include a review of the current investment program, the cash flow requirements, actuarial characteristics and plan demographics. We will consider the return objectives, risk tolerance and time horizon of the Fund. We will apply the Capital Asset Pricing Model. The Model includes: (a) the Fund's current or assumed asset classes to be considered; (b) historical performance of the market index relative to each asset class (c) estimated return and risk characteristics of each asset class; (d) correlation between the asset classes; and (e) limitations on each asset class imposed by the Fund's guidelines.

Using data from the analysis of the current plan and the inputs to the model, we will develop an appropriate array of portfolios with various asset allocation mixes. We will recommend for the Trustees' consideration one or more asset allocation policies that will propose the asset classes in which the assets of the Fund may be invested and a range of investments in each asset class. The recommended asset allocation is intended to produce the highest projected rate of return for a given level of risk.

As part of our ongoing asset allocation review, we will report on the Fund's assets compared to the asset allocation policy and recommend, as appropriate and in accordance with the investment policy, action to rebalance the portfolio.

#### ***Attachment 4***

##### **Investment Manager Review**

We will evaluate each of the Fund's current investment managers. The evaluation will include a review of each manager's stated investment philosophy and investment style and the role it plays within the investment and asset allocation policy. In performing this function, we will periodically review: the manager's capacity to effectively manage the assets, the manager's trading practices, the investment management fees (we will not verify the calculation of the fee unless specifically requested to so do) and proxy voting guidelines.

With respect to the investment manager review, we will notify the Trustees in the event that we are made aware of significant changes in organization and operations, business structure, professional staff, investment philosophy, brokerage practices and assets under management. To the extent investment managers report any violations of ERISA and claims or litigation, we will notify the Trustees.

We will provide the Fund with our views on the above matters.

#### ***Attachment 5***

##### **Investment Manager Search and Selection**

We will review the performance of the Fund's investment managers for consistency with the investment policy statement and asset allocation policy and for compliance with the manager's investment guidelines and objectives. As appropriate, we will recommend to the Trustees that the investment managers be terminated. If the Fund decides to replace or add an investment manager, we will conduct an investment manager search. In conducting an investment manager search, we will: (a) identify for the Trustees' consideration three or more candidates that we believe will effectively carry out the investment policy guidelines established and/or the investment style identified for the asset to be invested. The designation of candidates will be based on a variety of public and private sources, including commercially marketed databases in which investment managers participate; (b) prepare written questionnaires for the candidates concerning their capabilities and services, including the organization's business structure, description of investment style and process, experience and qualifications of the professional staff, assets under management, proposed fee structure and prior investment performance record (as noted in the Agreement, we will not independently verify this information); (c) prepare a written summary report that provides a comparative analysis of the investment manager candidates on the matters addressed in the questionnaire; (d) meet with the Trustees to review the summary report and assist in the Trustees' selection of finalist candidates; and (e) participate in interviews with the Trustees and assist in



questioning the candidates with respect to aspects of the services not fully covered in the written proposals. At the Trustees' request, we will recommend for their consideration the candidate that, in our view, is most suitable.

On request, we will assist the Fund or its professionals in negotiating the investment management agreement with the successful candidate (as noted in the Agreement, we do not provide legal advice or prepare legal documents).

## ***Attachment 6***

### **Investment Performance Evaluation**

We will measure and evaluate the performance of the Fund as a whole and with respect to each investment manager, including the submission of a written report on a (quarterly, semi-annual, annual) basis. We will calculate the rate of return for each investment manager, for each asset class and on an overall basis. The calculations will be based on the market value and transaction statements provided by the Fund's custodian bank. We will not verify the reported value of the assets. In the absence of sufficient data from the custodian bank, the calculations may be based on information provided by the investment manager. If the Fund so requests in writing at the time of an investment performance evaluation, we will provide a list of the documents we reviewed in the course of our evaluation. We will compare the calculated rate of return with the reported return of the investment manager, but will not further review or verify the manager's reported return. We will calculate the distribution of assets by investment manager and by asset class in terms of market value and percent of assets. We will compare the investment results of each investment manager with relevant market indices, stated objectives and a universe of similar managers as stated in the investment policy. Whenever, in our judgment, the manager's benchmark is not appropriate, we will so advise the Fund and recommend an alternative benchmark. We will calculate the risk in terms of return volatility, as measured by standard deviation (a statistical measure of variance from the mean), of the investment manager's portfolio by asset class and total. We will compare the risk characteristics to relevant market indices and a universe of similar managers. We will evaluate the extent to which investment policies and objectives have been carried out and how they have affected the actual results. At least once a year, we will meet with the investment managers that serve the Fund and review investment performance and any changes in organization structure, investment philosophy and process, professional staff and business practices. We will review the investment manager's portfolio for compliance with the Fund's investment guidelines. We will not review the performance of Fund assets that are not under the control of an investment manager.

## ***Attachment 7***

### **Review and Evaluate Custodian Services**

As part of our performance evaluation process, we will provide an assessment of the custodian and, if necessary, comment on its performance in our (quarterly, semi-annual, annual) report. As

appropriate, we will recommend that the custodian be terminated. In conducting a search for a replacement, we will proceed along similar lines as discussed under Investment Manager Search (Attachment 5).

### ***Attachment 8***

#### **Review and Evaluate Brokerage and Trading Practices**

We will review and evaluate the brokerage and trading practices of each manager. Our review will include the reasonableness of turnover, brokerage costs and commissions. We will not determine whether, for any specific transaction or transactions, a broker obtains “best execution.” We will also review the extent to which managers use affiliated brokers.

### ***Attachment 9***

#### **Review of Proxy Voting Guidelines**

We will review the proxy voting guidelines of each manager for consistency with the Fund’s Investment Policy Statement. To the extent investment managers report their proxy voting activities to us, we will review these activities for consistency with the managers’ proxy voting policies.

### ***Attachment 10***

#### **General Consulting**

We will respond to requests from Trustees or the Fund Administrator for assistance on investment related topics within the overall scope of our engagement as set forth in the body of the Agreement. We will notify the Trustees or Fund Administrator if the request is beyond the scope of the engagement or our expertise or qualifications. We will gather and use publicly available information. In the event that the request involves an expenditure of time in excess of \_\_\_\_ hours or significant out-of-pocket expenses, we will advise the Trustees or the Fund Administrator of the estimated cost and proceed only with their consent.