

EXHIBIT 2

DRAFT CONTRACT, MODULE 2

CORPORATE GOVERNANCE COUNSEL



BY AND BETWEEN

**THE COMPTROLLER OF THE STATE OF NEW YORK, AS TRUSTEE
OF THE COMMON RETIREMENT FUND**

AND

CONTRACT NUMBER: #ICM XXX

This Agreement ("Agreement") is by and between the Comptroller of the State of New York (the "Comptroller"), as Trustee of the Common Retirement Fund (the "CRF" or the "Fund") whose principal office is located at 110 State Street, Albany, New York 12236, and [REDACTED], a [entity type] organized and existing under the laws of [REDACTED] ("Counsel") located at [REDACTED].

WITNESSETH

WHEREAS, the Comptroller is responsible for investing the monies of the Fund for the exclusive benefit of the New York State and Local Retirement System's (the "System") members, retirees and beneficiaries, and is authorized to manage and invest a portion of such assets in certain securities pursuant to the New York Retirement and Social Security Law; and

WHEREAS, the Comptroller, on [DATE], pursuant to a Request For Proposals for Corporate Governance Counsel for the Fund ("RFP"), attached hereto as Exhibit A, sought to identify a pool of qualified law firms to serve from time to time as corporate governance counsel in connection with the Fund's portfolio companies or corporate governance matters generally; and

WHEREAS, Counsel submitted a proposal and signed attachments ("Proposal") to the RFP by the required date of [DATE] and attached hereto as Exhibit B; and

WHEREAS, based on the evaluation of the various proposals submitted in response to the RFP, the Comptroller, has determined that Counsel possesses the skills and experience necessary to provide the corporate governance related services described in the RFP ("Services"); and

WHEREAS, the Comptroller has determined that it would be in the best interests of the Fund to retain, if and when needed, Counsel to provide the legal services described above to the Comptroller;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

I. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Agreement shall be deemed inclusive of the following documents. Only documents expressly mentioned below shall be deemed a part of this Agreement. Conflicts between these documents shall be resolved in the following order of precedence:

- A.** Appendix A – Standard Clauses for Contracts Entered Into By the Comptroller of the State of New York as Trustee of the New York State Common Retirement Fund;
- B.** The Agreement – this document, including Appendices B through H as herein described:
 - Appendix B – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
 - Appendix C – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
 - Appendix D – Insurance Regulations;
 - Appendix E – Proposer's Certification/Acknowledgements;
 - Appendix F – CRF Vendor Responsibility and Conflict of Interest Disclosure Form;
 - Appendix G – CRF Proposer's Disclosure of Prior Non-Responsibility Determinations; and
 - Appendix H – Material Conflicts of Interest Statement;
- C.** Exhibit A – the RFP 21-06, including the Official Responses to Questions, and any and all amendments and addenda to the RFP; and

- D. Exhibit B – the Proposal (Exhibits B1 – Technical Proposal, B2 – Cost Proposal, and B3 – Administrative Proposal), as modified by any clarifications thereto, and including all Attachments.

This Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by authorized representatives of Counsel and the Comptroller.

II. TERM

This Agreement shall commence upon the date of execution by the CRF and will continue for a period of four years (“Initial Term”). The CRF, at its sole discretion, shall have the option to extend the Agreement under the same terms for two additional one-year periods (“Extended Term”) (collectively, the Initial and Extended Terms are the “Term”)

III. REPRESENTATIONS, WARRANTIES & COVENANTS OF COUNSEL

Counsel hereby represents, warrants, and covenants that:

- A. Counsel possesses a high degree of skill and experience with respect to the duties required to be performed pursuant to the terms of this Agreement. Counsel will perform the Services in good faith and in a timely, competent and professional manner in accordance with applicable professional standards. Counsel, and its staff assigned to perform the Services, maintains and shall maintain throughout the term hereof, the necessary qualifications, training and licenses as may be required within the jurisdiction where the Services are to be performed and shall be legally entitled to work in such jurisdiction. Counsel, its partners, officers, directors, shareholders, and staff, will comply with the standards set forth in the New York State Department of Financial Services (“DFS”) Regulations applicable to the Counsel.
- B. Counsel possesses the staff, resources and ability to perform the duties required to be performed pursuant to the terms of this Agreement at the reasonable direction and convenience of the Comptroller and the Fund.
- C. Counsel presently is not aware of any conflicts of interest with respect to duties required to be performed pursuant to the terms of this Agreement and any other client representation, consultant contract or employment. Counsel shall promptly advise Counsel to the Comptroller whenever it becomes aware of any situation that involves or appears to involve such a conflict of interest or potential conflict.
- D. Counsel represents and warrants that neither Counsel nor its staff has received or paid, or entered into an agreement to receive or pay, any compensation, fees, or any other benefit from or to any third party, including any subcontractor, in connection with the indirect or direct procurement of this Agreement.

IV. SERVICES

Counsel shall perform the following services at the request of Counsel to the Comptroller:

- A. Represent the Comptroller in corporate governance matters and provide legal research, analysis, advice, and counsel with respect to corporate and securities laws related to corporate governance initiatives;
- B. Review and analyze corporate bylaws, charters, and certificates of incorporation;
- C. Analyze legal and regulatory requirements and prevailing corporate governance best practices;
- D. Consult with and advise the Comptroller's staff with respect to drafting and submitting shareholder proposals;
- E. Review, analyze, and respond to no action requests made to the SEC by which companies seek to omit Comptroller-sponsored or co-sponsored shareholder proposals from corporate proxy materials;
- F. Draft, review, and render advice on press releases and shareholder communications;

- G. Provide advice regarding exempt solicitations, proxy voting, other proxy matters, and general annual meeting matters;
- H. Assist the Comptroller's staff in drafting comments responding to regulatory releases;
- I. Provide opinions and advice with respect to state and federal laws;
- J. Provide opinions and advice with respect to rules promulgated by the SEC and other regulatory agencies and stock exchanges;
- K. Represent the Comptroller in administrative or judicial proceedings in corporate governance matters as directed by Counsel to the Comptroller;
- L. Keep Counsel to the Comptroller fully apprised of all activity in all administrative or judicial proceedings, including all strategic decisions and provide copies of all written documents and correspondence in the matter for Counsel to the Comptroller to review and approve in advance of release or filing. In addition, Counsel will provide copies of opposing parties' written documents and correspondence to Counsel to the Comptroller as soon as possible after receipt by Counsel;
- M. Schedule periodic meetings and conference calls with Counsel to the Comptroller to discuss developments and strategies with respect to any matter in which the Proposer represents the Comptroller.

All decisions regarding commencing and pursuing corporate governance initiatives shall be made solely by the Comptroller or his designated representative.

It is understood that Counsel is a member of a pool of law firms and may not be asked to represent the Fund in any matter.

V. FIDUCIARY OBLIGATION

Counsel shall act as a fiduciary to the Comptroller and the Fund. In that regard, Counsel shall, in the discharge of its duties and the exercise of its powers hereunder:

- A. act with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
- B. be governed by the highest duty of care imposed by:
 - (a) the fiduciary standards in effect from time to time under federal and state law that apply to persons and entities serving in a similar capacity with respect to the Comptroller or CRF (including, without limitation, the standards set forth in the Regulations of the New York State Department of Financial Services (11 NYCRR Subpart 136-2), as they may be amended from time to time or any successor provisions);
 - (b) Sections 404 and 406 of Employee Retirement Income Security Act of 1974, as it may be amended ("ERISA") (as if the CRF were an employee benefit plan subject to ERISA, including Title I thereof, and not a governmental plan within the meaning of section 3(32) of ERISA); and
 - (c) any other federal or state law affecting the Comptroller or CRF that may impose a higher or comparable standard.

VI. AUTHORITY OF COUNSEL

Counsel shall at all appropriate times make clear to the courts and other counsel that Counsel is not authorized to impinge on the authority of the New York State Attorney General to issue formal opinions construing the statutes or Constitution of the State of New York or to appear in court on behalf of the people of the State of New York or to represent the Comptroller in any capacity other than as provided herein.

Opinions prepared by Counsel construing the statutes or Constitution of the State of New York do not constitute the opinion of the State of New York unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the following:

Solicitor General
 Appeals and Opinions Bureau
 Department of Law
 State Capitol
 Albany, New York 12224

Counsel will not represent the Comptroller in judicial litigation related to the services to be provided under this Agreement except where such services are specifically approved by the Counsel to the Comptroller. Such approval must be provided separately for each matter to be litigated and must be received prior to the commencement of service therefor.

VII. PUBLICITY

Counsel is prohibited from making public statements regarding matters in which it represents the Comptroller. Prohibited statements include, but are not limited to: disclosing to the media any facts involving or relating to the corporate governance initiative without prior approval of the Comptroller’s designated representative; and all forms of communication such as responding to telephone inquiries and/or issuing public statements or press releases. Counsel will fully cooperate with the Comptroller’s press office regarding requests for information and will assist in the preparation of documents relating to the corporate governance matter as requested by the Comptroller’s designated representative or the Comptroller’s press office.

VIII. INDEPENDENT CONTRACTOR

The relationship of Counsel to the Fund, arising out of this Agreement, is that of independent contractor. Counsel covenants and agrees that its employees will not hold themselves out as employees of the Fund, and that they will not make any claim, demand, or application for any right or privilege applicable to any employee of the Fund, including but not limited to, Workers’ Compensation coverage, Social Security coverage, or System benefits.

IX. COMPENSATION

A. Compensation will be based on the hourly rates for Counsel’s professionals in accordance with the following fee schedule:

	Discounted Hourly Rate Year One	Discounted Hourly Rate Year Two	Discounted Hourly Rate Year Three	Discounted Hourly Rate Year Four	Discounted Hourly Rate Year Five (if extended)	Discounted Hourly Rate Year Six (if extended)
Partners	\$	\$	\$	\$	\$	\$
Associates	\$	\$	\$	\$	\$	\$
Staff Attorneys	\$	\$	\$	\$	\$	\$
Of Counsels	\$	\$	\$	\$	\$	\$
Paralegals	\$	\$	\$	\$	\$	\$

- B. In the event that Counsel proposes to use other counsel to provide legal services hereunder, Counsel agrees that the Comptroller shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractors of Counsel prior to their performance of any services in any matter for which Counsel is retained.
- C. To be eligible for reimbursement, the expenses must be listed on a submitted invoice with a copy of the receipt attached. Expenses shall be separately itemized and accompanied by receipts. When appropriate, court approval will be obtained before expenses are reimbursed. Reimbursable expenses will be limited to the following unless written authorization to exceed the specified limits or to bill for other items of expense is obtained in advance:
 - (i) Travel expenses: Travel expense reimbursement will be paid in accordance with guidelines established by the Office of the State Comptroller ("OSC"). (See Office of the State Comptroller Travel Manual, available at <http://www.osc.state.ny.us/agencies/travel/manual.pdf>). For current per diem reimbursement rates only, visit the GSA Domestic Per Diem Page (currently available at <http://www.gsa.gov/travel/plan-book/per-diem-rates>), as such rates may be amended from time to time. Air travel will be reimbursed at coach rates. Travel expenses mean those incurred while traveling out of town on business and relating to Services provided in accordance with this Agreement.
 - (ii) Express delivery charges; photocopying/reproduction charges performed by a third party; court costs; deposition transcripts costs; pre-approved costs associated with electronic discovery platforms, and, fees for experts, claims administrators, consultants and other professionals.
 - (iii) Travel time will be compensated at 50% of the above hourly fees. Additionally, Counsel shall not bill any other client while in travel status.
 - (iv) All expenses (including travel and electronic discovery platforms) that are anticipated to exceed five hundred dollars (\$500.00) must be pre-approved by the Comptroller or his designated representative.
- D. No other expenses and disbursements shall be reimbursable unless specifically authorized in writing by the Comptroller or his designated representative. Detailed information on time and expenses shall be provided as requested. The Fund will audit all expenses.

X. PAYMENT AND INVOICES

- A. Compensation provided for pursuant to this Agreement shall be payable by the Fund in the ordinary course of business upon the Fund's receipt of Counsel's invoice. Invoices must be submitted monthly unless the total invoice amount covering a billing period of one month is less than \$1,000, in which event that amount may be submitted on the following month's invoice.

All invoices must contain a detailed itemization of requested compensation. Billing for services not separately delineated (commonly known as "block billing") is not acceptable. Invoices must, at a minimum, include:

- (i) The CRF's Agreement #ICM[XXX], and Counsel's taxpayer identification number;
- (ii) The name, title and billing rate of each individual performing services, the date(s) each billed service was rendered, a detailed description of each such service, and the amount of time (delineated in tenth of an hour increments) devoted to each such service;
- (iii) A summary of the total number of hours of services performed by each person, in tenth of an hour increments;
- (iv) A description of all reimbursable expenses, including travel, itemized by category with documentation as described in paragraph D of Section IX (Compensation) above;
- (v) The total amount billed for services and reimbursable expenses for the invoice period; and
- (vi) The beginning and ending dates of the billing period to which the invoice applies;

- B.** Services pertaining to more than one matter should be stated in separate invoices for each such case. Counsel must provide the Comptroller's designated representative with copies of all bills submitted by third parties for services rendered to Counsel on behalf of the Comptroller. All vouchers, invoices or statements must be submitted to:

Office of the State Comptroller
Legal Services Division, 14th Floor
110 State Street,
Albany, NY 12236
ATTN: Secretary to the Counsel to the Comptroller

XI. NOTICES

Except as otherwise expressly set forth herein, any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally or sent by certified, registered, or express mail, postage prepaid, but in all cases shall be deemed given when actually received at the following addresses:

TO THE COMPTROLLER:

Name: Nelson R. Sheingold
Title: Counsel to the Comptroller
Address: Office of the State Comptroller
110 State Street, 14th Floor
Albany, NY 12236
Telephone: (518) 474-3444

TO COUNSEL:

Name:
Title:
Address:
Telephone:
E-mail:

Either party, by notice in writing served upon the other as herein, may designate from time to time a different mailing address or a different or additional person to which all such notices or demands to that party thereafter are to be addressed.

XII. CONFIDENTIALITY

Counsel shall take all appropriate measures to protect the confidentiality of all information supplied to it or developed by it during the course of its performance hereunder ("Confidential Information"). Counsel shall maintain the confidentiality of all Confidential Information to the maximum extent permitted by law, and safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices, and procedures, that Counsel uses to maintain its own confidential information. Upon the written request of the CRF, Counsel shall return all Confidential Information to the CRF. Counsel's obligation to the CRF shall be that of attorney and client and shall be subject to Counsel's duty of confidentiality to its clients. Counsel must immediately notify the CRF in the event of any unauthorized access, use, or disclosure of OSC or CRF confidential information, or in the event of Counsel's receipt of a valid order or mandatory request from a judicial, administrative, or governmental agency having jurisdiction over it, for OSC or CRF confidential information.

The Parties agree to use a secure method of and/or product for transmission and sharing of confidential CRF data and documents to facilitate the Services. Such method and/or product and appropriate security requirements, including without limitation encryption requirements, limits on access to confidential information and ability to download confidential information and restrictions on storage and retention of CRF confidential information are

subject to the prior written approval of the CRF. Reasonable costs associated with such transmission and sharing will be the responsibility of Counsel.

XIII. TERMINATION AND SUSPENSION

- A. The Comptroller reserves the right to terminate or suspend this Agreement terminate or suspend the services with respect to a specific matter or matters, with or without cause, upon 15 days prior written notice. In the event of termination, Counsel shall be entitled to compensation for services performed through the date of termination which are acceptable to the Comptroller, in his sole discretion. In the event of suspension, Counsel shall be entitled to compensation for non-suspended services which are acceptable to the Comptroller, in his sole discretion.
- B. The Comptroller reserves the right to terminate or suspend this Agreement or to terminate or suspend the services with respect to a specific matter or matters immediately upon written notice to Counsel, if the Comptroller deems the performance unsatisfactory at any time during the term of this Agreement, in his sole discretion.
- C. In the event of termination, Counsel agrees to perform such transition services as the Counsel to the Comptroller may reasonably request in connection with the transfer of any pending services, including all draft pleadings and the results of all research not yet shared with the Comptroller, to a successor law firm. Counsel agrees to reasonably cooperate with any successor law firm to facilitate such transition.

XIV. MISCELLANEOUS PROVISIONS

A. Review

Counsel shall submit to a review by, and respond in writing to any inquiry or request for information, the New York State Department of Financial Services concerning fees paid and services rendered hereunder.

B. Waiver

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach.

C. Severability

The terms, clauses and provisions of this Agreement are intended to be severable, and the unconstitutionality, illegality or unconscionability of any term, clause or provision shall in no way affect the enforcement of any other term, clause or provision.

D. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one instrument.

E. Ethics Compliance

The Consultant certifies that:

- 1. The Consultant, and those assigned by the Consultant to perform Services under the Agreement have read and understand the provisions of Public Officers Law §§73 and 74 including without limitation:
 - (a) the provisions of §73 (subd 5) which provides that, (i) no statewide elected official, state officer or employee, individual whose name has been submitted by the governor to the senate for confirmation to become a state officer or employee, member of the legislature or legislative employee shall, directly indirectly solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her, or could reasonably be expected to influence him or her, in the performance of his or her official duties or was intended as a reward for any official action on his or her part; and (ii) no person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any State officer or

employee, member of the legislature or legislative employee under such circumstances (clauses (i) and (ii) collectively, the "Gift Restrictions").

(b) the provisions of §73 (subd 8), which sets out (i) a two-year bar on a State employee from appearing before his or her former agency after leaving State service, and (ii) a lifetime bar on a State employee from rendering services on any matters with respect to which he or she was directly concerned during State service and in which he or she personally participated, or which was under his or her active consideration during State service.

2. The Consultant, and those assigned by the Consultant to perform Services under the Agreement shall not: (i) offer or provide any gift or hospitality to a State employee in violation of said Gift Restrictions, (ii) assign any former State employee to appear before OSC, the System or the CRF to perform Services in violation of the two-year bar, or (iii) assign any former State employee to the render Services in violation of the lifetime bar.

3. Consultant will include these ethics restrictions in its policies.

4. The Consultant will promptly report to the CRF any non-compliance with the above requirements to:

Office of the State Comptroller
110 State Street – 14th Floor
Albany, New York 12236
Attn: Special Counsel for Ethics

and

Office of the State Comptroller
110 State Street – 14th Floor
Albany, New York 12236
Attn: CRF Director of Compliance

5. This certification is material to the Agreement and the CRF intends to rely on it. Failure to comply may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

F. Public Communication

Unless specifically authorized in writing by the Comptroller on a case-by-case basis, the Consultant shall not use the name of the Comptroller, the CRF or the State of New York, its officials or employees, or the seal of the State of New York or seal of the New York State Office of the State Comptroller in any manner, including but not limited to: (i) in any advertisement, publication, press release or promotion; or (ii) as an express or implied endorsement of any such person or entity.

G. Survival

The provisions of Sections XII "Confidentiality," XIII "Termination and Suspension," and Appendix A shall survive the expiration or termination of this Agreement.

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