

**THE ASSEMBLY
STATE OF NEW YORK**

THIS AGREEMENT made the _____ day of March 2021 between

**Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY**

Hereinafter called the Contractor and **The Assembly of the State of New York**, New York State Capitol, Albany, New York 12248 hereinafter called the "Assembly":

WITNESSETH:

It is hereby mutually agreed as follows:

- A.
1. The Assembly does hereby employ, engage, and hire, for the period of March 17, 2021, to March 16, 2022, the Contractor, and the Contractor does hereby accept and agree to assist the Judiciary Committee in conducting an investigation into the allegations against Governor Andrew Cuomo that may be the basis of articles of impeachment and assist in any proceedings in the Assembly or other body based on or related to those investigations.
 2. In consideration of the foregoing, the Contractor shall receive as and for full payment for services rendered compensation at the rate of Six Hundred Dollars (\$600.00) per hour for time spent by both Partners and Associates. Additionally, the Contractor shall receive as and for full payment for services rendered compensation at the rate of Two Hundred Fifty Dollars (\$250.00) per hour for time spent by Paralegals. Hourly charges shall include all legal research, analysis, memoranda, correspondence, telephone conversations with Assembly personnel or other persons, preparation for, and appearances at meetings, court appearances, and any other tasks necessary to assist in conducting the investigation and proceedings based on or related to those investigations. 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 rendered and travel shall not, during the term of this agreement, exceed the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00). 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. Or, at the option of the Assembly, compensation shall be payable in accordance to Section 63 of the Legislative Law.
- B. 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.

- C. The Contractor will represent the New York State Assembly in judicial or quasi-judicial litigation related to the services to be provided under this agreement when such services are specifically requested by the Assembly. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of services.
- D. 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.
- E. 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.
- F. 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.
- G. 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.
- H.
 - 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 be effected by delivery of a Notice of Termination to the Contractor specifying the extent to which performance of work under the contract is terminated and the date upon which such 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 grant the Assembly a worldwide, non-exclusive, perpetual, irrevocable, royalty-free license 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.

- I. The Assembly may, at any time, by written notice and with the consent of the Contractor, make changes in or additions to work or services within the general scope of this contract upon the approval of 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.
- J. The contractor 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 of the Services under the terms of this Agreement ("Confidential Information"). To the extent the Services are performed by a law firm, such protection shall be supplemented by the New York Rules of Professional Conduct (including Rule 1.6 pertaining to confidentiality of information). The contractor shall hold Confidential Information confidential to the maximum extent permitted by law. The contractor 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 the contractor uses to maintain its own confidential information. Upon the written request of the Assembly, the contractor shall deliver the Assembly's files with respect to this engagement. The Assembly's files do not include the Contractor's accounting records, or other internal Contractor documents, e-mails or communications or drafts of any documents prepared by the Contractor in connection with this engagement. The Contractor will retain documents relating to this engagement only so long as we deem appropriate or as required by law and thereafter may dispose of documents or other materials. The Contractor shall grant the Assembly a worldwide, non-exclusive, perpetual, irrevocable, royalty-free license to any and all reports and findings rendered to the Assembly by the Contractor. The contractor shall make no statement to the public or to anyone other than the Assembly, unless required to do so by law, regarding its performance of the Services under the terms of this Agreement, unless the Assembly has specifically provided written permission for the release of such statement. To the extent the Services under this Agreement are performed by a law firm, in accordance with the New York Rules of Professional Conduct (including Rule 1.7 pertaining to conflicts of interest), the contractor shall not transmit its other clients any of the Assembly's Confidential Information.
- 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. 1. Contractor hereby covenants and represents that there is 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 representation, and Contractor shall have a duty to notify the Assembly promptly of any actual conflict of interest in all that it does to serve the purpose of this Agreement and its intent.
2. Contractor 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) 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. Contractor has advised the Assembly that it represents many entities and individuals. It is possible that during the time that Contractor represents the Assembly, Contractor will represent present or future clients before the State of New York, its departments, authorities, or other bodies. The Assembly agrees that Contractor may continue to represent or undertake in the future to represent existing clients in any matter that is not substantially related to the work for the Assembly, even if interests of such clients in those other matters are directly adverse to the State of New York. Contractor agrees however that prospective clients consent to conflicting representations contained in the preceding sentence shall not apply in the instance where, as a result of the Contractor's representation of the Assembly, it has obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client could be used in any such other manner by such client to the material disadvantage of the Assembly of the State of New York. Contractor agrees that, subject to applicable rules of professional responsibility, it will give notice to the Assembly upon undertaking representation of any new client where the matter is not substantially related but the interests of that client are directly adverse to the Assembly. Subject to applicable rules of professional responsibility, Contractor shall promptly notify the Assembly upon undertaking representation of any new client where the interests of that client are directly adverse to the Assembly.
- P. 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 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.

- Q. This written Agreement contains the sole and entire Agreement between the parties and shall supersede any and all other Agreements between the parties.
- R. The parties hereto shall execute such other and further documents as may be required to effectuate the terms of this Agreement.
- S. 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.
- T. This agreement shall not take effect until approved in writing by the Office of the State Comptroller, if necessary.
- U. This agreement is governed by the laws of the State of New York.

In Witness Whereof, this instrument has been duly executed the day and year first above written.

Contract Number: C600004

DAVIS POLK & WARDWELL LLP

ASSEMBLY OF THE STATE OF NEW YORK

Angela T. Burgess
 Signature
Angela T. Burgess
 Print Name
Partner
 Title
4/20/21
 Date

David Muskett
 Signature
David Muskett
 Print Name
Admin Counsel
 Title
4/21/21
 Date

APPROVED AS TO FORM:

Attorney General's Signature

Comptroller's Signature

Dated _____

Dated _____

APPROVED DEPT. OF AUDIT & CONTROL
May 12 2021 Brian Fuller
FOR THE STATE COMPTROLLER

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

ACKNOWLEDGEMENT OF FIRM OR PARTNERSHIP

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

On this 20th day of April, 2021, before me personally appeared Angela Burgess, to me known and known to me to be a member of the Davis Polk & Wardwell LLP is the person described and who executed the foregoing instrument in the Firm name Davis Polk & Wardwell LLP and s/he duly acknowledged to me that s/he executed the same and for the act and deed of said Firm.

Bernadette Sullivan

Notary Public # 01SU4813940
Qualified in: New York County
Commission expires: June 30, 2022

BERNADETTE M. SULLIVAN
Notary Public, State of New York
No. 01SU4813940
Qualified in New York County
Commission Expires June 30, 2022



APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

October 2019

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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 \$25,000, 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 § 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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-e 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 consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwb certification@esd.ny.gov
<https://ny.newycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

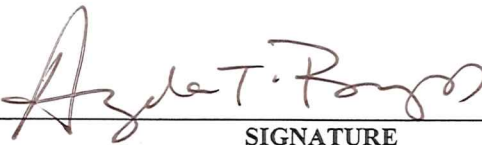
26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.



SIGNATURE

4/20/21

DATE