

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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BY E-MAIL: FOIL@osc.state.ny.us

July 1, 2014

TO: Records Access Officer of NYS Comptroller Thomas DiNapoli

RE:: FOIL REQUEST: Records Pertaining to the Comptroller's Approvals
of Contracts for Services by:

- (1) Kasowitz, Benson, Torres, Friedman, LLP
- (2) Kirkland & Ellis, LLP
- (3) Loeb & Loeb, LLP

Enclosed is the "Justification for Contract between the New York State Assembly and Kasowitz Benson Torres Friedman LLP", together with pertinent pages of the August 2013 Contract, #C111945.

The Contract limits compensation for services to \$50,000. Paragraph S states:

"This agreement will not take effect until approved, in writing, hereon by the Offices of the Attorney General and State Comptroller of the State of New York."
(underlining added).

Page 5 is the signature page for the parties, followed by a section entitled "APPROVED AS TO FORM", which has lines for the signatures of the Attorney General and Comptroller and for the dates thereof. These are each stamped, with the stamp of the Comptroller reading: "APPROVED DEPT. OF AUDIT & CONTROL OCT 10 2013 *Charlotte Breeyear* FOR THE STATE COMPTROLLER".

Paragraph J of the Contract states:

"The Assembly may, at any time, by written notice, make changes in or additions to work or services within the general scope of this contract upon the approval of the Office of the Attorney General and the Office of the State Comptroller. ..."
(underlining added).

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

The Contract's paragraph O states:

“No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing, executed by the parties hereto, and approved by the Offices of the Attorney General and Comptroller of the State of New York ...” (underlining added).

Attached is a November 27, 2013 letter signed by the parties modifying Contract # C111945 by increasing compensation for services to \$350,000, together with a December 2, 2014 acknowledgment of firm or partnership pertaining thereto. Neither reflect approval of the Attorney General and Comptroller.

Pursuant to Public Officers Law, Article VI [Freedom of Information Law (F.O.I.L.)], request is made for:

- (1) all publicly-available records pertaining to the “Justification for Contract”, including the names of the “Several law firms” which were contenders for the Contract and their supporting proposals/memos, if any;
- (2) all publicly-available records establishing the Comptroller's approval of Contract #C111945, pursuant to Contract paragraph S;
- (3) all publicly-available records establishing the Comptroller's approval of the November 27, 2013 modification – and of any further modifications – pursuant to Contract paragraphs J and O.

Presumably, the Attorney General and Comptroller were required to approve comparable contracts for the New York State Senate and Kirkland & Ellis, LLP and for Temporary Senate President Jeffrey Klein and Loeb & Loeb, LLP. Pursuant to FOIL, request is made for:

- (4) copies of the contracts for the Senate and Kirkland & Ellis, LLP and for Temporary Senate President Klein and Loeb & Loeb, LLP, including “Justifications” and supporting proposals/memos, approved by the Comptroller; and
- (5) such modifications of the contracts as the Comptroller approved.

Pursuant to Public Officers Law §89.3, your response is required “within five business days” of your receipt of this request. I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.

A handwritten signature in blue ink, appearing to read "Long RW" followed by a stylized name, possibly "Xasnow".

Enclosures:

- (1) "Justification for Contract", with Contract pp. 1-5, Appendix A pp. 1-3
- (2) November 27, 2013 letter amending Contract,
with Acknowledgment of Firm or Partnership

Justification for Contract between the New York State Assembly and Kasowitz Benson
Torres Friedman LLP

The Assembly has asked the firm of Kasowitz Benson Torres Friedman LLP to serve as special counsel advising the Assembly in formulating or amending legislation or policies related to campaign finance, the electoral process, lobbying, conflicts of interest and ethics of public officers, intended to restore the public trust and increase accountability in state government. As special counsel, Kasowitz Benson Torres Friedman LLP will also advise the Assembly in matters related to the separation of powers and legislative privileges and immunities and provide counsel if litigation arises related to these issues. assist in managing compliance and responding to requests for information in connection with Executive inquiries.

Several law firms were considered by the Assembly. This firm was chosen due to their reputation and litigation expertise. The firm has agreed to offer the Assembly a reduced hourly rate of Two Hundred Eighty-Five Dollars (\$285.00). This is a reasonable market rate for the Albany area and comparable to recently approved contracts for outside counsel. The Assembly does not currently have any on-going contracts with this law firm.

THE ASSEMBLY
STATE OF NEW YORK

THIS AGREEMENT made the _____ day of August, 2013 between

Kasowitz Benson Torres Friedman LLP
1633 Broadway
New York New York 10019

Hereinafter called the Contractor and The Assembly of the State of New York, hereinafter called the Assembly:

WITNESSETH:

It is hereby mutually agreed as follows:

- A. 1. The Assembly does hereby employ, engage and hire the Contractor, and the Contractor does hereby accept and agree to perform legal services in connection with Executive inquiries into the operation of the Assembly and related requests made to Assembly Members or staff for information or documents in connection with consideration or passage of legislation on an as needed basis for the period of August 15, 2013 to August 14, 2014.
2. In consideration of the foregoing, the Contractor shall receive as and for full payment for services rendered compensation at the rate of Two Hundred Eighty-Five Dollars (\$285.00) per hour for partners and associates and Ninety dollars (\$90.00) for paralegals and law clerks. Hourly charges shall include all legal research, analysis, memoranda, correspondence, telephone conversations with you or other persons, preparation for, and appearances at meetings, court appearances and any other tasks necessary to conduct legal representation of the Assembly. The hourly rate shall also include all disbursements and reasonable out-of-pocket expenses exclusive of travel.
3. The total to be paid to the Contractor for compensation for services shall not, during the term of this agreement, exceed the sum of Fifty Thousand Dollars (\$50,000). In addition, the Contractor shall be entitled to reasonable travel not to exceed Five Thousand Dollars (\$5,000.00). Travel and expenses shall be in conformity with the Office of the State Comptroller of the State of New York travel guidelines. Said compensation shall be payable monthly on the basis of itemized vouchers submitted for services previously rendered by the Contractor and approved by the Speaker of the New York State Assembly or his designated representative. The vouchers must itemize the days and hours for each person along with any travel expenses, if any.
4. The Contractor will maintain accurate records and accounts of services performed and moneys expended under this Agreement and shall furnish or make available any estimate, expenditures, or report, as requested by the State Comptroller, or as may be necessary for auditing purposes or to verify that expenditures were made only for the purpose authorized by this Agreement. Such records and accounts and all supportive documentation shall be kept for at least six (6) years subsequent to dates of final payment hereunder, or until a final

audit has been made by the Department of Audit and Control, whichever event shall occur sooner.

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5. The term of this Agreement shall be one year from August 15, 2013 to August 14, 2014 and may renewable for one year periods by written agreement between the Contractor and the Assembly, ~~and approved by the Offices of Attorney General and Comptroller of the State of New York.~~

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- B. The Contractor shall not delegate any of the duties required to be performed under the terms of this Agreement.

- C. The relationship of the Contractor to the Assembly shall be that of an independent contractor. In accordance with such status as an independent contractor, said Contractor covenants and agrees to act consistent with such status, to neither hold himself out as nor claim to be an officer or employee of the State of New York by reason hereof, and not to, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the State of New York, including, but not limited to, worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership credit.

- D. The retained attorney or law firm will represent the ~~State of New York New York State Assembly~~ in judicial litigation related to the services to be provided under this agreement only when such services are specifically requested by the Assembly and approved by the Attorney General. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of services.

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- E. Opinions prepared by consultant law firms construing the statutes or Constitution of the State of New York do not constitute the view of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Division of the Appeals and Opinions Bureau, Department of Law, State Capitol, Albany, New York.

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- F. With respect to any contract or employment as an independent Contractor or employee of the State of New York, or any New York public corporation as defined in Section Sixty-six of the New York General Construction Law, or any agency or department of either, pursuant to the terms of any other present or future Agreement, express, implied, entered into with such entity, if any, the Contractor hereby covenants and represents that there is no conflict as to hours required to be worked or duties required to be performed pursuant to the terms of this Agreement and the aforesaid contract or employment.

- G. Contractor affirms and agrees to comply with New York State Finance Law §139-j, 139-k, and 165-a and certifies that all information provided to the Assembly is complete, true, and accurate

- H. During the term of this Agreement, the provisions of Appendix A attached hereto are made a part of this Agreement with the same force and effect as if fully set forth herein, and the parties agree to be bound by the terms thereof.

- I. 1. The performance of work under the contract may be terminated for convenience, in whole or from time to time in part, by the Assembly whenever for any reason the Assembly shall determine that such termination is in its best interest. Termination of work hereunder shall

- termination becomes effective.
2. After receipt of the Notice of Termination, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of any outstanding commitments covering personal services extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice.
 3. The Contractor shall submit its termination claim to the Assembly promptly after receipt of a Notice of Termination, but in no event later than thirty days from the effective date thereof, unless one or more extensions in writing are granted by the Assembly upon written request of the Contractor within such thirty day period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Assembly may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
 4. The Contractor agrees to transfer title to the Assembly and deliver in the manner, at the time, and to the extent, if any, directed by the Assembly, such information and items which, if the contract had been completed, would have been required to be furnished to the Assembly.
- J. The Assembly may, at any time, by written notice, make changes in or additions to work or services within the general scope of this contract upon the approval of the Office of the Attorney General and the Office of the State Comptroller. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of this contract, an equitable adjustment shall be made in the price, or time of performance, or both, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty days from the date of receipt by the Contractor of the notification of change; provided, however, that the Assembly, if it decides that the facts justify such action, may receive and act upon such claim asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.
- K. This agreement shall be deemed executory only to the extent of money available to the Assembly for the performance of the terms hereof and no liability on account thereof shall be incurred by the Assembly or the State of New York beyond moneys available for the purpose thereof.
- L. Anything herein contained to the contrary notwithstanding, it is expressly understood and agreed that the Contractor shall not have the right to make any contracts or commitments for or on behalf of the Assembly or New York State.
- M. This Agreement and performance hereunder and all actions hereunder shall be construed in accordance with and under and pursuant to the laws of the State of New York and that in any action that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of New York shall be applicable and govern to the exclusion of the law of any other forum, and any action against the State of New York or the Assembly arising out of this contract shall be commenced in a court of competent jurisdiction in the State of New York.

- N. All notices, demands, instructions, claims, approvals and disapprovals required to be given to either party hereto shall be deemed to have been given properly if sent by registered mail addressed to the party at the addresses hereinbefore set forth or to such other address as either party shall have notified the other in writing to be the proper mailing address.
- O. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing, ~~and executed by the parties hereto and approved by the Offices of the Attorney General and Comptroller of the State of New York~~ and no evidence of any waiver or modification shall be offered or received in evidence in any action between the parties hereto arising out of or affecting this Agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the parties further agree that the provisions of this paragraph may not be waived except as herein set forth.
- P. This written Agreement contains the sole and entire Agreement between the parties and shall supersede any and all other Agreements between the parties.
- Q. The parties hereto shall execute such other and further documents as may be required to effectuate the terms of this Agreement.
- R. The terms, clauses and provisions of this contract are intended to be severable, and the unconstitutionality, illegality or unconscionability of any term, clause or provision shall in no way effect the enforcement of any other term, clause or provision.
- S. This agreement shall not take effect until approved, in writing, hereon by the Offices of the Attorney General and State Comptroller of the State of New York.
- T. This agreement is governed by the laws of the State of New York.

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IN WITNESS WHEREOF, this instrument has been duly executed the day and year first above written.

CONTRACT NUMBER C111945

ASSEMBLY OF THE STATE OF NEW YORK

Kasowitz Benson Torres & Friedman LLP

Kasowitz Benson Torres Friedman LLP

Amy A. Metzalka

New York State Assembly

Mark E. Kasowitz - Partner

Print Name and Title

Amy A. Metzalka Administrative Counsel

Print Name and Title

8/19/13

Date

8/20/13

Date

APPROVED AS TO FORM:

Attorney General's Signature

Comptroller's Signature

APPROVED AS TO FORM
NYS ATTORNEY GENERAL

SEP 25 2013

Dated *Lorraine L. Remo*
LORRAINE L. REMO
PRINCIPAL ATTORNEY

APPROVED
DEPT. OF AUDIT & CONTROL

OCT 10 2013

Dated *Charlotte S. Bruneau*
FOR THE STATE COMPTROLLER

NOTE: Original copies of this signature page will only be attached to original copies of this contract.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

December, 2012

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-c or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner



AMY A. METCALFE
Administrative Counsel

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

Enterprise Center
Albany, New York 12246
(518) 465-4197
FAX: (518) 465-4271

November 27, 2013

Marc E. Kasowitz, Esq.
Kasowitz Benson Torres Friedman LLP
1633 Broadway
New York, New York 10019

Re: Contract Number C111945

Dear Mr. Kasowitz:

This letter is to confirm our agreement to amend the Contract between your firm and the New York State Assembly (C111945). The amount for compensation for services in Section A (3) shall be increased from Fifty-Thousand Dollars (\$50,000) to Three Hundred Fifty-Thousand Dollars (\$350,000).

Please sign below to indicate your approval to this change.

Sincerely,

Amy Metcalfe
Administrative Counsel

Marc E. Kasowitz, Esq.

ACKNOWLEDGEMENT OF FIRM OR PARTNERSHIP

STATE OF NEW YORK)
COUNTY OF NY)ss.:

On this 2 day of December, 2013, before me personally appeared Marc E. Kasowitz, to me known and known to me to be a member of the Firm of Kasowitz Benson Torres Friedman LLP is the person described and who executed the foregoing instrument in the Firm name of Kasowitz Benson Torres Friedman LLP and s/he duly acknowledged to me that s/he executed the same and for the act and deed of said Firm.

Michael Tenenhaus

Notary Public #
Qualified in:
Commission expires:

MICHAEL VAIL TENENHAUS
Notary Public, State of New York
Qualified in New York County
Reg No. 02TE6289770
Commission Expires September 30, 2017