

LEGAL SERVICES AGREEMENT

AGREEMENT made as of the ____ day of [month, year], by and between [name of firm] (“Firm”), a law firm with an office at [address of firm], and the NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL (“DHCR” or “Agency” or “State”), with its principal offices at Hampton Plaza, 38-40 State Street, Albany, New York 12207.

WITNESSETH:

WHEREAS, on November 10, 2022, DHCR issued a solicitation for a cloud-based solution that will modernize DHCR’s current legacy systems and manual processes, herein referred to as the Rent Regulation System Modernization (“RRSM”) project (“2022 RFQ”); and

WHEREAS, DHCR remains in an active 2022 RFQ solicitation process for the RRSM project; and

WHEREAS, on May 8, 2023, DHCR issued a request for proposals seeking law firms with an expertise in the area of information technology (“IT”) law to assist DHCR with the contract to be awarded to the successful respondent of the RRSM project (“2023 RFP”); and

WHEREAS, as a result of this 2023 RFP process, DHCR desires to engage the Firm to provide legal services in the area of IT law for, and in connection with, the tentative awardee of the 2022 RFQ; and

WHEREAS, the Firm is qualified to provide such legal services; and

WHEREAS, the Firm is capable of handling the legal services to be provided under this Agreement in an expedited and skillful manner; and

WHEREAS, the Firm is willing to provide such legal services to DHCR on a contract basis including, but not limited to, such oral and written reports as may be requested by DHCR;

NOW, THEREFORE, in consideration of the foregoing and the covenants and conditions set forth herein, the parties hereto agree as follows:

1. Scope of Services.

The Firm shall provide legal services to DHCR in connection with the 2022 RFQ (a) in the area of information technology law, which may include, but is not limited to, reviewing and assisting DHCR with the negotiations of the terms and provisions of the RRSM contract and the service level agreement.

Furthermore, the Firm is also subject to the following Outside Counsel provisions:

- a. Opinions prepared by retained attorneys or law firms, i.e., the Firm, construing the statutes or Constitution of the State of New York (“State”) 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, i.e., the 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 State Agency’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.

2. Relationship of the Parties.

The relationship of the Firm to DHCR shall be that of an attorney and client. Nothing herein shall be construed as limiting or amending the attorney-client privileges afforded by law.

The Firm 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 Firm 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 Agency 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 Agency or the State, including but not limited to workers’ compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership credit.

3. Conflicts of Interest.

The Firm 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 the Firm shall have a duty to notify the Agency promptly of any actual or potential conflicts of interest in all that it does to serve the purpose of this Agreement and its intent.

The Firm warrants that it has performed conflicts checks 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: a) materially impair its ability to perform the services outlined herein or b) materially and adversely affect its financial ability to perform the services outlined herein if decided in an adverse manner.

4. Compensation.

The Agency agrees to pay the Firm for reasonably required work performed in a satisfactory manner at the following hourly discounted rates:

SERVICES	FEES
For partners and/or counsel	Up to \$XXX per hour or the actual hourly billing rate for partner and/or counsel (<i>i.e., the lesser of the two</i>)
For senior associates (<i>in practice four (4) years or more</i>)	Up to \$XXX per hour or the actual hourly billing rate for associates (<i>i.e., the lesser of the two</i>)
For junior associates (<i>in practice less than four (4) years</i>)	Up to \$XXX per hour or the actual hourly billing rate for junior associates (<i>i.e., the lesser of the two</i>)
For paralegals/legal assistants	Up to \$XXX per hour or the actual hourly billing rate for paralegal/ legal assistant (<i>i.e., the lesser of the two</i>)

Prior to the commencement of work on any matter for the Agency, the Firm shall identify in writing, for approval by the Agency, all attorneys and paralegals assigned to any such matter, together with the corresponding hourly rates.

In the alternative, the Agency and the Firm may agree on a lower rate or fixed fee for a particular matter.

In addition, the Agency agrees to pay the actual cost of all other expenses requested by the Firm or reasonably incurred in the performance of the legal services in accordance with Section 1 of this Agreement. The Agency will not be charged for any travel or lodging costs without its prior written consent. The Agency will not be charged for any research expenses, costs or fees paid or incurred by the Firm with respect to third party databases or on-line services (e.g., Westlaw or LexisNexis) without the prior written consent of the Agency.

5. Payment Process and Accounting Procedures.

Invoices for payment must be accompanied by a statement from a partner of the Firm certifying that the bill presented represents services actually performed exclusively for the Agency. Each invoice shall include a schedule, by transaction, and each schedule shall include: (a) a description of the tasks performed by each person assigned to that particular matter, identified by name and title; (b) the time each identified person devoted to each task; (c) the number of hours worked by each identified person; and (d) specific identification of reasonable expenses for which the Firm seeks reimbursement.

Invoices for payment must be submitted by the Firm, in pdf format, by email, to [TO BE INSERTED]. Invoices must include the Firm's Federal Employer Identification Number ("FEIN") or Social Security Number if Firm does not have a FEIN. All invoices must be submitted within sixty (60) days of the date of services provided.

Payment received hereunder shall be full and complete satisfaction of any and every claim resulting from the approved items in such requisition.

6. Supervision of Services.

DHCR may, upon prior notification, call meetings which shall be attended by representatives of the Firm.

The Firm will cooperate with DHCR at all times during the performance of Legal Services and promptly study and act upon all DHCR recommendations and proposals.

The Firm shall cooperate with DHCR in promptly completing and submitting all documents and records required by DHCR or other authorized representative of the State of New York ("State") and otherwise comply with all orders, administrative rules, regulations and procedures of DHCR for the proper administration of legal services.

7. Warranties.

The Firm 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.

The Firm warrants that its services shall be performed in accordance with applicable professional standards and that the Firm shall correct, at no charge to the Agency 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.

8. Indemnification and Liability.

The Firm shall be fully liable without monetary limitation for any act or omission of the Firm, 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 the Firm, its employees, subcontractors or agents arising from the Firm's performance of the Contract, provided, however, that the Firm 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 Firm to perform under this Agreement.

In connection with the foregoing, the State shall give the Firm: (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 Firm's sole expense, and (iii) assistance in the defense of any such action at the expense of the Firm. 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.

9. Termination.

This Agreement shall take effect on insert date and shall remain in force for six months, unless terminated at will by the Agency upon thirty (30) days prior written notice. This Agreement includes two optional three-month renewals, subject to approval by the State's Attorney General. In the event of termination by the Agency, the Firm will be entitled to payment for services rendered, and actual out-of-pocket expenses incurred (subject to the limitations set forth in Section 4 above), to the date of termination in accordance with the provisions of this Agreement.

10. Insurance.

The Firm and its subcontractors, if any, are required to provide and maintain, at its (their) sole cost and expense, the insurance requirements at the minimum limits specified herein during the term of the Agreement and for two (2) years after completion of work. All required insurance policies shall be maintained with insurance companies licensed within the State of New York and holding an AM Best rating of no less than A-VIII. Said policies shall contain a provision that coverage will not be canceled, non-renewed or materially changed, until at least thirty (30) days' prior written notice has been provided to DHCR. DHCR shall be named as Additional Insured. The Firm (and its subcontractors, if any) agrees to have included in each of the above policies for the Firm's subcontractors, a waiver of the insurer's right of subrogation against the Additional Insured.

The Firm (and its subcontractors, if any) shall furnish to DHCR evidence of the following insurance requirements upon execution of this Agreement and upon thirty (30) days prior to the expiration date of said policies:

- A. Worker's Compensation Insurance and Disability Benefits Coverage providing statutory benefits for the Firm and the Firm's Parties' (*defined as the Firm and those working on its behalf being, i.e., subcontractors and vendors*) employees and Employee's Liability coverage in an amount that is no less than One Million Dollars (\$1,000,000).

Proof of Compliance with Workers' Compensation Coverage Requirements:

- a. CE-200 – Certificate of Attestation for New York Entities with No Employees and Certain Out-of-State Entities that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required; or
- b. C-105.2 – Certificate of Workers' Compensation Insurance (*or U-26.3 if insured through the State Insurance Fund*); or
- c. SI-12 – Certificate of Workers' Compensation Self-Insurance (*or GSI-105.2 Certificate of Participation in Workers' Compensation Group Self-Insurance*); or
- d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- a. CE-200 – Certificate of Attestation for New York Entities with No Employees and Certain Out-of-State Entities that New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required; or
- b. DB-120.1 – Certificate of Disability Benefits Insurance; or
- c. DB-155 – Certificate of Disability Benefits Self-Insurance.

B. Professional Liability Insurance/ Errors and Omissions Liability Insurance.

The Firm, and any subcontractor retained by the Firm to work on this Agreement, shall procure and maintain during and for a period of three (3) years after completion of the Agreement, Professional Liability Insurance/Errors and Omissions Liability Insurance in the amount that is no less than One Million Dollars (\$1,000,000) issued to and covering damage for liability imposed on the Firm by this Agreement or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Agreement. The Professional Liability Insurance/Errors and Omissions Liability Insurance may be issued on a Claims-Made Policy form, in which case the Firm shall purchase, at its sole expense, Tail Coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

C. Data Breach and Privacy Liability Insurance (Cyber Insurance).

The Firm shall maintain, during the term of the contract, Data Breach and Privacy Liability Insurance (“Cyber Insurance”) including coverage for failure to protect confidential information and failure of the security of the Firm’s computer systems or the DHCR’s systems due to the actions of the Firm which results in unauthorized access to DHCR or its data. The Firm shall carry and maintain applicable coverage in the amount no less than One Million Dollars (\$1,000,000). The Cyber Insurance shall provide coverage for damages arising from, but not limited to the following: (i) breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information; personally identifiable information (“PII”) (*e.g., medical, financial, or personal in nature in electronic or non-electronic form*); (ii) privacy notification costs; (iii) regulatory defense and penalties; (iv) website media liability; and (v) cyber theft of customer’s property, including but not limited to data, PII, money and securities.

If the policy is written on a Claims-Made basis, the Firm must provide to DHCR proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not renewed.

D. Certificate of Insurance.

Certificates of Insurance, or Claims-Made Policy forms, for all of the aforementioned coverage shall be in accordance with the New York State Insurance Law and provided to DHCR upon execution of this Agreement.

11. Equal Opportunity Requirements and Procedures.

The Firm shall comply with the provisions of the Human Rights Law, and all other New York State and Federal statutory and constitutional non-discrimination provisions. The Firm 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.

12. Subject to Approval by NYS Attorney General.

This Agreement is subject to Approval of the New York State Attorney General (“OAG”). If the value of this Agreement exceeds \$50,000 in amount, this Agreement is also subject to approval of the New York State Comptroller (“OSC”). 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.

13. Compliance with Procurement Rules

- A. By execution of this Agreement, the Firm certifies that information provided to the State of New York with respect to the Vendor Responsibility Questionnaire, and Procurement Lobbying Certifications is complete, true and accurate.
- B. The Firm hereby acknowledges that any misrepresentation of fact in the Questionnaire and attachments, or in any Firm responsibility information that may be requested by the Agency, may result in termination of this Agreement.

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

The Agency, 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 Firm. This includes the Agency's right to terminate this Agreement in the event the Agency finds that the certification made by the Firm in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete. In the event of such suspension, the Firm will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Firm must comply with the terms of the suspension order. Contract activity may resume at such time as the Agency issues a written notice authorizing a resumption of performance under this Agreement.

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

- C. Nothing in this section shall be interpreted to limit or expand the Agency's obligations pursuant to N.Y. Public Officers Law Article 6 and 6-a, the Freedom of Information Law and Personal Privacy Protection Law, respectively. Similarly, nothing in this section shall be interpreted to limit or expand the applicability of either laws or exemptions to disclosure of records possessed by the Agency.
- D. The Firm and its staff must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. Failure to comply with these requirements may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

14. Exhibits and Appendices.

1. Exhibit A Standard Clauses for New York State Contracts
2. Exhibit B This Agreement—as it appears prior to the signature page incorporated herein

15. Entire Agreement

This Agreement, together with Exhibit A, constitutes the entire agreement between the Firm and DHCR with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements.

In the event of any discrepancy, disagreement or ambiguity among the following documents they shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

1. Exhibit A – Standard Clauses for New York State Contracts
2. Exhibit B—this Agreement—as it appears prior to the signature page incorporated herein; and

-REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY-

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered in the State of New York, all as of the day and year first above written.

AGREED TO AND ACCEPTED TO:

[Name of Firm]

By: _____

[Name of Partner/Person authorized to bind Firm to this Agreement]

Partner

Date: _____

State 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.”

STATE OF NEW YORK)

) SS.:

County of _____)

On the ____ day of ____, ____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the corporation described herein which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the board of directors of said corporation.

(Notary): _____

AGREED TO AND ACCEPTED TO:

DIVISION OF HOUSING AND COMMUNITY RENEWAL

Approved as to Form:

By: _____

[Insert Name]

[Insert Title]

Date: _____

By: _____

Sheldon Melnitsky

Deputy Counsel

Date: _____

Approval by the Office of the New York State Attorney General:

By: _____

Name:

Title:

Date:

EXHIBIT A

SAMPLE