

CONTRACT No. C000249

**NEW YORK STATE EXECUTIVE CHAMBER
AND
MORVILLO ABRAMOWITZ GRAND IASON & ANELLO P.C.
FOR LEGAL SERVICES
FOR THE PERIOD
February 15, 2021 THROUGH February 15, 2023**

This is an AGREEMENT by and between the New York State Executive Chamber (hereinafter referred to as "CHAMBER") and Morvillo Abramowitz Grand Iason & Anello P.C., (hereinafter referred to as "MORVILLO ABRAMOWITZ" or "CONTRACTOR"), a law firm with offices at 565 Fifth Avenue, New York, NY 10017.

WITNESSETH

WHEREAS, the Department of Justice (hereinafter referred to as "DOJ") and other law enforcement or investigative entities have made inquiries and requests for information related to the CHAMBER's COVID-19 pandemic response, including related to Nursing Homes, publication of a COVID-related book authored by the Governor, and other pandemic related matters (hereinafter referred to as "Legal Matters"); and

WHEREAS, the CHAMBER requires expert outside counsel to assist in responding to such inquiries and requests, as well as providing any other legal advice or guidance in connection with the Legal Matters; and

WHEREAS, the CHAMBER has determined that MORVILLO ABRAMOWITZ is uniquely and exceptionally qualified to perform such services; and

WHEREAS, MORVILLO ABRAMOWITZ is capable of handling these matters in an expedited and skillful manner;

NOW, THEREFORE, in consideration of the terms and conditions of this AGREEMENT, it is hereby mutually agreed by and between the CHAMBER and the CONTRACTOR (each individually a "PARTY" and collectively "PARTIES"), as follows:

I. SERVICES TO BE PROVIDED

The CHAMBER hereby engages MORVILLO ABRAMOWITZ to provide legal services in connection with the Legal Matters and any other related inquiries, investigations, or other requests for information made by law enforcement authorities or investigative entities or bodies, other than civil matters in which the Attorney General typically represents the CHAMBER. This may include, but not be limited to, consulting with the CHAMBER as to strategy, substance, and procedure; document production; drafting and reviewing documents; legal research; fact research; witness interviews; assistance with drafting responses and communicating with law enforcement

authorities; as well as any other legal advice in support of CHAMBER's cooperation with law enforcement authorities.

II. TERM

The CHAMBER hereby engages MORVILLO ABRAMOWITZ to furnish legal services set forth in Section I, for the period of February 15, 2021 through February 15, 2023, with two optional one-year extensions.

III. COMPENSATION

A. MORVILLO ABRAMOWITZ shall bill the CHAMBER monthly for services performed under this AGREEMENT according to the following hourly rates:

Title	Name	Discounted Hourly Rate
Partner	Elkan Abramowitz	\$937.50
Partner	Robert Radick	\$680.00
Partner	Kate Cassidy	\$680.00
Partner	Christopher Harwood	\$680.00
Partner	Brian Jacobs	\$680.00
Counsel	Jacob Mermelstein, TBD	\$550.00
Associate	TBD	\$450.00
Staff Attorney	TBD	\$300.00
Contract Attorney (regular time)	TBD	\$52.50
Contract Attorney (overtime - over 40 hours per week)	TBD	\$72.63
Legal Assistants/Paralegals	TBD	\$210.00
Litigation Support Manager	Amadou Sarr	\$250.00
Review Services Manager	TBD	\$125.00

MORVILLO ABRAMOWITZ's hourly rates for attorneys on this AGREEMENT are significantly discounted from its standard hourly rates (by 25% for Mr. Abramowitz and 15% for other attorneys).

B. MORVILLO ABRAMOWITZ will bill for routine out-of-pocket expenses incurred on CHAMBER's behalf, such as filing fees, transcript expenses, travel (in accordance with NYS Travel Guidelines), messenger service, photocopies, long distance telephone calls, facsimiles and computerized research. Any extraordinary expenses, such as contract attorneys, will be incurred only after discussion and agreement between MORVILLO ABRAMOWITZ and CHAMBER.

C. Total payments under this AGREEMENT, inclusive of expenses and other disbursements, shall not exceed a maximum amount of \$2,500,000 which does not mean that this maximum amount will actually be spent. If the parties agree that

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the payment amount under this AGREEMENT should be increased, the AGREEMENT may be amended subject to approval by the State Comptroller.

- D. Fees, disbursements and charges shall become payable pursuant to NYS Finance Law Article 11-A and upon the receipt of an approvable invoice that includes the following information:
1. The AGREEMENT number (C000249), the CONTRACTOR's New York State Vendor Identification Number (1100119885), and an invoice number;
 2. The start and end date of the period to which the statement pertains;
 3. A brief description of the work performed;
 4. The name of the individual(s) performing the service, such person's title, and billing rate;
 5. A summary of the total number of hours of services performed;
 6. The date(s) each billed service was rendered;
 7. A description of all reimbursable disbursements and expenses itemized by category, including travel, with receipts and documentation; and
 8. The total amount billed for services for the invoice period.
- E. All invoices should be submitted electronically to the CHAMBER at contracts@budget.ny.gov.
- F. MORVILLO ABRAMOWITZ agrees to provide the CHAMBER with such detailed documentation substantiating fees and disbursements as the CHAMBER may request.
- G. MORVILLO ABRAMOWITZ 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.
- H. MORVILLO ABRAMOWITZ shall not be reimbursed for the preparation of invoices or billing statements or for time spent correcting any errors in previously submitted invoices or billing statements.

IV. RELATIONSHIP OF PARTIES

- A. The relationship of the CONTRACTOR, including any subcontracted attorneys, to the CHAMBER shall be that of an attorney and client. Nothing herein shall be construed as limiting or amending the attorney-client privileges afforded by law.
- B. The CONTRACTOR is and shall be, in all respects, an independent contractor in performing services pursuant to this AGREEMENT. In accordance with such status as an independent contractor, the CONTRACTOR covenants and agrees to act consistent with such status: to neither hold itself out as, nor claim to be, an officer or employee of the DIVISION or the STATE 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 DIVISION or the STATE, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership credit.

V. STAFF

- A. MORVILLO ABRAMOWITZ shall assign Elkan Abramowitz as the lead partner for its duties hereunder. MORVILLO ABRAMOWITZ may not make changes to the lead engagement partner without the CHAMBER's prior approval.
- B. The CONTRACTOR 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. All employees of the CONTRACTOR, or of its subcontractors, who shall perform Services under this AGREEMENT, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services under this AGREEMENT on behalf of CONTRACTOR shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.
- C. The CONTRACTOR may arrange for a portion/s of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subcontractors, subject to approval of the CHAMBER. If the CONTRACTOR determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONTRACTOR to the CHAMBER. The CONTRACTOR retains ultimate responsibility for all services performed under the AGREEMENT, including those performed by subcontractors.
- D. The CONTRACTOR shall be fully responsible for performance of work by its staff and by its subcontractor's staff, including contracted legal services. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

VI. CHAMBER REPRESENTATIVES

- A. All Notices under this AGREEMENT shall be directed to the representatives identified in this Section, or their designees.
- B. Such representatives shall request, oversee, supervise and accept performance of services provided by the CONTRACTOR and shall receive any required submissions. Whenever an action is to be taken or approval for services given by the CHAMBER, such action or approval may be given only by the representatives designated pursuant to this Section.

- C. The CHAMBER, with the commencement of this AGREEMENT, designates as its representative, Beth Garvey, or her designee(s). The CHAMBER may, on written notice, designate other individuals as its representatives.

VII. CONFLICTS OF INTEREST

- A. MORVILLO ABRAMOWITZ 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 MORVILLO ABRAMOWITZ shall have a duty to notify the CHAMBER 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. MORVILLO ABRAMOWITZ 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. MORVILLO ABRAMOWITZ agrees that it will give notice to the CHAMBER 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 CHAMBER. MORVILLO ABRAMOWITZ shall promptly notify the CHAMBER upon undertaking representation of any new client where the interests of that client in the matter are directly adverse to the CHAMBER.

VIII. WARRANTIES

- A. The CONTRACTOR warrants that it will perform services in good faith and in a workmanlike and professional manner in accordance with the applicable professional standards. The warranties expressly set forth in this AGREEMENT are in lieu of all other warranties, expressed or implied including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
- B. The CONTRACTOR warrants that its services shall be performed in accordance with applicable professional standards and that the CONTRACTOR shall correct, at no charge to the CHAMBER or the STATE, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

IX. INDEMNIFICATION AND LIABILITY

The CONTRACTOR shall be fully liable without monetary limitation for any act or omission of the CONTRACTOR, its employees, subcontractors and agents, and shall fully indemnify and hold harmless the STATE from suits, actions, damages and costs of every name and description relating to personal injury, death and damage to real or tangible personal property or intellectual property caused by fault or negligence of CONTRACTOR, its employees, subcontractors or agents arising from the CONTRACTOR's performance of the Contract, provided, however, that the CONTRACTOR shall not be obligated to indemnify the STATE for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act by the STATE or the acts of third parties, other than those provided by the CONTRACTOR to perform under the Agreement. In connection with the foregoing, the STATE shall give the CONTRACTOR: (i) prompt written notice of any action, claim or threat of suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at the CONTRACTOR's sole expense, and (iii) assistance in the defense of any such action at the expense of the CONTRACTOR. Notwithstanding the foregoing, the State reserves the right to join such action, claim, or threat of suit, at its sole expense, when it determines there is an issue involving a significant public interest.

X. TERMINATION

- A. The CHAMBER reserves the right to terminate the services of the CONTRACTOR, in whole or in part, upon thirty (30) days written notice for any reason, or immediately for cause. Upon notice of termination, the CONTRACTOR shall stop work immediately and complete only those specific assignments, if any, subsequently approved by the CHAMBER. In the event of termination other than for cause, the CONTRACTOR shall be entitled to compensation for services performed through the date of termination that are accepted by the CHAMBER, and for any subsequent services that are accepted by the CHAMBER, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the CHAMBER. The CONTRACTOR agrees to cooperate to the fullest respect with any successor consultants and contractors.
- B. If the Termination for cause results from unsatisfactory performance by the CONTRACTOR, the value of the work performed by the CONTRACTOR prior to termination shall be established by the CHAMBER.
- C. In addition, non-compliance with the procurement laws as noted in Section XI of this AGREEMENT will lead to contract termination.
- D. In the unlikely event that circumstances make it necessary to do so, the CONTRACTOR, with the mutual consent of the CHAMBER, may withdraw from

this AGREEMENT for nonpayment of fees or for any other reason authorized or required by the applicable Rules of Professional Conduct.

XI. COMPLIANCE WITH PROCUREMENT LAWS

- A. By execution of this AGREEMENT, the CONTRACTOR certifies that information provided to the STATE with respect to the Vendor Responsibility Questionnaire, Procurement Lobbying Certifications, Contractor Disclosure Form A and Section 5-a of the Tax Law (Forms ST-220-TD and ST-220-CA) is complete, true and accurate.
- B. The CONTRACTOR 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 CONTRACTOR responsibility information that may be requested by the DEPARTMENT, may result in termination of this AGREEMENT.

The CONTRACTOR 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 DEPARTMENT, 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, the CONTRACTOR agrees, if requested by the DEPARTMENT, to present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

The DEPARTMENT, 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 the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. Contract activity may resume at such time as the DEPARTMENT issues a written notice authorizing a resumption of performance under this AGREEMENT.

Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard by the appropriate DEPARTMENT officials or staff, this AGREEMENT may be terminated by the DEPARTMENT at the CONTRACTOR's expense where the CONTRACTOR is determined by the DEPARTMENT to be non-responsible. In such event, the DEPARTMENT may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

- C. CONTRACTOR hereby acknowledges that State Finance Law Section 163(4)(g) imposes certain reporting requirements on the contractor doing business with the STATE. In furtherance of these reporting requirements, the CONTRACTOR

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/Content/XI/18/C.htm>.

XII. REQUIREMENTS AND PROCEDURES FOR M/WBE PARTICIPATION

A. General Provisions

1. The DEPARTMENT is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all STATE contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
2. The CONTRACTOR agrees, in addition to any other nondiscrimination provision of the AGREEMENT and at no additional cost to the DEPARTMENT, to fully comply and cooperate with the DEPARTMENT in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority- and women-owned business enterprises ("MWBE"). The CONTRACTOR's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
3. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract.

B. Contract Goals

Pursuant to 5 NYCRR Section 142.2, the DEPARTMENT has determined that MWBE Contract Goals are not practical, feasible or appropriate for the services required under this AGREEMENT. As such, there are no MWBE subcontracting goals for this AGREEMENT. Notwithstanding the preceding, CONTRACTOR is still responsible to meet all requirements of the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145.

C. Equal Employment Opportunity (EEO)

1. The CONTRACTOR agrees to be bound by the provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder

pertaining to equal employment opportunities for minority group members and women shall apply to the AGREEMENT.

2. In performing the AGREEMENT, the CONTRACTOR shall:

- a. Ensure that each CONTRACTOR and each subcontractor performing work on this AGREEMENT shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- b. The CONTRACTOR shall submit an EEO policy statement to the DEPARTMENT within seventy-two (72) hours after the date of the notice by the DEPARTMENT to award the AGREEMENT to the CONTRACTOR.
- c. If the CONTRACTOR, or any of its subcontractors, does not have an existing EEO policy statement, the DEPARTMENT may require the CONTRACTOR or subcontractor to adopt a model statement.
- d. The CONTRACTOR's EEO policy statement shall include the following language:
 - 1) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - 2) The CONTRACTOR shall state in all solicitations or advertisements for employees that, in the performance of the AGREEMENT, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - 3) 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.

- 4) The CONTRACTOR will include the provisions of subsection XXIV.C.2.d Paragraphs 1) through 3) and subsection XXIV.C.4, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the AGREEMENT.

3. Staffing Plan

To ensure compliance with this section, the CONTRACTOR shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the AGREEMENT by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The CONTRACTOR shall complete the staffing plan form and submit it within a reasonable time, as directed by the DEPARTMENT.

4. Workforce Employment Utilization Report ("Workforce Report")

- a. The CONTRACTOR shall submit a Workforce Report, and shall require each of its subcontractors to submit a Workforce Report, in such form as shall be required by the DEPARTMENT on a QUARTERLY basis during the term of the AGREEMENT.
 - b. Separate forms shall be completed by the CONTRACTOR and any subcontractors.
 - c. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
5. The CONTRACTOR shall comply with the provisions of the Human Rights Law, and all other STATE and Federal statutory and constitutional non-discrimination provisions. The CONTRACTOR and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

XIII. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

NYS Executive Law Article 17-B

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The DEPARTMENT recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of DEPARTMENT contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, CONTRACTORS are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the AGREEMENT. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, the DEPARTMENT conducted a comprehensive search and determined that the AGREEMENT does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to the CONTRACTOR. Nevertheless, CONTRACTOR is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the AGREEMENT for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

CONTRACTOR is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

XIV. 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.

XV. CONFIDENTIALITY

- A. CONTRACTOR agrees that it will not use confidential or proprietary information disclosed to CONTRACTOR in connection with the services (“Confidential Information”) for any purpose other than in connection with the services. The CONTRACTOR is fully responsible for its staff, its subcontractor(s) and any subcontractor’s staff with regard to Confidential Information.

- B. Information which falls into any of the following categories shall not be considered Confidential Information:
1. information that is previously rightfully known to the CONTRACTOR without restriction on disclosure;
 2. information that becomes, from no breach of this AGREEMENT on the part of the CONTRACTOR, generally known in the relevant industry, or is otherwise publicly available; and
 3. information that is independently developed by CONTRACTOR without use of the confidential information.
- C. Except as specifically permitted in this AGREEMENT, CONTRACTOR shall not, at any time, in any fashion, form or manner, divulge, disclose, communicate or use, any Confidential Information other than in connection with the services or as otherwise provided herein.
- D. CONTRACTOR may disclose Confidential Information if such information is required to be disclosed by CONTRACTOR by any law, rule, regulation, judicial or administrative process or applicable professional standards, provided that, to the extent permitted by applicable law or regulation, the CONTRACTOR notifies the DEPARTMENT prior to any such required disclosure.
- E. CONTRACTOR agrees not to issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding the services without the express advance written approval of DEPARTMENT.
- F. CONTRACTOR agrees that, as between the PARTIES, all Confidential Information in its possession is at all times the sole property of the STATE.
- G. Notwithstanding anything herein to the contrary, CONTRACTOR shall have the right to retain one copy of the Confidential Information and any summaries, analyses, notes or extracts prepared by CONTRACTOR which are based on or contain portions of the Confidential Information evidencing its services for the STATE as required by law, regulation, professional standards or reasonable business practice.
- H. CONTRACTOR shall retain all Confidential Information in confidence, exercising the same standard of care used by CONTRACTOR to protect its own confidential and proprietary information, to prevent the disclosure of Confidential Information to any third party. CONTRACTOR shall not use Confidential Information for any purpose other than in furtherance of its professional services for the DEPARTMENT.

- I. CONTRACTOR understands that if it breaches, or threatens to breach this AGREEMENT, the DEPARTMENT shall have the right to seek all equitable and legal rights (including the right to seek injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable legal fees) for losses or damages resulting from such breach. CONTRACTOR acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the confidential or proprietary information identified in this AGREEMENT.

XVI. ENTIRE AGREEMENT AND INTERPRETATION

- A. This AGREEMENT and Appendix A (Standard Clauses for New York State Contracts) 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.
- B. This AGREEMENT shall not be changed, modified or altered in any manner except by an instrument in writing executed by both PARTIES.
- C. In the event of any discrepancy, disagreement, or ambiguity, the terms of Appendix A (Standard Clauses for New York State Contracts) shall be given preference.

XVII. REQUIRED OUTSIDE COUNSEL PROVISIONS

- 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 State of New York in judicial litigation related to the services to be provided under this AGREEMENT only when such services are specifically requested by the CHAMBER's counsel 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 therefor.

XVIII. 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.

XIX. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) MANDATORY TERMS AND CONDITIONS

- A. Remedies. In the event that Seller fails to observe or perform any term or condition of the Agreement and such failure remains uncured after 15 calendar days following written notice by the Commissioner of Health ("Commissioner"), the Commissioner may exercise all rights and remedies available at law or in equity.
- B. Termination for Cause and Convenience. Termination rights of the parties shall be as prescribed in section X of this agreement.
- C. Equal Employment Opportunity. During the performance of this Agreement, the Seller agrees as follows:

- 1. The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- 2. The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3. The Seller will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who would not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Seller legal duty to furnish information.

4. The Seller will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the Seller's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Seller may be declared ineligible for further Government Agreements or federally assisted construction Agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Seller will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided however, that in the event a Seller becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Seller may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so

participating in a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Sellers and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any Agreement or Agreement modification subject to Executive Order 11246 of September 24, 1965, with a Seller debarred from, or who has not demonstrated eligibility for, Government Agreements and federally assisted construction Agreements pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Sellers and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (Agreement, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

D. Davis-Bacon Act.

1. All transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt 5 as may be applicable. The Seller shall comply with 40 U.S.C. 3141-3144, and 3146_3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. Sellers are required to pay wages to laborers and mechanics at a rate not less than the prevailing wage specified in a wage determination made by the Secretary of Labor.
3. Additionally, Sellers are required to pay wages not less than once a week.

E. Copeland Anti-Kickback Act.

1. Seller. The Seller shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
2. Subcontracts. The Seller or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Seller shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Agreement clauses.
3. Breach. A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a Seller and subcontractor as provided in 29 C.F.R. § 5.12."

F. Agreement Work Hours and Safety Standards Act

1. Overtime requirements. No Seller or subcontractor for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Seller and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Seller and subcontractor shall be liable to the United States (in the case of work done under Agreement for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. Withholding for unpaid wages and liquidated damages. The State of New York shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Seller or subcontractor under any such Agreement or any other Federal Agreement with the same prime Seller, or any other federally-assisted Agreement subject to the Agreement Work Hours and Safety Standards Act, which is held by the same prime Seller, such sums as may be determined to be necessary to satisfy

any liabilities of such Seller or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

4. Subcontracts. The Seller or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Seller shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

G. Clean Air Act and The Federal Water Pollution Control Act.

Clean Air Act

1. The Seller agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et, seq.
2. The Seller agrees to report each violation to the State of New York and understands and agrees that the State of New York will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Seller agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The Seller agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33U.S.C. 1251 et seq.
2. The Seller agrees to report each violation to the State of New York and understands and agrees that the State of New York will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Seller agrees to include these requirements in each subcontract exceeding \$1,500,000 financed in whole or in part with Federal assistance provided by FEMA.

H. Disbarment and Suspension

1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Seller is required to verify that none of the Seller's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 2. The Seller must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 3. This certification is a material representation of fact relied upon by the State of New York. If it is later determined that the Seller did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 4. The Seller agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any Agreement that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- I. Byrd Anti-Lobbying Amendment.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

a. Required Certification. If applicable, Sellers must sign and submit to the State of New York entity the attached certification - FEMA APPENDIX 1

J. Procurement of Recovered Materials.

- (i) In the performance of this Agreement, the Seller shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired--
 - Competitively within a timeframe providing for compliance with the Agreement performance schedule
 - Meeting Agreement performance requirements; or

- At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Seller also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

K. Access to Records

1. The Seller agrees to provide the State of New York, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Seller which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Seller agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Seller agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
4. In compliance with the Disaster Recovery Act of 2018, the State of New York and the Seller acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

L. Changes

- a. Standard. To be eligible for FEMA assistance under the State of New York's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

M. DHS Seal, Logo, and Flags. The Seller shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

N. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. The Seller will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

O. No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Seller, or any other party pertaining to any matter resulting from the Agreement.

P. Program Fraud and False or Fraudulent Statements or Related Acts. The Seller acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Seller's actions pertaining to this Agreement.

Q FEMA APPENDIX 1

44 C.F.R. PART 18 -CERTIFICATION REGARDING LOBBYING

In accordance with 44 C.F.R. PART 18, the Seller further certifies to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Agreement, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Repo11 Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Agreements under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$ 10,000 and not more than \$100,000 for each such failure.

The Seller certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Seller understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

C000249

IN WITNESS WHEREOF, each of the PARTIES hereto has caused this AGREEMENT to be executed by its duly authorized officers on the day and year stated below.

Agency Certification

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

Approved by:

MORVILLO ABRAMOWITZ GRAND
IASON & ANELLO P.C.

By: [Signature]
Name: Kathleen E. Cassidy
Title: Principal
Date: 4/22/21

NEW YORK STATE
EXECUTIVE CHAMBER

By: [Signature]
Name: BETH CARVEY
Title: ACTING COUNSEL
Date: 5/13/21

State Comptroller:
THOMAS P. DINAPOLI

By: _____	APPROVED DEPT. OF AUDIT & CONTROL
Date: _____	May 27 2021 Brian Fuller
	FOR THE STATE COMPTROLLER

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 NEW YORK } SS.:

On the 22nd day of April in the year 2021, before me via live video connection ~~personally~~ appeared Kathleen E. Cassidy, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that she resides at

; 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: she is a Principal of Morvillo Abramowitz Grand et al., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ If a partnership: he is the _____ of _____, 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.

Notary Public
Registration No. _____

CARLSON A. FLOY
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01FL6324390
Qualified in New York County
Commission Expires May 4, 2023

State of: _____

This document has been notarized
pursuant to NY Executive Order 202.7

APPENDIX A: STANDARD CLAUSES FOR NYS CONTRACTS

October 2019

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, licensor, 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: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.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.