

**STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
AGREEMENT WITH
GROOM LAW GROUP**

NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER C001127

THIS AGREEMENT ("Agreement") is between the New York State Office of the State Comptroller, by the Department of Audit and Control ("OSC"), whose main office and principal place of business is 110 State Street, Albany, New York 12236, and Groom Law Group ("Counsel" or "Contractor") whose office is located at 1701 Pennsylvania Avenue, NW, Suite 1200, Washington, D.C. 20006.

WITNESSETH

WHEREAS, OSC seeks to retain outside counsel for representation of OSC in tax advisory legal matters and related claims and litigation; and

WHEREAS, pursuant to Executive Law Section 63(1), the New York State Office of the Attorney General has determined that it is appropriate for OSC to hire outside counsel to represent OSC on such matters; and

WHEREAS, OSC has determined that Counsel is well-qualified to perform the legal services; and

WHEREAS, Counsel is capable of handling such matters in an expedited and skillful manner.

NOW, THEREFORE, in consideration of the terms set forth and the mutual covenants and obligations of the parties, the parties do hereby agree as follows:

I. SCOPE OF SERVICES

Counsel shall perform the following services ("Services"):

- Provide a partner or partner(s) ("Lead Partner(s)") that will be responsible for the provision of the Services and all communications with OSC;
- Timely review, research, prepare, and issue tax advice in the form and manner requested by Counsel to the Comptroller or his/her designee;
- Render advice and opinions in relation to the international, federal, New York State, and local tax consequences of identified transactions, including tax reporting and withholding requirements for income, Social Security, and Medicare taxes;
- Review, negotiate, and draft relevant documents necessary to obtain Internal Revenue Service private letter rulings;
- Participate in conference calls and attend meetings as needed in Albany, New York City, or any other location designated by Counsel to the Comptroller or his/her designee, to discuss tax advice provided;
- Cooperate fully with OSC in the preparation and review of any documents related to OSC's tax reporting and withholding obligations;
- Prepare all documents and opinions and/or perform any other work related to tax counsel in a timely manner. Upon request of Counsel to the Comptroller or his/her designee, provide Counsel to the Comptroller and OSC staff the opportunity to review and comment upon the documents, opinions, and any tax counsel work performed before such work product is issued in final form; and

- Be available for and timely respond to telephone inquiries from Counsel to the Comptroller or his/her designee.

In addition to the Services described above, Counsel's Services will include, but not be limited to, the following areas:

A. State Payroll-Related Services

Payroll-related tax advisory topics may include, but are not limited to:

- General tax matters and reporting requirements;
- Reporting of payments to domestic and foreign taxpayers, including non-resident aliens;
- Workers' compensation;
- Worker status determinations;
- Backup withholding;
- Taxation of employer-provided benefits, including employee use of employer-owned property;
- Payment of retroactive salary awards; and
- Interpretations of specific sections of the Internal Revenue Code and provisions of the New York Tax Law involving employment tax and other relevant employment-related matters, such as determining the priority of payment of federal and state tax liens and other garnishments.

B. Unclaimed Funds

Unclaimed fund-related tax advisory topics may include, but are not limited to:

- Payment and tax reporting of interest on certain claims;
- Payment and tax reporting of the liquidated value of securities and other asset classes;
- Payment and tax reporting of accruals on securities;
- Tax reporting of payments to non-resident aliens; and
- Tax reporting issues involving individual retirement accounts and qualified plan benefits.

The advice rendered under this Agreement shall be in writing or in such other form as requested by OSC.

All reports and other materials, preliminary, final and otherwise, prepared for or relating to the Services shall be furnished to and shall become the sole and exclusive property of OSC, and shall be treated at all times as confidential by Counsel.

II. TERM

This Agreement shall commence on approval by OSC's Bureau of Contracts and shall continue for a period of three years, or until compensation for the Services reaches the "total compensation" amount stated in Section V. "Compensation," whichever comes first.

Notwithstanding the foregoing, OSC reserves the right to terminate this Agreement as provided for in Section XVI. "Termination and Suspension."

III. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES

This Agreement shall be deemed inclusive of the following documents and appendices. Only documents expressly mentioned below shall be deemed a part of this Agreement. Conflicts between these documents shall be resolved in the following order of precedence:

1. Appendix A – Standard Clauses for New York State Contracts.

2. Agreement – (this document), including:

- Appendix B – Forms AC 3239-A, Contractor’s EEO Staffing Plan of Anticipated Workforce and AC 3239-B, Contractor’s/Subcontractor’s EEO Workforce Utilization Report;
- Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
- Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
- Appendix E – Contractor’s Certifications/Acknowledgements;
- Appendix F – Disclosure of Prior Non-Responsibility Determinations; and
- Appendix G – OSC Consultant Disclosure Reporting Requirements.

3. Attachment A – Fee Schedule.

IV. STAFF

Counsel’s “Staff” includes the lead engagement partners (Lead Partners), and any employees, consultants, owners, officers, directors, subsidiaries, affiliates, partners, and agents of Counsel.

Counsel shall assign David Powell and Elizabeth Dold as Lead Partners. Counsel may not make changes to the Lead Partners without OSC’s prior written approval.

Counsel certifies that Staff provided to perform the Services possess the necessary integrity and professional capacity to meet OSC’s reasonable expectations. Subsequent to the commencement of Services, whenever Counsel becomes aware, or reasonably should have become aware, that any Staff providing Services to OSC (“Key Staff”) no longer possess the necessary integrity or professional capacity, Counsel shall immediately discontinue the use of such Key Staff hereunder and notify OSC.

OSC reserves the right to approve or disapprove any proposed changes in Key Staff. In each instance involving the replacement of Key Staff, Counsel will provide OSC with a summary of the experience of the proposed replacement and an opportunity to interview that person, prior to giving its approval or disapproval. Said approval shall not be unreasonably withheld. OSC has final approval of any Key Staff furnished to provide Services and may refuse to approve any Key Staff person based on its review of the Key Staff person’s responsibility to perform the required Services. OSC reserves the right to bar anyone from access to OSC’s premises and/or access to OSC’s information resources.

Counsel agrees that first- and second-year associates will not be assigned to OSC matters without the prior written approval of OSC.

Counsel warrants that the Services will be performed in accordance with applicable professional standards and that the Counsel shall correct, at no charge to OSC, Services that fail to meet applicable professional standards and that result in obvious or patent errors in the progression of its work.

The Federal Immigration Reform and Control Act, as amended (8 USC § 1324a et. al.), obligates employers, such as Counsel, to verify that their employees are legally entitled to work in the United States. In order to confirm that Counsel’s employees are legally entitled to work in the United States, OSC reserves the right to request documentation attesting to the legal entitlement to work in the United States of any Counsel’s staff assigned to provide Services under the Agreement. OSC does not provide sponsorship. Counsel warrants to OSC that the employees assigned to provide Services to OSC are eligible for employment in the United States. Counsel is responsible for ensuring that the employees retain the authorization to legally work in the United States throughout

the term of the Agreement. OSC does not discriminate against individuals on the basis of national origin or citizenship.

V. COMPENSATION

Total compensation under this Agreement, including reimbursement for travel expenses, shall not exceed \$225,000.

OSC shall compensate Counsel pursuant to this Agreement in accordance with the hourly rates set forth under the column entitled "2022 Standard Rate Less 15%" in Attachment A through December 31, 2022. Effective for each subsequent calendar year, Counsel shall be compensated in accordance with an hourly rate for each staff member that is the standard hourly rates effective for Counsel's clients generally as of the beginning of that calendar year, less 15%. Counsel will advise OSC in writing of the Standard hourly rates effective each year prior to the first of that calendar year. In no event will any staff have an hourly rate that exceeds the highest hourly rate payable under this Agreement to staff named on Attachment A.

OSC expects that Counsel will make reasonable efforts to assign work to the least costly staff member with appropriate skill and experience.

Travel expenses will be reimbursed to Counsel only where OSC has authorized such travel in advance. OSC will limit such reimbursement to the following unless written authorization to exceed the specified limits is obtained in advance:

- A. To the extent permissible under New York State ("State") law, OSC will pay Counsel's travel and meal expenses while traveling out of town on business relating to Services provided in accordance with this Agreement. Such expense reimbursement will be paid in accordance with guidelines established by the Office of the State Comptroller. (See Office of the State Comptroller Travel Manual, available at <http://www.osc.state.ny.us/agencies/travel/manual.pdf>.) For current per diem reimbursement rates only, visit the GSA Domestic Per Diem Page (currently available at <http://www.gsa.gov/portal/category/21287>), as such rates may be amended from time to time. Air travel will be reimbursed at coach rates.
- B. Reimbursement for reasonable pre-approved travel expenses will be made upon submission of appropriate invoices accompanied by copies of receipts for individual expenses.

VI. PAYMENT AND INVOICES

- A. Compensation shall be payable by OSC in the ordinary course of State business upon OSC's receipt of Counsel's invoice. Invoices for services rendered shall be submitted after the first day of the month following the month in which the work was performed. All such invoices shall contain appropriate itemization of requested compensation. Billing for services not appropriately delineated (commonly known as Block Billing) is not acceptable. Approved invoices will be paid in accordance with Article 11-A of the State Finance Law.

All invoices must include the following information:

1. OSC's Agreement #C001127, Counsel's taxpayer identification number, and Counsel's New York State Vendor Identification Number;
2. A brief description of Services provided;
3. The name of each individual providing the Services, the total number of hours or fraction thereof spent by such individual in the performance of the Services, the individual's title, hourly rate, and the total amount billed for the individual, in tenth of an hour increments;
4. The date(s) that each invoiced service was rendered;
5. An itemized list and appropriate documentation describing and supporting all items billed as expenses, including itemization and documentation of travel, overnight lodging, and meal expenses sufficient to demonstrate conformance with applicable State reimbursement rates, as set forth in Section V. "Compensation;"
6. The total amount billed for Services and expenses for the invoice period;

7. The beginning and ending dates of the billing period included in the invoice, and the expiration date of this Agreement.

- B. Counsel agrees to provide OSC with such detailed documentation substantiating fees and disbursements as OSC may request. Counsel shall not be reimbursed for the preparation of invoices or billing statements or for the correction of any error in previously submitted invoices or billing statements. All invoices shall be subject to OSC's acceptance of the Services for which billing is being made and are to be submitted via email (preferred) to contractinvoices@osc.ny.gov or via hard copy mail to:

Office of the State Comptroller
Bureau of Finance
Contract Payment Unit
110 State Street, Stop 13-2
Albany, NY 12236-0001

With a copy to vjones@osc.ny.gov (preferred) or via hard copy mail to:

Attention: Victoria Jones, Executive Assistant
Office of the State Comptroller
Division of Legal Services
110 State Street, Stop 14-1
Albany, NY 12236-0001

And with a copy to jsorrendino@osc.ny.gov (preferred) or via hard copy mail to:

Attention: Jessica Sorrendino, Associate Attorney
Office of the State Comptroller
Division of Legal Services
110 State Street, Stop 14-1
Albany, NY 12236-0001

VII. EQUAL EMPLOYMENT OPPORTUNITY ("EEO") REPORTING

Counsel agrees to comply with applicable federal, State, and local requirements concerning equal employment opportunities for minorities and women, including but not limited to Executive Law § 312 and its implementing regulations. In addition to the requirements stated in Appendix A Clause 12 (Equal Employment Opportunities for Minorities and Women), and to ensure complete compliance with such requirements (and with Executive Law § 312 and the regulations adopted pursuant thereto) Counsel agrees to submit to OSC its EEO Policy Statement, and Form AC 3239-A Proposer's EEO Staffing Plan of Anticipated Workforce. Further, Counsel shall submit on a semi-annual basis Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report).

Counsel shall submit two originals and two copies of Form AC 3239-B to OSC at the following address:

Attn: Director of Finance
New York State Office of the State Comptroller
Bureau of Finance
110 State Street, Stop 13-2
Albany, NY 12236

These Reports are reviewed as part of OSC's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce and Counsel's EEO Workforce Utilization Reports, Counsel may be subject to an in-depth EEO compliance review. If deficiencies are identified, OSC shall make every effort to resolve the deficiencies identified and to bring Counsel into compliance with such requirements. If OSC is unsuccessful in its efforts, and upon review, the Deputy Comptroller for the Division of Finance and Administration at OSC determines that Counsel is non-compliant, such Deputy Comptroller shall submit a written complaint to the New York State Department of Economic Development's Division of Minority and Women's Business Development ("DMWBD") regarding Counsel's noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon Counsel by personal service or certified mail, return receipt requested.

DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law § 316) and regulation (5 NYCRR § 143.6).

VIII. NOTICES

Any notice or other communication given pursuant to this Agreement shall be in writing and addressed to such party at the address set forth in this Agreement, and shall be effective:

- (i) When delivered personally to the party for whom intended;
- (ii) Upon five days following the deposit of the notice or other communication into the United States Postal Service mail (certified mail, return receipt requested, or first class postage prepaid); or
- (iii) Upon actual receipt by the intended party if such notice or other communication is sent by overnight mail service.

The following are the names and contact information for OSC and Counsel. The parties shall notify each other, as soon as possible of any change.

OSC:

Title: Director of Finance
Address: Office of the State Comptroller
110 State Street, Stop 13-1
Albany, NY 12236-0001
Email: rfp@osc.ny.gov

Counsel:

Name: David W. Powell & Elizabeth T. Dold
Title: Principal
Address: 1701 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 857-0620
Email: dwp@groom.com; etd@groom.com

IX. COOPERATION

Counsel and OSC and their respective agents, employees and officers shall cooperate with each other to the fullest extent in connection with the Services to be provided under this Agreement. OSC shall supply and make available necessary information and personnel to assist Counsel to perform the Services.

X. RELATIONSHIP OF PARTIES AND AUTHORITY OF COUNSEL

A. Relationship of Parties

The relationship of Counsel and its Staff to OSC shall be that of an attorney serving a client as an independent contractor, and not that of an agent or employee of OSC. Counsel, as an independent contractor, shall not have the authority to contract for or bind OSC for any purpose whatsoever. Counsel covenants and agrees that its Staff will not hold themselves out as agents, officers, or employees of OSC, and that they will not make any claim, demand or application for any right or privilege applicable to any officer or employee of OSC or the State, including but not limited to, Workers' Compensation coverage, Social Security coverage or Retirement System benefits.

B. Authority of Counsel

1. Pursuant to this Agreement, Counsel's appearances before any court or in any other forum are on behalf of OSC.
2. Legal advice or opinions rendered hereunder shall be rendered only to OSC and not to any other party. Notwithstanding any other provision of this Agreement, OSC and the Counsel agree that any legal advice rendered by Counsel to OSC shall not be published as an opinion of the Comptroller or the State. Opinions prepared by Counsel construing the statutes or Constitution of the State will 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 following:

Solicitor General
Appeals and Opinions Bureau
Department of Law
State Capitol
Albany, New York 12224

3. Counsel will not represent OSC or the State in judicial litigation or in any other proceeding related to the Services to be provided under this Agreement except when such Services are specifically requested by the Counsel to the Comptroller and approved by the Office of the New York State Attorney General. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of Services therefore.

XI. RIGHTS TO WORK PRODUCT

All work performed by Counsel and its Staff for OSC under the Agreement, including reports and analyses furnished to OSC by or through Counsel and its Staff, is a work for hire; title and ownership shall pass to the State upon acceptance of the work, for such use as OSC shall deem appropriate, other than Counsel's work papers, which Counsel may retain.

Nothing herein shall preclude Counsel from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in the course of Counsel's business.

XII. REPRESENTATIONS AND WARRANTY; CONFLICTS OF INTEREST

Counsel hereby represents and warrants that:

- Counsel will perform the Services in good faith and in a competent and professional manner in accordance with applicable professional standards;
- Counsel and its Staff possess a high degree of skill and experience with respect to the duties required to be performed pursuant to the terms of this Agreement;
- Counsel 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; or (2) materially and adversely affect its financial ability to perform the Services if decided in an adverse manner;
- Counsel has performed a conflicts check and has determined that it currently has no conflicts of interest and that it may, under applicable ethics rules, perform the anticipated Services; and
- Counsel shall at all times adhere to the applicable rules of professional conduct with respect to conflicts of interest, and shall notify Counsel to the Comptroller promptly, and in no event more than three business days after discovery, of any actual, potential, or appearance of a conflict of interest that may arise during the term of this Agreement, including, for example (and without limitation), (a) where Counsel's representation or prospective representation of another client would be substantially related to Counsel's representation of OSC, (b) where the matter that is the subject of Counsel's representation or potential representation of another client is not substantially related to Counsel's representation of OSC, but the

interests of that client are directly adverse to the interests of OSC or the State, or (c) where, as a result of the Counsel's representation of OSC, it has obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client or prospective client, could be used by or on behalf of such other client to the material disadvantage of OSC or the State. The term "substantially related" shall mean Counsel's representation or prospective representation of another client relates to a matter or matters that involve same transaction or legal dispute as Counsel's representation of OSC.

XIII. CONFIDENTIALITY

Counsel shall take all appropriate measures to protect the confidentiality of all information supplied to or developed by Counsel during the course of its performance under the terms of this Agreement. Counsel shall hold OSC information confidential to the maximum extent permitted by law. Counsel shall safeguard OSC information with at least the same level of care and security, using all reasonable and necessary security measures, devices, and procedures that Counsel uses to maintain its own confidential information and the confidential information of its other clients. Upon the written request of OSC, Counsel shall return all OSC information to OSC. Counsel's obligation to OSC shall be that of attorney and client and shall be subject to Counsel's duty of confidentiality to its clients.

XIV. INDEMNIFICATION AND LIABILITY

- A.** Neither Counsel, OSC, nor the State shall be liable for any delay or failure in performance beyond its control resulting from acts of war, hostility or sabotage; act of God; electrical, internet or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such event continues for more than 90 days, either party may terminate all or any agreed upon portion of the Agreement immediately upon written notice. This paragraph does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures, or OSC's obligation to pay for Services provided by Counsel which have been approved by OSC.
- B.** Subject to the applicable State laws and standards with respect to attorney malpractice, Counsel shall be fully liable for any act or omission of Counsel and its Staff and shall fully indemnify, defend, and hold harmless OSC and the State, their officials, agents, and employees, without limitation, from suits, actions, damages, and costs of every name and description (including reasonable attorneys' fees and expenses) arising from any act or omission of Counsel or its Staff, including bodily or personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software and databases); damage to intellectual property; and infringement or violation of a third party's patent, copyright, license, or other proprietary or intellectual property right; provided however that Counsel shall not be obligated to indemnify OSC for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of OSC.

For third party claims, OSC shall give Counsel:

1. prompt written notice of any action, claim, suit, proceeding, or threat of such action for which Counsel is required to indemnify OSC;
2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at Counsel's sole expense; and
3. reasonable assistance in the defense of any such action, claim, suit, or proceeding at the expense of Counsel.

Notwithstanding the foregoing, the State reserves the right to join such action, claim, suit or proceeding at its sole expense, if it determines there is an issue involving a significant public interest.

- C.** For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this Agreement as being without limitation, and regardless of the basis on which the claim is made, Counsel shall be liable for any act or omission of Counsel and its Staff, in an amount not to exceed, in aggregate, the greater of the dollar amount of this Agreement, or two times the charges

paid to Counsel. Counsel shall not be responsible for loss of records or data unless Counsel is required to back-up the records or data.

- D. Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special damages of any kind that may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by OSC, Counsel, or by others.
- E. OSC may, in addition to other legal remedies available to it, retain from amounts otherwise due Counsel such monies as may be necessary to satisfy any claim for damages OSC may have against Counsel.

XV. RESPONSIBILITY TERMS

- A. Counsel covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Vendor Responsibility Questionnaire ("Responsibility Questionnaire") provided to the Counsel by OSC prior to execution of this Agreement. Counsel further covenants and represents that as of the date of execution of this Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Responsibility Questionnaire.
- B. Counsel shall provide to OSC updates to the Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information related to such Responsibility Questionnaire becomes available. Counsel shall, on an annual basis from the anniversary date of execution of this Agreement, re-certify such Responsibility Questionnaire, noting any changes, whether material or non-material, or submit a certification of "no change" to OSC.
- C. Notwithstanding Subsection (B), above, OSC reserves the right, in its sole discretion, at any time during the term of this Agreement, (i) to require updates or clarifications to the Responsibility Questionnaire, (ii) to inquire about information included in or omitted from the Responsibility Questionnaire, and (iii) to require Counsel to provide such information to OSC within a reasonable timeframe to be established at OSC's sole discretion.
- D. OSC reserves the right to make a final determination of Counsel's non-responsibility ("Determination of Non-Responsibility") at any time during the term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (ii) Counsel's failure to disclose material information; or (iii) State's discovery of any other material information which pertains to Counsel's responsibility.
- E. If OSC preliminarily determines Counsel to be non-responsible, State shall provide written notice to Counsel detailing the reason(s) for the preliminary determination, and shall provide Counsel with an opportunity to be heard before the determination is finalized.
- F. Upon a Determination of Non-Responsibility of Counsel, OSC reserves the right to terminate this Agreement for cause pursuant to Section XVI. "Termination and Suspension."

XVI. TERMINATION AND SUSPENSION

- A. OSC may terminate or suspend this Agreement, or terminate or suspend the Services with respect to a specific matter or matters, with or without cause upon 30 days' prior written notice.
- B. OSC reserves the right to terminate or suspend this Agreement, or to terminate or suspend the Services with respect to a specific matter or matters, immediately upon written notice to Counsel, if OSC, in its sole discretion, deems Counsel's performance unsatisfactory at any time during the term of this Agreement.

In the event of termination, Counsel shall be entitled to compensation for Services performed through the date of termination that are acceptable to OSC, in OSC's sole discretion. In the event of suspension, Counsel shall be entitled to compensation for non-suspended Services that are acceptable to OSC, in its sole discretion.

XVII. TRANSITION

Upon expiration or termination of this Agreement, Counsel shall provide OSC with all necessary records in Counsel's possession relating to the Services provided under this Agreement. At OSC's request, Counsel shall, at current (hourly) rates, also make appropriate Staff available to OSC during normal business hours to answer questions regarding such records and the Services provided by Counsel. Counsel shall cooperate to the fullest extent with any successor contractor in order to accomplish a smooth and orderly transition, so that the Services are uninterrupted and are not adversely impacted.

XVIII. SUBCONTRACTING PROHIBITED

The Agreement is intended to secure the personal services of Counsel because of the ability and reputation of Counsel and its Staff. Therefore, the Services hereunder may not be subcontracted by Counsel.

XIX. MISCELLANEOUS PROVISIONS

A. WAIVER

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach.

B. SEVERABILITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

C. ETHICS COMPLIANCE

Counsel and its Staff shall comply with the requirements of Public Officers Law §§ 73 and 74, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

D. PUBLIC COMMUNICATION

Neither Counsel nor any of its Staff shall make any statement to the press or issue through any media of communication any statement bearing on the Services performed or data collected under this Agreement, without the prior written approval of OSC.

E. NO PRESUMPTION AGAINST DRAFTSPERSON

Each of the parties hereby acknowledges that each such party had an equal opportunity to negotiate and influence the drafting of the language contained in this Agreement, and that there shall be no presumption against any such party on the ground that such party was responsible for preparing this Agreement or any part hereof. All prior working drafts of this Agreement, and any notes and communications prepared in connection therewith, shall be disregarded for purposes of interpreting the meaning of any provision contained herein.

F. SURVIVAL

The provisions of Sections XII. "Representations and Warranty; Conflicts of Interest," XIII. "Confidentiality," XIV. "Indemnification and Liability," XVII. "Transition" and Appendix A shall survive the expiration or termination of this Agreement.

XX. ENTIRE AGREEMENT/APPROVALS

This Agreement and the appendices, exhibits, and attachments hereto constitute the entire Agreement between the parties 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. The Agreement shall not be changed, modified, or altered in any manner except by an amendment executed by the parties. This Agreement and any amendment hereof shall not be deemed executed, valid or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by OSC's Bureau of Contracts pursuant to State Finance Law § 112, and filed in the Office of the State Comptroller.

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IN WITNESS WHEREOF, the parties have executed this Agreement.

In addition to the acceptance of this Agreement, OSC and Counsel signatures on this page also certify that originals of this signature page will be attached to all other originals of this Agreement.

CONTRACT NUMBER: C001127

GROOM LAW GROUP

OFFICE OF THE STATE COMPTROLLER

David W. Powell
SIGNATURE

J.R. Disare
SIGNATURE

David W. Powell
PRINTED NAME

JEREMY R. DISARE
PRINTED NAME

Principal
TITLE

DIRECTOR OF FINANCE
TITLE

24 AUG 2022
DATE

9/1/2022
DATE

COUNSEL'S ACKNOWLEDGEMENT

STATE OF District of Columbia }
COUNTY OF _____ }

SS.:

On the 24th day of August in the year 2022, before me personally appeared David W. Powell, known to me to be the person who executed the foregoing instrument, who, acknowledged to me that he/she maintains an office at Washington, DC, and further that he/she is the Principal of Groom Law Group, the business described in the foregoing instrument; that he/she is authorized to execute the foregoing instrument on behalf of the business for the purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of the business as the act and deed of the business.

Sylvia E. Simms
Notary Public
Registration No.



APPROVED AS TO FORM:
NYS ATTORNEY GENERAL

APPROVED:
THOMAS P. DINAPOLI, COMPTROLLER

BY:

DATE

BY:

DATE

APPROVED
DEPT. OF AUDIT & CONTROL
Oct 12 2022
Alyssa Connelly
FOR THE STATE COMPTROLLER

From: [Maggi, Benjamin](#)
To: [RFP; Contract Approval](#)
Cc: [Christine C. Anderson](#); [Amanda M. Orlowski](#)
Subject: Approved - RE: OSC Contract # C001127 Groom Law Group (outside counsel)
Date: Friday, September 9, 2022 7:40:14 AM

Approved as to Form: 9/09/2022 by Benjamin Maggi
Received: 9/07/2022

OAG: CAS please file and enter. "P" Amount: 225,000

Reminder: Agencies must forward the contract approved by the OAG Contract Approval Section along with the email in which the OAG Contract Approval Section approved the contract, to OSC via the Comptroller's EDSS system. If you are not enrolled in the EDSS system and have not made alternative arrangements with OSC on how to submit your transaction, please contact OSC at [REDACTED] - [REDACTED] or email [REDACTED].

Benjamin L. Maggi
Section Chief
Contract Approval Section
New York State Office of the Attorney General
Contract Approval Section
The Capitol, Albany, NY 12224

ATTORNEY CLIENT PRIVILEGED/NOT FOR DISSEMINATION

The information contained in this electronic mail message is privileged and confidential and intended only for the individual or individuals named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please reply to the sender immediately to notify us of the error and delete the original message. Thank you.

APPENDIX D

OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY

Whereas, it is the policy of the Office of the State Comptroller (OSC) and the New York State Common Retirement Fund (CRF) to procure goods and services in a fair, equitable and open manner and to protect the procurement process from improper influences; and

Whereas, procurement lobbying activities must be monitored and documented to assure the integrity of the procurement process;

Now, therefore, I, Thomas P. DiNapoli, Comptroller of the State of New York, in consideration of the foregoing, do hereby order as follows;

1. **Applicability.** This executive order applies to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology. Decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, and selections of investment advisors or managers whose services are integral to the administration of CRF investments, remain subject to the Comptroller's fiduciary responsibility to administer the CRF prudently to increase and preserve CRF assets on behalf of its beneficiaries. In addition, selection of counsel to represent the CRF in transactional, investment or litigation matters remain subject to the Comptroller's fiduciary responsibilities. Although such CRF investment decisions and selections are not subject to this executive order, they shall be made in a fair and equitable manner, in accordance with the Comptroller's fiduciary responsibilities.
2. **General Counsel.** The General Counsel shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF. The General Counsel shall form such committees or draw upon OSC staff as needed to fulfill this responsibility.
3. **Procedural Controls.** The General Counsel shall develop, in consultation with the executive staff of OSC, procedural controls in the form of written Procurement Integrity Procedures. Such procedures shall:
 - a. require that decisions made on the award of procurement contracts shall be made in accordance with Article 11 of the State Finance Law, free from any improper influence;
 - b. require that any OSC employee who has direct knowledge of any improper influence or attempted improper influence shall immediately make a record of the improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the General Counsel or appropriate Division of Legal Services staff designated by the General Counsel;
 - c. prohibit contact relating to a bid or proposal, during the procurement process, between all OSC personnel involved in the determination of the procurement contract award and any employee, agent, or consultant of a bidder or proposer competing for the contract, except for contacts authorized by the procedures established pursuant to this executive order;
 - d. establish procedures for appropriate contacts between OSC personnel involved in the determination of a procurement contract award and the employees, agents or consultants of a bidder or proposer for the purpose of clarifying a bid or proposal. Such authorized contacts shall only be for the purpose of providing information to OSC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by a bidder or proposer, and shall occur only at such times and in such manner as have been authorized by the procedures established pursuant to this executive order;

- e. provide for appropriate contacts between OSC personnel and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of bids or proposals and selection of a contractor have been completed;
 - f. establish a process for the review by the General Counsel of any allegations of improper influence or attempted improper influence, and for the imposition of sanctions if such improper activity has been found to exist.
4. Incorporation of Procedural Controls in Contract Documents. The Procurement Integrity Procedures required by this executive order shall be incorporated into all OSC and CRF procurement solicitations and contracts.
 5. Periodic Review. The General Counsel shall periodically review the Procurement Integrity Procedures with OSC personnel in order to ascertain potential areas of exposure to improper influence and to adopt desirable revisions for more effective avoidance of improper influences.
 6. Sanctions. Any OSC employee who violates the Procurement Integrity Procedures may be subject to disciplinary action. Any vendor who violates the Procurement Integrity Procedures may be found to be a non-responsible vendor, and on the basis of such finding, may be ineligible to receive a contract award.

_____/s/_____
Thomas P. DiNapoli
Comptroller, State of New York

Last Revised Date: March 14, 2007
Original Date: February 14, 2002

OSC PROCUREMENT INTEGRITY PROCEDURES

In order to ensure that procurements of goods or services¹ by the Office of the State Comptroller (OSC) or the Common Retirement Fund (CRF) are conducted in a fair, equitable and open manner, the procedures set forth below shall apply to the procurement process.

The General Counsel to the Comptroller shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF.

A copy of these Procurement Integrity Procedures will be given to every OSC employee, consultant, or other person assigned to any task related to an OSC or CRF procurement. A copy of these procedures will be incorporated into every Request for Information (RFI), Request for Proposals (RFP) or Invitation for Bids (IFB) issued by OSC or CRF.

Any OSC employee who violates these procedures may be subject to disciplinary action, such as a reprimand, suspension, demotion, or dismissal. Any vendor who violates these procedures may, after notice and an opportunity to be heard, be determined to be a non-responsible vendor, and on the basis of such a determination may be ineligible to receive a contract award.

Every reasonable effort will be made to assure compliance with these procedures, but a minor deviation from these procedures that does not impair the fairness and integrity of the procurement process will not require the invalidation of a contract award.

1. OSC employees must provide every interested vendor² with an equal opportunity to compete. No information may be given to one vendor without being made available to all other interested vendors. Vendors should be asked to submit every substantive question³ concerning the procurement in writing not later than the date specified by OSC for such questions; and a copy of each question, together with OSC's written answer, should be supplied to all interested vendors and included in the procurement record.
2. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will serve as the coordinator for all procurement-related contacts between OSC personnel and vendor personnel. All telephone calls, correspondence, and meeting requests must be routed to: Assistant Comptroller for Administration, Office of the State Comptroller, 110 State Street – 13th Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: RFP@osc.state.ny.us. OSC's Assistant Comptroller for Administration, or a designee, will maintain a record of all such contacts.
3. A vendor may not exert or attempt to exert any improper influence⁴ relating to the vendor's bid

¹ These procedures apply to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology, except that they do not apply to (i) decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, (ii) selections of investment advisors or managers whose services are integral to the administration of CRF investments, and (iii) selection of counsel to represent the CRF in transactional, investment or litigation matters. Such CRF investment decisions and selections remain subject to the Comptroller's fiduciary responsibilities, and are to be made in a fair and equitable manner in accordance with those responsibilities.

² For the purposes of these procedures, the term "interested vendor" means a person or firm that has received or requested a Request for Information (RFI), an RFP, or an IFB issued by OSC or CRF.

³ For the purposes of these procedures, the term "substantive question" means an inquiry concerning a material requirement of the procurement process, such as a technical specification or a financial prerequisite. The term does not apply to ministerial matters, such as the time and place or manner of submitting a bid or proposal.

⁴ For the purposes of these procedures, the term "improper influence" means any attempt to achieve preferential, unequal, or favored consideration of a bid or proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law sections 73 and 74.

or proposal. Any OSC employee who has direct knowledge of any improper influence or attempt to exert an improper influence concerning a procurement contract shall immediately make a record of the improper influence or attempted improper influence and notify the General Counsel to the Comptroller. The General Counsel to the Comptroller shall thereupon cause an investigation to be made and shall recommend such action, if any, as may be necessary.

4. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor's bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process⁵. If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.

⁵ For the purposes of these procedures, the term "attempt to influence the procurement process" means any attempt to influence any determination by OSC or CRF by a person other than an OSC employee with respect to (i) the solicitation, evaluation or award of a procurement contract; or (ii) the preparation of specifications or request for submissions of bids or proposals for a procurement contract.

11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.
12. During the evaluation and selection phases of the procurement process, no OSC employee may disclose any part of a bid or proposal to any other person, except that (i) a member of an evaluation or selection committee may discuss a proposal with another member of the same committee, and (ii) a member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.
13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011