



Andrew M. Cuomo  
Governor

STATE OF NEW YORK  
**EXECUTIVE DEPARTMENT**  
DIVISION OF THE BUDGET  
STATE CAPITOL  
ALBANY, NEW YORK 12224

Robert L. Megna  
Director of the Budget

July 25, 2014

**RECEIVED**  
NYS OFFICE OF ATTORNEY GENERAL

JUL 25 2014

CONTRACT APPROVAL UNIT

Ms. Lorraine Remo, Esq.  
Office of the Attorney General  
Contract Approval Unit  
State Capitol  
Albany, NY 12224 .

Re: HINCKLEY, ALLEN & SNYDER LLP - C000438  
\$300,000  
May 16, 2014 through December 31, 2014

Dear Ms. Remo:

Enclosed for your approval are four copies of the above referenced contract between the Division of the Budget (Division), as fiscal agent on behalf of the Moreland Commission to Investigate Public Corruption (Commission) and Hinckley, Allen & Snyder LLP (Hinckley Allen). Under this contract, Hinckley Allen will provide legal services for the Division in connection with an investigation of the Commission being conducted by the United States Attorney's Office for the Southern District of New York.

When the contract is approved, please call me at 402-2587 to arrange our pick up of these documents. If you have any questions or concerns, please contact me or Michelle Heaslip (474-4421). Thank you for your attention to this matter.

Sincerely,

Jason DiGianni  
Contracts Officer

Enclosures



Andrew M. Cuomo  
Governor

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**EXECUTIVE DEPARTMENT**  
DIVISION OF THE BUDGET  
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Re: Hinckley, Allen & Snyder LLP – C000438  
\$300,000  
May 16, 2014 through December 31, 2014

Dear Ms. Remo:

Enclosed is a contract (C000438) between the New York State Division of the Budget, as fiscal agent of the Moreland Commission to Investigate Public Corruption (Commission) and Hinckley, Allen & Snyder LLP (Hinckley Allen) for legal services for the period May 16, 2014 through December 31, 2014. The contract retains Hinckley Allen to provide legal services for the Division in connection with an investigation of the Commission being conducted by the United States Attorney's Office for the Southern District of New York (USAO).

**Nature of and Need for Services / Necessity for Outside Counsel**

With respect to the nature of services to be performed by Hinckley Allen, please see Section I of the attached contract. Please note, Hinckley Allen's representation is limited to the Commission, and this agreement does not authorize Hinckley Allen to litigate on behalf of the Commission. The Commission does not currently have in-house counsel and must therefore retain the services of an outside law firm.

**Selection of Hinckley Allen**

Hinckley Allen is a 160 lawyer, full service firm with offices in Albany, New York City, Boston, Providence, Hartford and Concord, NH. The firm has an exceptionally strong and well-known white collar defense and government investigation practice, which includes Michael Koenig, who will serve as the lead attorney for this matter.

Mr. Koenig is a former federal prosecutor with the United States Department of Justice and a highly experienced defense attorney in private practice. He has handled

a number of high profile and sensitive cases, which also makes him uniquely qualified for this particular assignment. As a federal prosecutor in the Justice Department's Criminal Division, Fraud Section, Mr. Koenig prosecuted a variety of white collar crimes, but focused on corporate fraud. His work in the corporate arena earned him the Assistant Attorney General's Award for Financial Integrity. In private practice, Mr. Koenig has represented numerous public officials, public figures, business professionals, and companies. In addition, Mr. Koenig has practiced in a number of federal courts around the country, including the USAO. Thus, he is experienced in the federal system. He also has handled countless matters over the years with many New York State enforcement and regulatory agencies, including:

- Office of the Attorney General
- Numerous District Attorney Offices
- Office of the Inspector General
- Joint Commission on Public Ethics (and its predecessor, Commission on Public Integrity)
- Office of the State Comptroller
- Office of Professional Discipline
- Office of Professional Medical Conduct
- Office of the Medicaid Inspector General

Mr. Koenig has conducted many internal investigations on behalf of companies, and is very skilled in managing complicated matters with many moving parts. As a result of his prosecutorial and defense experience, he is fully familiar with and more than capable of handling issues that have arisen, or will arise, in this matter. This would include subpoena compliance, document review, grand jury processes, communications with the US Attorney General's Office and the FBI, advising clients (including bodies, as opposed to individuals), and identifying and coordinating the work that needs to be done in cases like this.

### Fee Structure

Hinckley Allen will provide necessary legal services for the State in the matter, bill all personnel at specified rates and provide detailed documentation substantiating all fees and disbursements. The firm has also agreed to discount its normal and customary fees for attorneys and legal assistants who provide services in connection with this work. Hinckley Allen's fee structure is as follows:

Title	Hinckley Allen Hourly Rate
Partners	\$450-\$550
Associates	\$275-\$425
Legal Assistants/Paralegals	\$125

**Contract Number and Value**

The Division's contract with Hinckley Allen will be numbered C000438 and will have a contract value not to exceed \$300,000. The Division has not had any contracts with Hinckley Allen in the past three years.

We look forward to working with you to expedite the approval of the attached contract. Please let me or Jason DiGianni (402-2587) know if you need any additional information.

Sincerely,



Jason DiGianni  
Contracts Officer

Enclosures

Milton L. Williams, Jr.  
Moreland Commission  
90 Church Street  
New York, N.Y. 10007

June 4, 2014

Ms. Meg Levine  
Mr. Pete Favretto  
Contract Approval Unit  
Office of the Attorney General  
The Capitol  
Albany, New York 12224

Dear Mr. Favretto and Ms. Levine:

On behalf of the Moreland Commission on Public Corruption ("Moreland Commission"), and as one its Co-Chairs, I am writing to request that the Office of the Attorney General of New York State ("OAG") authorize the Moreland Commission to retain outside counsel to represent it in connection with an investigation being conducted by the United States Attorney's Office for the Southern District of New York.

Based upon our recent conversation and your direction, I am providing the information set forth in the April 5, 2006 Memorandum from Pete Favretto regarding "Outside Counsel Contracts." Also enclosed is the proposed engagement letter from Hinckley, Allen & Snyder LLP ("Hinckley Allen") (Michael L. Koenig, of counsel), the outside law firm the Moreland Commission will be hiring to represent it in the above-referenced SDNY investigation.

The following responses relate to the items identified in Mr. Favretto's Memorandum.

**1. The nature of the services to be performed**

Hinckley Allen, through the lead partner on this case, Michael Koenig, is expected to perform all legal and counseling services that may be necessitated by the SDNY Investigation. These services include: fact research; legal research; communications and meetings with the Moreland Commission's Commissioners and staff; communications and meetings with the United States Attorney's Office for the SDNY and any other law enforcement or regulatory body, including the Federal Bureau of Investigation; assisting the Moreland Commission with reviewing, analyzing and complying with any subpoena that has been, or may be, issued; preparing any Commissioner or staff member for any interview or testimony they have been or may be asked to provide; attending with any Commissioner or staff member any interview or testimonial proceeding he/she may be asked to attend; conferring with Hinckley Allen colleagues on substance, strategy and procedure; preparing any Court filings that may become necessary; attending any meetings related to the investigation that may be necessary; and engaging and

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overseeing a third party vendor for document collection and production tasks. The course of the investigation may necessitate additional tasks as well that Hinckley Allen may be asked to perform. I will advise the OAG in the event those additional tasks become necessary.

**2. The reasons why agency counsel of the OAG cannot handle the matter.**

As to why "agency counsel" cannot handle the matter, the initial answer is that there no longer is "agency counsel." Originally, Kelly Donovan was counsel to the Commission. However, Ms. Donovan resigned from her position with the Commission and returned to her position as, I believe, Executive Deputy Attorney General for Criminal Justice in the Office of the Attorney General, the same or similar position I believe she held prior to joining the Moreland Commission as its "in house" counsel.

In addition to the absence of an "in the house" agency counsel, the OAG cannot handle this matter given the nature and scope of the SDNY investigation, which, among other things, includes inquiry into the formation, operation, management and dissolution of the Moreland Commission. The scope and nature of the SDNY investigation, which to date is being conducted through documents and interviews, makes not only Ms. Donovan a witness and custodian of documents, but also the number of Assistant Attorney Generals who were working as Commission staff.

More specifically, prior to joining the Commission, Ms. Donovan and other Assistant Attorney Generals were employed by the OAG, and were again employed by the OAG upon their departures from the Commission. Given the nature of the SDNY's broad investigation into a number of matters, these individuals will be witnesses who have relevant documents that will need to be produced and may be called upon for interviews and/or to provide testimony. Given the involvement of OAG personnel on the Moreland Commission, and their OAG positions, the OAG cannot provide the independent, objective legal advice and counsel that will be necessary to represent the Moreland Commission with regard to the SDNY investigation.

In short, given the inextricable link between the OAG (through Ms. Donovan and staff) and the matters now under investigation by the SDNY (for which OAG personnel are and will be witnesses and custodians of documents), the Moreland Commission must have outside, independent representation and legal advice and guidance that is not compromised by prior involvement or interest in the case.

The authority to hire outside counsel is based upon the above set of facts and the conflict arising thereunder and/or N.Y. Executive Law 63 and/or 67.

**3. The reasons for selecting the attorney or firm and the process used in making the selection. Be sure to provide evidence that State Finance Law Section 163 has been complied with. Include copies of the RFP and all proposals.**

Hinckley Allen is a 160 lawyer, full service firm with offices in Albany, New York City, Boston, Providence, Hartford and Concord (NH). The firm has an exceptionally strong and well-

known white collar defense and government investigations practice, which includes Michael Koenig, who would serve as the lead attorney for this matter.

Mr. Koenig is a former federal prosecutor with the United States Department of Justice in Washington, DC, and a highly experienced defense attorney in private practice. He has handled a number of high profile and sensitive cases, which also makes him uniquely qualified for this particular representation. As a federal prosecutor in the Justice Department's Criminal Division, Fraud Section, Mr. Koenig prosecuted a variety of white collar crimes, but focused on corporate fraud. In doing so, his work led to the high profile indictment and conviction of former Qwest CEO Joseph Nacchio, and the similarly high profile indictments and convictions of 9 senior officials of a computer company in New Hampshire. Mr. Koenig's work in the corporate fraud arena earned him the Assistant Attorney General's Award for Financial Integrity from then Criminal Division Chief, Christopher Wray. In private practice, Mr. Koenig has represented numerous public officials, public figures, business professionals and companies. In addition, Mr. Koenig has practiced in a number of federal courts around the country, including the SDNY. Thus, he is experienced in the federal system. He also has handled countless matters over the years with all New York State law enforcement and regulatory agencies, including the OAG; numerous District Attorney Offices; the Inspector General; JCOPE and its predecessor, COPI; the OSC; the OPD; the OMIG; and the OPMC. In addition, he has conducted numerous internal investigations on behalf of companies, and is thus very skilled in managing complicated matters with many moving parts. In short, Mr. Koenig has the ability, experience and credibility necessary in an investigation of this nature.

As a result of his prosecutorial and defense experience, Mr. Koenig is fully familiar with and more than capable of handling issues that have arisen, or will arise, in this case, including subpoena compliance, document review, grand jury processes, communications with the United States Attorney's Office and the FBI, advising clients (including bodies, as opposed to individuals), and identifying and coordinating the work that needs to be done in cases like this.

Based upon independent confirmation of Mr. Koenig's experience and ability through conversations I have had and research I have conducted, he is well-respected by prosecutors, judges and defense attorneys. He is listed in the coveted "Best Lawyers In America" for white collar defense, and was named the top white collar lawyer in Albany in 2012. A copy of Mr. Koenig's bio from his firm's website is included herein.

In sum, Mr. Koenig possesses the requisite skills, experience, background and credibility to represent the Moreland Commission. Based upon my numerous conversations with him, it is clear he understands the nature of this case and what the representation entails. Finally, he and his firm have agreed to handle this matter at extremely fair and reasonable rates, set forth below, which are significantly lower than New York City or Washington, DC firms would charge for attorneys with the same experience and background as Mr. Koenig and his colleagues.

4. **The fee schedule (hourly rates for partners, associates and paralegals) and expenses. The total contract amount should be stated, preferably in "not to exceed" form.**

Mr. Koenig and Hinckley Allen have agreed to the following rates for this matter, which reflects a courtesy discount from their standard rates in matters like this. Mr. Koenig will be the lead attorney, and primarily assisted by Ms. Lane:

a.	Michael Koenig (partner):	\$550/hour
b.	Victoria Lane (of counsel):	\$425/hour
c.	Laura Angelini (partner):	\$450/hour
d.	James Tuxbury (sr. associate):	\$400/hour
e.	Jack Gallagher (associate):	\$300/hour
f.	Rhiannon Campbell (associate):	\$275/hour
g.	Sam Breslin (associate):	\$275/hour
h.	Maria Mayhew (paralegal):	\$125/hour

Mr. Koenig has indicated that not all of the above-referenced legal professionals may be utilized, but has assured me that he will staff this matter so that the services provided are both efficient and cost-effective, and that the legal professionals assigned to this matter will be given tasks commensurate with their experience and the matter's needs. There is a possibility, depending on the course of the SDNY investigation, that other Hinckley Allen attorneys will be necessary, either in place of or in addition to the above list. If that becomes the case, their rates will range between \$250 and \$400/hour.

Given the nature and fluidity of the SDNY investigation, the full contract amount cannot be stated.

5. **Whether there have been discussions with the OAG concerning the use of outside counsel in this matter and, if so, with whom.**

As co-chairman of the Moreland Commission, I have had a few conversations with senior-level representatives of the OAG about the Moreland's Commission's need to have outside counsel in light of the fact that Kelly Donovan, and therefore the entire AG's office, could not represent the Moreland Commission with regard to the SDNY's investigation. These representatives understood the issue, and agreed that the Moreland Commission did need outside counsel under the circumstances, and accordingly, referred me to this very process.

6. **A list of all contracts between your agency and the attorney or firm within the past 3 years, including the OSC number, the start and end dates and the amounts thereof.**

There are no such contracts.

7. **The Comptroller's contract number, if known.**



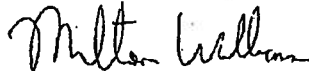
Not applicable.

8. If the contract involves litigation, the letter or memorandum must also state:  
a) the name of the action or proceeding; b) its venue; and c) a description of the nature of the action or proceeding.

Currently, the United States Attorney's Office for the Southern District of New York has issued a grand jury subpoena to the "Moreland Commission to Investigate Public Corruption." The subpoena calls for production of documents from the Moreland Commission to Investigate Public Corruption, and its current of former Commissioners, staff, employees and agents.

Please let me know if you need additional information. Given the nature and timing of the SDNY investigation and matters that need to be handled, I would appreciate your quickest attention to this matter.

Very truly yours,



Milton Williams  
Co-Chair, Moreland Commission

**CONTRACT No. C000438**

**NEW YORK STATE DIVISION OF THE BUDGET  
AND HINCKLEY, ALLEN & SNYDER LLP  
FOR LEGAL SERVICES  
FOR THE PERIOD  
MAY 16, 2014 THROUGH DECEMBER 31, 2014**

This is an AGREEMENT by and between the New York State Division of the Budget, hereinafter referred to as "DIVISION") on behalf of the COMMISSION (as defined below), and HINCKLEY, ALLEN & SNYDER LLP, a law firm with offices at 30 South Pearl Street, Suite 901, Albany, New York 12207 (hereinafter referred to as "HINCKLEY ALLEN").

**WITNESSETH**

**WHEREAS**, on July 2, 2013, Governor Andrew M. Cuomo issued Executive Order 106 forming the Commission to Investigate Public Corruption ("COMMISSION") under the Moreland Act and Executive Law Section 63(8) to probe systemic public corruption and the appearance of such corruption in state government, political campaigns and elections in New York State ("STATE");

**WHEREAS**, the COMMISSION requires legal services in connection with an investigation of the COMMISSION being conducted by the United States Attorney's Office for the Southern District of New York (hereinafter referred to as "USAO"); and

**WHEREAS**, the COMMISSION has determined that HINCKLEY ALLEN is uniquely and exceptionally well qualified to perform such services; and

**WHEREAS**, HINCKLEY ALLEN is capable of handling this matter in an expedited and skillful manner;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions herein set forth, the DIVISION, COMMISSION and HINCKLEY ALLEN agree, as follows:

**I. SERVICES TO BE PROVIDED**

The DIVISION on behalf of the COMMISSION hereby engages HINCKLEY ALLEN to provide legal services in connection with the USAO's investigation of the Moreland Commission. The services will include, but not be limited to: fact research; legal research; communications and meetings with the COMMISSION's Commissioners and staff; communications and meetings with the USAO and any other law enforcement or regulatory body, including the Federal Bureau of Investigation; assisting the COMMISSION with reviewing, analyzing and complying with any subpoena that has been, or may be issued to the COMMISSION; drafting any internal or external memorandum(a) that may be necessary; attending any meetings on behalf of the COMMISSION related to the USAO investigation that may be necessary; and engaging and overseeing a third party vendor for document collection and production tasks.

HINCKLEY ALLEN shall represent COMMISSION and the State of New York in litigation related to the services to be provided under this AGREEMENT only when such services are specifically requested by COMMISSION and approved by the Attorney General of the State of New York and the DIVISION.

## II. TERM OF ENGAGEMENT

The DIVISION on behalf of the COMMISSION hereby engages HINCKLEY ALLEN to furnish legal services set forth in Article I, for the period of MAY 16, 2014 through DECEMBER 31, 2014.

## III. COMPENSATION

HINCKLEY ALLEN has agreed to discount its normal and customary fees for attorneys and paralegals who provide services, consistent with the intent of Executive Order Number 10. For the services described in Article I, the State will pay HINCKLEY ALLEN an amount equal to charges incurred based upon the actual hours devoted to performing the services by the following hourly rates:

<u>Title</u>	<u>Rate</u>
Michael Koenig (Partner)	\$550 /hour
Victoria Lane (Of Counsel)	\$425/hour
Laura Angelini (Partner)	\$450/hour
James Tuxbury (Associate)	\$400/hour
Jack Gallagher (Associate)	\$300/hour
Rhiannon Campbell (Associate)	\$275/hour
Sam Breslin (Associate)	\$275/hour
Maria Mayhew (Paralegal)	\$125/hour

The DIVISION, as the authorized fiscal agent of the COMMISSION and the Executive Chamber (hereinafter referred to as the "CHAMBER"), will be charged separately, and at a reasonable rate, for disbursements and charges incurred under the contract that are beyond HINCKLEY ALLEN's general office-related expenses. Such disbursements and charges shall be the actual cost of the out-of-pocket expenses and may include, but are not limited to, investigators, consultants, experts, messenger and delivery service, computerized research, filing fees, and copying documents for retention in HINCKLEY ALLEN's files. The DIVISION on behalf of the COMMISSION will reimburse HINCKLEY ALLEN for necessary travel expenses in accordance with the New York State rate for Management/Confidential employees for coach fare, accommodations and meal charges for breakfast and dinner. Any out-of-New York State travel must be approved in advance by the DIVISION. Unless otherwise approved by the DIVISION, HINCKLEY ALLEN will not be reimbursed for taxis, private cars or meals, except as part of necessary travel expenses. If at any time it appears that unusually large expenses will be incurred, such as substantial outside reproduction costs or fees for a large project, HINCKLEY ALLEN shall consult with the DIVISION prior to incurring such expenses.

Total payments under this AGREEMENT, inclusive of expenses and other disbursements, shall not exceed a maximum amount of \$ 300,000 and 00/100 unless otherwise amended in writing by all parties and approved by the NYS Office of the Attorney General and Office of the State Comptroller. Fees, disbursements and charges shall become payable pursuant to NYS Finance Law Article 11-A and upon the submission of a monthly invoice that includes a statement containing the following information:

1. A brief description of the work performed;
2. The name of the individual(s) performing the service, such person's title, and billing rate;
3. A summary of the total number of hours of services performed by each person;
4. The date(s) each billed service was rendered;
5. A description of all reimbursable disbursements and expenses itemized by category, including travel, with receipts and documentation;
6. The total amount billed for services for the invoice period;
7. The beginning and ending date of the period to which the statement pertains; and
8. The number assigned to this contract by the DIVISION and HINCKLEY ALLEN's Statewide Financial System Vendor Identification Number.

The invoice shall be submitted to:

Jason DiGianni on behalf of Karen Orcutt  
NYS Division of the Budget  
State Capitol, Room 128  
Albany, NY 12224  
contracts@budget.ny.gov

HINCKLEY ALLEN agrees to provide the DIVISION with such detailed documentation substantiating fees and disbursements as the DIVISION may request.

HINCKLEY ALLEN acknowledges that it will not receive payment on any invoices submitted under this Agreement unless or until it complies with the State Comptroller's electronic payment procedures.

HINCKLEY ALLEN shall not be reimbursed for the preparation of invoices or billing statements or for the correction of any error in previously submitted invoices or billing statements. Further, HINCKLEY ALLEN agrees to notify the DIVISION when the amounts billed have reached 80% of the total payment cap for this Agreement.

#### **IV. STAFF**

- A. Persons providing services under this contract shall not be State employees or become entitled to any of the benefits to which employees of the State of New York are entitled.

- B. The relationship of HINCKLEY ALLEN to the DIVISION on behalf of the COMMISSION arising out of this AGREEMENT shall be that of an independent contractor. The relationship of the COMMISSION to HINCKLEY ALLEN arising out of this AGREEMENT shall be that of client. The COMMISSION and DIVISION shall not be responsible for providing Workers' Compensation insurance coverage, unemployment insurance benefits, Social Security coverage or retirement membership credit for persons providing services under this AGREEMENT, and HINCKLEY ALLEN shall secure such compensation and disability insurance for the benefit of said persons during the life of this AGREEMENT as required by the provisions of the Workers' Compensation Law of the State of New York.
- C. HINCKLEY ALLEN shall assign Michael Koenig as the lead partner, and may use other firm personnel for its duties hereunder. HINCKLEY ALLEN may not make changes to the lead engagement partner without the COMMISSION's prior approval.
- D. HINCKLEY ALLEN specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders and subcontractors have and shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties performed hereunder.
- E. The COMMISSION shall direct all activities performed by HINCKLEY ALLEN under this AGREEMENT. Within the COMMISSION, such activities shall generally be directed by the following individual(s): MILTON WILLIAMS.

## **V. GOVERNING LAW/STANDARD CLAUSES**

This AGREEMENT shall be governed by the laws of the State of New York. Appendix A, Standard Clauses for NYS Contracts, is expressly made a part of AGREEMENT as fully as if set forth at length herein.

## **VI. ORDER OF PRECEDENCE**

In the event of any discrepancy, disagreement or ambiguity under this AGREEMENT and its appended material, said AGREEMENT will be resolved by giving precedence to the AGREEMENT Documents in this order:

1. Appendix A – Standard Clauses for NYS Contracts;
2. Agreement – As it appears prior to the signature page incorporated herein.

## **VII. AUTHORITY OF COUNSEL**

HINCKLEY ALLEN acknowledges that any opinions prepared by HINCKLEY ALLEN construing the statutes or Constitution of the State of New York do not constitute the opinions of the COMMISSION or the State. HINCKLEY ALLEN further acknowledges that only the Attorney General of the State of New York has the authority to prepare or approve the issuance of such opinions on behalf of the COMMISSION or State.

- A. Opinions prepared by retained attorneys or law firms construing the statutes or Constitution of the State of New York do not constitute the opinion 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, Appeals and Opinions Bureau, Department of Law, State Capitol, Albany, New York.
- B. The retained attorney or law firm will represent the COMMISSION in judicial litigation related to the services to be provided under this agreement only when such services are specifically requested by the State agency's counsel and approved by the Attorney General and the DIVISION. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of services therefor. For avoidance of doubt, HINCKLEY ALLEN is not authorized by this AGREEMENT to litigate on behalf of the COMMISSION.

### **VIII. CLIENT RESPONSIBILITIES**

The COMMISSION agrees to cooperate with HINCKLEY ALLEN and keep HINCKLEY ALLEN informed with complete and accurate factual information, documents and other communications relevant to the subject matter of the representation or otherwise reasonably requested by HINCKLEY ALLEN. In particular, the COMMISSION agrees to make itself available to attend meetings, hearings, conferences, and other proceedings, and to commit itself to meet all obligations. The COMMISSION agrees to inform HINCKLEY ALLEN, in writing, of any changes in the names, addresses, telephone numbers, contact persons, e-mail addresses, or other relevant changes in status. Whenever HINCKLEY ALLEN needs the COMMISSION's instructions or authorization in order to proceed with legal work on behalf of COMMISSION, HINCKLEY ALLEN shall contact the COMMISSION, Commissioners, and staff at the latest addresses received from the COMMISSION.

The COMMISSION acknowledges that opinions or beliefs concerning the subject matter or various courses of action and the results that might be anticipated expressed by HINCKLEY ALLEN are intended to be an expression of opinion only, based on information available to HINCKLEY ALLEN at the time and should not be construed by the COMMISSION as a promise or guarantee.

### **IX. GENERAL TERMS AND CONFLICTS**

- A. HINCKLEY ALLEN hereby covenants and represents that there is not and shall be no actual or potential conflict of interest that could prevent the firm's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT and any other contract or employment; and HINCKLEY ALLEN shall have a duty to notify the COMMISSION promptly of any actual or potential conflicts of interest in all that it does to serve the purpose of this AGREEMENT and its intent.
- B. HINCKLEY ALLEN warrants that it has performed a conflicts check and has determined that it may, under applicable ethics rules, perform the anticipated services. It further warrants that it is not involved in any litigation or administrative proceeding(s) to which

it is a party that would either: 1) materially impair its ability to perform the services outlined herein or 2) materially and adversely affect its financial ability to perform the services outlined herein if decided in an adverse manner. HINCKLEY ALLEN agrees that it will give notice to the COMMISSION upon undertaking representation of any new client where the matter is not substantially related but the interest of that client are directly adverse to the COMMISSION. HINCKLEY ALLEN shall promptly notify the COMMISSION upon undertaking representation of any new client where the interests of that client are directly adverse to the COMMISSION.

- C. HINCKLEY ALLEN shall take all appropriate action to protect the confidentiality of all information supplied to it or developed by it during the course of its performance under the terms of this AGREEMENT. HINCKLEY ALLEN shall hold Confidential Information confidential to the maximum extent permitted by law. HINCKLEY ALLEN shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that HINCKLEY ALLEN uses to maintain its own confidential information.

Upon the written request of the COMMISSION, HINCKLEY ALLEN shall return all written Confidential Information to the COMMISSION.

- D. Any and all reports and findings rendered to the COMMISSION by the HINCKLEY ALLEN shall be the exclusive property of the COMMISSION and subject to the COMMISSION's exclusive use and control HINCKLEY ALLEN hereby waives any and all rights to such reports and findings and the control thereof.
- E. COMMISSION staff, others authorized by the COMMISSION, or other State agencies authorized by State law, shall have access to and the right to examine the books, documents, work papers, documentation of charges, or other records of the HINCKLEY ALLEN involved in transactions relating to this AGREEMENT during the contract period and for a period of ten (10) years after final payment for said services. HINCKLEY ALLEN will make all records, including related documents of any and all subcontractors, available to New York State.
- F. HINCKLEY ALLEN shall be fully liable without monetary limitation for all damage to life, real or tangible personal property, and intellectual property due to negligent or otherwise tortious acts, errors or omissions of HINCKLEY ALLEN in connection with its services under this Agreement. Further, it is expressly understood that HINCKLEY ALLEN shall indemnify and save harmless the State, the COMMISSION, its officers, and employees from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of HINCKLEY ALLEN or the quality of goods provided under this Agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided. However, HINCKLEY ALLEN shall not be required to indemnify the COMMISSION for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the State and shall not be required to indemnify the State for that portion of any claim, suit, action, damage or cost which arises due to the negligent

act or omission of the State. The provisions of this section shall survive the expiration or termination of this Agreement.

## **X. TERMINATION**

- A. The COMMISSION shall have the right, in its sole discretion, to postpone, suspend, abandon or terminate this Agreement at any time and for any reason, and such action shall in no event be deemed a breach of contract. This includes the COMMISSION's right to terminate this Agreement in the event the COMMISSION finds that the certification made by HINCKLEY ALLEN in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete. This also includes the COMMISSION's right to terminate this Agreement at any time in the event the COMMISSION finds that HINCKLEY ALLEN is non-responsible or has failed to accurately disclose vendor responsibility information.
- B. In the event the COMMISSION exercises its right to postpone, suspend, abandon or terminate this Agreement, HINCKLEY ALLEN must within ten (10) days of such postponement, suspension, abandonment or termination deliver to the COMMISSION all records, documents and data pertaining to services rendered under this Agreement.
- C. In the event the COMMISSION exercises its right to postpone, suspend, abandon or terminate this Agreement for convenience, due to no fault of HINCKLEY ALLEN, the COMMISSION will fix the value of the work performed as of such postponement, suspension, abandonment or cancellation date, as verified by audit, and compensate HINCKLEY ALLEN accordingly.
- D. HINCKLEY ALLEN may withdraw from the representation upon at least thirty (30) days written notice to the COMMISSION where withdrawal is permissible or required under rules of professional conduct.

## **XI. FORCE MAJEURE**

Neither party will be liable for losses, defaults, or damages under this AGREEMENT which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this AGREEMENT, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

## **XII. COMPLIANCE WITH PROCUREMENT LAWS**

- A. By execution of this AGREEMENT, HINCKLEY ALLEN certifies that information provided to the State of New York with respect to the Vendor Responsibility



Questionnaire, Procurement Lobbying Certifications, and Contractor Disclosure Form is complete, true and accurate.

- B. HINCKLEY ALLEN hereby acknowledges that the Vendor Responsibility Questionnaire and certification are made part of its proposal and thereby this AGREEMENT and that any misrepresentation of fact in the Questionnaire and attachments, or in any HINCKLEY ALLEN responsibility information that may be requested by the COMMISSION, may result in termination of this AGREEMENT.
- C. HINCKLEY ALLEN shall at all times during the contract term remain responsible. During the term of this AGREEMENT, any changes in the provided Questionnaire shall be disclosed to the COMMISSION, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of this AGREEMENT. Furthermore, HINCKLEY ALLEN agrees, if requested by the COMMISSION, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- D. The COMMISSION, in its sole discretion, reserves the right to suspend any or all activities under this AGREEMENT, at any time, when it discovers information that calls into question the responsibility of HINCKLEY ALLEN. In the event of such suspension, HINCKLEY ALLEN will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, HINCKLEY ALLEN must comply with the terms of the suspension order. Contract activity may resume at such time as the COMMISSION issues a written notice authorizing a resumption of performance under this AGREEMENT.
- E. Upon written notice to the HINCKLEY ALLEN, and a reasonable opportunity to be heard with the appropriate COMMISSION officials or staff, this AGREEMENT may be terminated by the COMMISSION at the HINCKLEY ALLEN expense where the HINCKLEY ALLEN is determined by the COMMISSION to be non-responsible. In such event, the COMMISSION may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.
- F. HINKLEY ALLEN hereby acknowledges that State Finance Law Section 163(4)(g) imposes certain reporting requirements on the contractor doing business with New York State, In furtherance of these reporting requirements, HINCKLEY ALLEN agrees to complete and submit an initial planned employment data report and an annual employment report (Forms A and B respectively). Complete instructions and forms may also be accessed at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp>.
- G. Nothing in this section shall be interpreted to limit or expand the COMMISSION's obligations pursuant to N.Y. Public Officers Law Article 6 and 6-a, the Freedom of Information Law and Personal Privacy Protection Law, respectively. Similarly, nothing in this section shall be interpreted to limit or expand the applicability of either laws or exemptions to disclosure of records possessed by the COMMISSION.

H. Nothing herein shall be construed as limiting or amending the attorney-client privileges afforded by law.

### **XIII. ENTIRE AGREEMENT**

This AGREEMENT and its Appendices constitute the entire AGREEMENT between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This AGREEMENT shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

### **XIV. SEVERABILITY**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, but shall remain binding and effective as against all parties hereto.

### **XV. ADDITIONAL PROVISIONS**

This AGREEMENT shall be deemed executory only to the extent of moneys annually appropriated and available for this purpose, and no liability on account thereof shall be incurred by the State beyond the amount appropriated. It is understood that neither this assignment nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate, or make available moneys for the purpose of this AGREEMENT.

### **XVI. CONDITIONS PRECEDENT**

This AGREEMENT and any subsequent amendments to this AGREEMENT shall not be deemed executed, valid or binding unless and until approved in writing by the Offices of the Attorney General and State Comptroller.

C000438

**Agency Certification:**

“In addition to the acceptance of this AGREEMENT, I also certify that original copies of this signature page will be attached to all other exact copies of this AGREEMENT.”

IN WITNESS WHEREOF the parties have executed this AGREEMENT on the \_\_\_\_ day of \_\_\_\_\_, 2014.

**Contractor:**  
**HINCKLEY, ALLEN & SNYDER  
LLP**

By: *M. Keating*

Date: 7/23/14

**Agency:**  
**NEW YORK STATE DIVISION OF  
THE BUDGET on behalf of the  
COMMISSION TO INVESTIGATE  
PUBLIC CORRUPTION**

By: *K. Orcutt*  
*for* Karen Orcutt  
Administrative Officer

Date: 7.25.14

**ATTORNEY GENERAL  
ERIC T. SCHNEIDERMAN**

By: APPROVED AS TO FORM  
NYS ATTORNEY GENERAL

Date: JUL 30 2014  
*Lorraine I. Remo*  
LORRAINE I. REMO  
PRINCIPAL ATTORNEY

**THOMAS P. DINAPOLI  
STATE COMPTROLLER**

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

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

CORPORATE ACKNOWLEDGMENT FORM

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and that all information provided is complete, true and accurate. Also, the contractor affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF New York }
COUNTY OF Albany } SS.:

On the 23rd day of July in the year 20 14, before me personally appeared Michael Kaeny, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at 66 Claremont Drive, Town of Voorheesville, County of Albany, State of New York; and further that:

[Check One]

- [ ] If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.
[ ] If a corporation): he is the of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
[X] If a partnership): he is the Partner of Hendler, Allen & Snyder, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
[ ] If a limited liability company): he is a duly authorized member of LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Maria M. Mayhew

Notary Public MARIA M. MAYHEW
Registration No. Notary Public, State of New York
Qual. in Rensselaer County No. 04MA4966773
Commission Expires July 2, 2018

State of: New York