

THE ASSEMBLY  
STATE OF NEW YORK

THIS AGREEMENT made the 17 day of ~~December 2018~~ <sup>January 2019</sup> between

Orrick, Herrington, & Sutcliffe LLP  
51 West 52<sup>nd</sup> Street  
New York, New York 10019-6142

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 December 15, 2018, to December 14, 2019 the Contractor, and the Contractor does hereby accept and agree to represent the New York State Assembly and draft an amicus brief in the matter of Roxanne Delgado et al v. The State of New York et al. Index Number 907537-18.
2. In consideration of the foregoing, the Contractor shall receive as and for full payment for services rendered compensation at the rate of Five Hundred Fifty Dollars (\$550.00) per hour for partners and associates and Two Hundred Fifty Dollars per hour (\$250.00) for paralegals. Hourly charges shall include all legal research, analysis, memoranda, correspondence, telephone conversations with you or other persons, preparation for, and appearances at meetings, court appearances, and any other tasks necessary to defend the Assembly in this matter. 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.
- 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 retained attorney or law firm will represent the New York State Assembly in judicial litigation related to the services to be provided under this agreement only when such services are specifically requested by the Assembly and approved by the Attorney General. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of services.
- 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 to the Contractor of a Notice of Termination 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 transfer title to the Assembly and deliver in the manner, at the time, and to the extent, if any, directed by the Assembly, such information and items which, if the contract had been completed, would have been required to be furnished to the Assembly.
- I. The Assembly may, at any time, by written notice, make changes in or additions to work or services within the general scope of this contract upon the approval of the Office of the Attorney General and the Office of the State Comptroller. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of this contract, an equitable adjustment shall be made in the price, or time of performance, or both, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty days from the date of receipt by the Contractor of the notification of change; provided, however, that the Assembly, if it decides that the facts justify such action, may receive and act upon such claim asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.
- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. 1. Contractor hereby covenants and represents that there is 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 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) to which a party would either 1). Materially impair its ability to perform the services outlined herein; or 2). Material 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 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 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. 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.

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AS  
am
- O. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and executed by the parties hereto and no evidence of any waiver or modification shall be offered or received in evidence in any action between the parties hereto arising out of or affecting this Agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the parties further agree that the provisions of this paragraph may not be waived except as herein set forth.
  - P. This written Agreement contains the sole and entire Agreement between the parties and shall supersede any and all other Agreements between the parties.
  - Q. The parties hereto shall execute such other and further documents as may be required to effectuate the terms of this Agreement.
  - R. The terms, clauses and provisions of this contract are intended to be severable, and the unconstitutionality, illegality or unconscionability of any term, clause or provision shall in no way effect the enforcement of any other term, clause or provision.
  - S. This agreement shall not take effect until approved, in writing, hereon by the Attorney General of the State of New York and if necessary the Office of the State Comptroller.
  - T. 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: C111971

ORRICK, HERRINGTON & SUTCLIFFE

ASSEMBLY OF THE STATE OF NEW YORK

*Andrew Silverman*  
 Signature  
Andrew Silverman  
 Print Name  
Partner  
 Title  
1/17/2019  
 Date

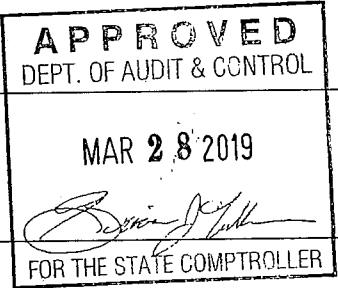
*Amy A. Metzalte*  
 Signature  
Amy A. Metzalte  
 Print Name  
Deputy Counsel to the Majority  
 Title  
1/25/19  
 Date

APPROVED AS TO FORM:

Attorney General's Signature

Comptroller's Signature

\_\_\_\_\_  
 Dated \_\_\_\_\_

\_\_\_\_\_  
 Dated \_\_\_\_\_  
  
 FOR THE STATE COMPTROLLER

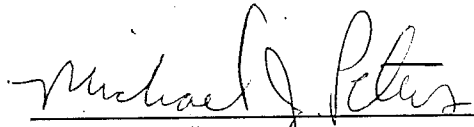
NOTE: Original copies of this signature page will only be attached to original copies of this contract.

ACKNOWLEDGEMENT OF FIRM OR PARTNERSHIP

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

On this 17 day of JANUARY, 2019, before me personally appeared Andrew Gilverman, to me known and known to me to be a member of the Orrick, Herrington & Sutcliffe LLP is the person described and who executed the foregoing instrument in the Firm name of Orrick, Herrington & Sutcliffe LLP and s/he duly acknowledged to me that s/he executed the same and for the act and deed of said Firm.

MICHAEL J. PETERS  
Notary Public, State of New York  
No. 01PE6139706  
Qualified in New York County  
Commission Expires January 17, 2022

  
Notary Public #  
Qualified in:  
Commission expires: