

SEGAL WATERS CONSULTING **Consulting Agreement**

This Agreement between The Segal Company (Western States) Inc., a **Maryland** corporation, d/b/a Segal Waters Consulting (hereinafter “Segal Waters”) and **Client Name, City, State** (hereinafter the “Client”) is entered into as of **Date ____, 20__**.

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

1. BASIC SERVICES

Segal Waters shall provide up to eighty (80) hours of consulting services to the Client as described below:

- Individual reclassification reviews: Using current job documentation as well as updated documentation in a template provided by Segal Waters, a review of the general purpose and essential functions would be conducted to ensure the position is properly classified.
- Individual job evaluation reviews: Using current job documentation including updated job questionnaires and job evaluation manuals supplied by Segal Waters, job(s) will be evaluated and recommended for placement into the client’s current pay structure.
- Individual reviews of exemption status under the Fair Labor Standards Act: Based on documentation provided by the Client, written review will be completed for a job’s eligibility for exemption from overtime under the Fair Labor Standards Act.
- Individual or career family market reviews: Individual or a specific list of no more than ten job titles will be market priced using market data available to Segal Waters or data supplied by the client.
- Development/update of individual job descriptions: Using current job documentation supplied by the client on templates provided by Segal Waters, an updated job description will be prepared for client review. Edits to the job description will be completed by the client.
- Annual reports on structure and market movement: Annual reports on market trends that provide actual and project pay and structure changes will be provided to the client for use in determining budget requirements for adjustments to their current pay structure and adjustments to employee pay.
- Recommendations for updates to client current pay structures based on standardized reports: Client may request that Segal Waters calculate one cost scenario for the cost of structure movement using agreed upon assumptions for pay changes.
- Telephone support on strategic or operational human resources issues: Segal Waters consultants will be available for telephone support on demand, providing advice on strategic or operation issues as identified by the client.

2. ADDITIONAL SERVICES

From time to time, the Client may request or Segal Waters may propose in writing future services and the fees payable for such services. If such proposal is accepted by the parties, then such additional services will be governed by the terms and conditions of this Agreement and any such proposal shall be attached hereto as an Exhibit to this Agreement.

3. RESPONSIBILITY OF CLIENT

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

4. PAYMENT TERMS

A. Basic Annual Services. Segal Waters' annual fee for providing the basic services described in Section 1 above will be \$20,000, payable in advance. Segal Waters will furnish Client with quarterly statements providing documentation of hours used (billed to the nearest quarter hour) and remaining hours available for Client use. Expenses and costs incurred by Segal Waters, including those incurred to attend on-site meetings will be invoiced to the Client separately at cost and payable within thirty (30) days of the invoice date. Routine expenses such as photocopying, telephone calls, facsimiles, mailing costs, and secretarial and word processing services are included in our fees.

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

5. NON-APPROPRIATION

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

6. TERM OF AGREEMENT

The term of this Agreement shall commence on [INSERT COMMENCEMENT DATE] and continue in effect for a period of one (1) year. Thereafter, this Agreement may be extended for successive one (1) year periods with the parties' mutual written consent.

7. TERMINATION OF AGREEMENT

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

8. PROFESSIONAL STANDARDS

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

9. CONFIDENTIALITY

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

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

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

10. INDEPENDENT CONTRACTOR

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

11. **SUBCONTRACTORS**

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

12. **NO ASSIGNMENT**

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

13. **FORCE MAJEURE**

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

14. **THIRD PARTY BENEFICIARIES**

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

15. **DISPUTE RESOLUTION**

A. **Mediation.** Any disputes between the parties hereto are subject to mediation in accordance with the Judicial Arbitration and Mediation Service ("JAMS") as a condition precedent to the commencement of any legal proceeding hereunder.

B. **Waiver of Jury Trial.** Each party hereby waive any right to a trial by jury in any action, suit, or proceeding arising out of this agreement, or any other agreement or transaction between the parties.

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

16. **DAMAGES**

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

17. **CONFLICT OF INTEREST**

Segal Waters hereby affirms that there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a Conflict of Interest. A Conflict of Interest means that because of other activities or relationships with other persons, Segal Waters or its subcontractor is unable or

potentially unable to render impartial assistance or advice to the Client, or Segal Waters' objectivity in performing the agreement work is or might be otherwise impaired.

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

18. NON-DISCRIMINATION

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

19. AUDIT OF SEGAL WATERS' FEES

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

20. NOTICES

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

- A. If to the Client: [Name]
[Title]
[Address]
[City, State & Zip]
- B. Copy to: [NAME]
[TITLE]
[Address]
[City, State & Zip]
- C. If to Segal Waters: Consultant:
[Name]
[Title]
[Address]
[City, State & Zip]
- D. Copy to: General Counsel
The Segal Company
333 West 34th Street
New York, NY 10001-2402

21. AMENDMENT OR MODIFICATION

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

22. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and it supersedes all prior oral or written agreements, commitments or understandings with respect to such matters.

23. SEVERABILITY

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

24. WAIVER OF DEFAULT

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

25. CONSTRUCTION OF LAWS AND JURISDICTION OF COURTS

This Agreement will be governed in all respects by the laws of [INSERT STATE], without regard to any conflicts of law principle, decisional law, or statutory provision, which would require or permit the application of another jurisdiction’s substantive law.

26. DULY AUTHORIZED SIGNATURES

For the Client:

The undersigned, [NAME] is [TITLE] of [CLIENT COMPANY NAME] and as such has been duly authorized by the Client to sign this Agreement on behalf thereof.

For Segal Waters:

The undersigned [NAME] is [TITLE] of Segal Waters and as such is duly authorized to sign this agreement in behalf thereof, thereby binding Segal Waters to the provisions of this Agreement.

IN WITNESS THEREOF, the parties have executed this Agreement as of the date hereinabove set forth.

[CLIENT]

Date

By

Witness

THE SEGAL COMPANY (WESTERN STATES), INC., DBA SEGAL WATERS CONSULTING

Date

By

Witness

