

CONTRACT NO. C000419

**THE NEW YORK STATE DIVISION OF THE BUDGET
MANAGEMENT CONSULTING SERVICES AGREEMENT
WITH MCKINSEY & COMPANY, INC. WASHINGTON D.C.
FOR THE PERIOD
September 1, 2012 – August 31, 2015**

THIS IS AN AGREEMENT ("AGREEMENT") dated as of September 1, 2012 by and among the NEW YORK STATE DIVISION OF THE BUDGET (hereinafter referred to as "DIVISION"), and McKinsey & Company, Inc. Washington D.C. (hereinafter referred to as "McKinsey" "CONTRACTOR", or "Secondary Management Consultant"), with offices located at 1200 19th Street, NW, Suite 1100, Washington, DC 20036.

WITNESSETH

WHEREAS, the DIVISION works to promote the best use of State resources and is responsible for ensuring that fiscal and program priorities are properly carried out and in establishing financial and budgetary policies/programs for New York State; and

WHEREAS, the DIVISION requires the services of a management consulting firm to advise the DIVISION on an as-needed basis in short-term engagements that focus on the review of management and fiscal issues relating to State programs, practices and initiatives.

WHEREAS, the DIVISION issued a Request for Proposals (RFP) for Management Consulting Services, dated June 5, 2012, a copy of which is attached hereto as, Appendix B, for management consulting services; and

WHEREAS, after an evaluation of the Proposals submitted for the performance of such work, the DIVISION determined that the Contractor is the most responsible, technically qualified, and competent to serve as Secondary Management Consultant based upon its Proposal; and

WHEREAS, the Contractor is willing to serve as a management consultant to the DIVISION, as outlined in the RFP and herein;

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

I. SERVICES

- A. The DIVISION does hereby engage McKinsey to provide management consulting services consistent with Section 3 of the RFP. Upon request, the Management

Consultant will be asked to provide assistance, guidance or analysis on, but not limited to, the following:

Program-Related Matters

- Assist DIVISION staff in reviewing and evaluating programs and initiatives in one or more State entities (i.e., agencies, public authorities, boards, commissions, etc.). Identify best practices, analytical techniques, change management, or strategy development for State programs or proposed initiatives.
- Review the success, return on State investment, and productivity and cost-effectiveness of programs and initiatives.
- Provide technical assistance to the DIVISION in program issues and the valuation of assets held by State entities.

Financial Plan-Related Matters

- Analyze the fiscal impact of changes in proposed or existing State and local programs which have impact on the State Financial Plan.
- Evaluate and advise the DIVISION on general or specific budgetary and management issues that may arise. This may include Consultant's interpretation of proposed management policies and its relation to State financing and the State's structure

State Operations and Management

- Analyze State entity operations, policies and processes to measure performance, identify opportunities to improve service, and increase efficiency. This may include, but not be limited to:
 - Analyzing and documenting current policies and processes;
 - Performing best practice research and benchmarking to other approaches at comparable entities;
 - Conducting workflow analyses; and
 - Designing accountability programs.
- Assess the functions performed by a State entity or group of entities to address operational improvement opportunities. This may include, but not be limited to, examining statutory responsibilities, organizational structures, resources (budget, personnel, equipment, technology, facilities, and other assets), and workload.

- Assist in developing implementation plans, generating project cost estimates and providing implementation and support services that may include, but not be limited to, program management support to facilitate project completion, including implementation steps, resource allocation, quality assurance, review of project schedules, monitor and manage issues and risks, create key performance indicators and management performance reports, and develop detailed baseline analytics;
- Perform quality assurance reviews of existing operations, including the review of transactions between the DIVISION and agencies, authorities and other parties the DIVISION may work with.

Management Issues, Changes and Federal Mandates/Statutes, Local Issues

- Advise the DIVISION on public management matters, as appropriate, including modifications or conditions for which New York State would be affected. Identify ways to meet new mandates, changes or requirements.
 - Assist in analyzing the cash flow and financial position of municipalities, public authorities and other State entities.
- B. The CONTRACTOR agrees to perform and furnish the services and labor required in connection herewith in accordance with all conditions, covenants and representations contained in this AGREEMENT.
- C. At the onset of each project, the CONTRACTOR and DIVISION will mutually agree on a statement of work (SOW), which shall define the services to be provided and the total cost for the project..

II. TERM

McKinsey agrees to perform the aforesaid services for a three year period beginning September 1, 2012 and ending August 31, 2015, with two optional one-year extensions.

III. COMPENSATION

A. McKinsey's rates for services rendered under this AGREEMENT shall not exceed the hourly rates as shown below:

Title	Hourly Rate				
	Contract Year 1 2012-2013	Contract Year 2 2013-2014	Contract Year 3 2014-2015	Contract Year 4 2015-2016	Contract Year 5 2016-2017
Engagement Partner	[REDACTED]				
Project Manager	[REDACTED]				

Senior Management Analyst	
Management Analyst	

The above rates shall apply to all hourly compensation paid under this AGREEMENT. The not-to-exceed hourly rates are inclusive of any reproduction, travel, postage or other expenses related to the engagement.

- B. Total payment under this AGREEMENT shall not exceed \$
- C. CONTRACTOR will only be compensated for services that are performed in accordance with a mutually agreed upon SOW as described in Section I.C.
- D. Billings for services rendered shall be submitted to the DIVISION after the first day of the month following the month in which the work was performed.
- E. As stated in Section 7.3.4 of the RFP, the CONTRACTOR 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.
- F. Fees shall become payable by the STATE upon receipt of an approvable invoice in accordance with this section. Properly invoiced fees not paid within 30 days of receipt of the invoice will be paid with interest in accordance with the New York State Prompt Payment Law. Any and all such invoices shall contain a detailed itemization of requested compensation which shall at the minimum include:
 - 1. The number assigned to this AGREEMENT and the CONTRACTOR's taxpayer identification number;
 - 2. Name(s), and title(s) as identified in this section, of the CONTRACTOR staff providing services;
 - 3. Name(s) of DIVISION employees, or their designee(s), requesting the services and directly involved;
 - 4. Specific identification of the deliverable(s) provided; and
 - 5. Time period in which the services were performed and date deliverable was accepted by the DIVISION.

All invoices should be submitted electronically to contracts@budget.ny.gov.

- G. The CONTRACTOR 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.

IV. RESERVATIONS

- A. The DIVISION reserves the right to utilize the secondary management consultant under the provisions delineated in the RFP.

- B. The DIVISION reserves the right to employ other consultants and contractors in connection with its responsibilities and functions. In that event, the CONTRACTOR will, as directed by the DIVISION, cooperate and work in harmony with such consultants and contractors.

V. RELATIONSHIP OF PARTIES

The relationship of the CONTRACTOR to the DIVISION shall be that of an independent contractor. 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.

VI. STAFF

- A. The CONTRACTOR shall assign Mr. [REDACTED] the lead engagement partner and the personnel referenced in its Proposal, but is not limited in its utilization of other personnel for its duties hereunder.
- 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.
- C. This AGREEMENT is intended to secure the professional services of the CONTRACTOR because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the CONTRACTOR.
- D. The DIVISION has an absolute right and discretion to approve or disapprove any proposed staff and changes in staff. The CONTRACTOR shall notify the DIVISION of any proposed changes in staff immediately. The DIVISION, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.
- E. The CONTRACTOR shall be fully responsible for performance of work by its staff and by its subcontractor's staff and the DIVISION reserves the right to request removal of any CONTRACTOR staff or subcontractor staff if, in the DIVISION's discretion, such staff is not performing in accordance with this AGREEMENT.
- F. The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the DIVISION.

Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

VII. DIVISION REPRESENTATIVES

- A. The DIVISION, with the commencement of this AGREEMENT, designates as its representatives, [REDACTED] and [REDACTED], or designee(s).
- B. Such representatives shall request, oversee, supervise and accept performance of services provided by the CONTRACTOR and shall receive any required submissions. Whenever an AGREEMENT action is to be taken or approval for services given by the DIVISION, such action or approval may be given only by the representatives designated pursuant to this Section.
- C. All Notices under this AGREEMENT shall be directed to the representatives identified in this Section, or their designees.
- D. The DIVISION may on written notice designate other individuals as its representatives.

VIII. MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION AND COMPLIANCE

A. General Provisions

1. The DIVISION is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("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 DIVISION, to fully comply and cooperate with the DIVISION in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). 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, leading to

the withholding of funds or such other actions, liquidated damages pursuant to this Section or enforcement proceedings as allowed by the AGREEMENT

4. The CONTRACTOR will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, 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.

For purposes of the Article, affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation.

5. 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.
6. 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.
7. The CONTRACTOR shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The CONTRACTOR and 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.

B. Contract Goals

The DIVISION and CONTRACTOR have agreed to a goal of at minimum ten percent participation for New York State certified Minority-Owned Business Enterprises (MBE) and minimum ten percent participation for New York State certified Woman-Owned Business Enterprises (WBE). Over the term of the contract, the CONTRACTOR will allocate at least ten percent of funds paid under this AGREEMENT to one or more certified MBE firms and at least ten percent of funds paid under this AGREEMENT to one or more certified WBE firms. The CONTRACTOR agrees to use the MWBE Utilization Plan set forth in the Proposal

for the performance of MWBEs on the AGREEMENT pursuant to the prescribed MWBE goals set forth above. The CONTRACTOR further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the AGREEMENT. Upon the occurrence of such a material breach, the DIVISION shall be entitled to any remedy provided herein, including but not limited to, a finding of CONTRACTOR non-responsiveness

Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, CONTRACTOR must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the AGREEMENT. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the CONTRACTOR acknowledges that if the CONTRACTOR is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the AGREEMENT, such a finding constitutes a breach of contract and the CONTRACTOR shall be liable to the DIVISION for liquidated or other appropriate damages, as set forth herein and in the RFP.

C. Equal Employment Opportunity (EEO)

1. The CONTRACTOR agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
2. The CONTRACTOR and subcontractors 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.

D. Penalties for Willful and Intentional Failure to Comply

1. Any contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements as set forth in the AGREEMENT shall be liable to the State for liquidated or other damages, as specified in the resulting contract, and shall provide for other appropriate remedies on account of such breach. Damages shall be calculated based on the actual cost incurred by the State agency related to the State agency's expenses for personnel, supplies, and overhead related to establishing, monitoring, and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance.
2. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the

DIVISION, the CONTRACTOR shall pay such liquidated damages to the DIVISION within sixty (60) days after they are assessed by the DIVISION unless prior to the expiration of such sixtieth day, the CONTRACTOR has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the DIVISION.

E. Deficiency and Disqualification

Vendors will receive a notice of deficiency when the STATE's specified requirements have not been met. Failure to fully address the RFP's administrative requirements may result in disqualification of a Bidder from the procurement. Procedures for Disqualification of a vendor are described in Section 142.9 of the New York Code, Rules and Regulations.

F. Contractor Compliance Reports

CONTRACTOR shall submit to the State Quarterly M/WBE Compliance Reports for Workforce Composition and M/WBE subcontractor participation for the previous quarter by the 5th day of each new State fiscal quarter (January, April, July, and October).

G. Noncompliance and Dispute Resolution

Where there is a dispute that cannot be resolved between an agency and a Vendor on noncompliance in M/WBE Utilization or Workforce Diversity, the issue will be elevated to the DMWBD for resolution. If a resolution of the dispute recommended by the Executive Director of DMWBD is satisfactory to the parties, the parties shall so indicate by signing a dispute resolution memorandum indicating that the matter has been resolved and stating the terms of the resolution.

If a resolution cannot be agreed upon, the Executive Director of DMWBD will refer the complaint, within 30 calendar days of the receipt of the complaint, to DMWBD's hearing officer for a hearing. The decision of DMWBD's hearing officer shall be final and may only be vacated or modified as provided in Article 78 of the Civil Practice Law and Rules.

IX. GENERAL TERMS

A. Conflicts of Interest

Pursuant to Request for Proposals Section 4.3, the CONTRACTOR has provided a letter in the CONTRACTOR's proposal (incorporated as Appendix C), signed by an authorized executive or legal representative, attesting that the CONTRACTOR's performance of the services does not and will not create a conflict of interest with,

nor position the firm to breach any other contract currently in force with the State of New York, that the CONTRACTOR will not act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.

The 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. The CONTRACTOR shall have a duty to notify the DIVISION immediately of any such actual or potential conflicts of interest.

The DIVISION and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The DIVISION will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the DIVISION, a real or potential conflict of interest cannot be cured.

B. Warranties

The CONTRACTOR warrants that it will perform Services in good faith and in a professional manner and that the Services will conform in all material respects to the description of such Services set forth herein. 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 CONTRACTOR shall perform Services in a workmanlike manner in accordance with industry standards.

C. Performance Monitoring

The CONTRACTOR's performance will be assessed by the State according to the achievement of CONTRACTOR's contractual obligations in a timely and professional manner, as set forth herein. The DIVISION will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

D. Indemnification and Liability

The CONTRACTOR shall be fully liable 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 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, without limitation; 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 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 CONTRACTOR's sole expense, and (iii) assistance in the defense of any such action at the expense of CONTRACTOR.

Except as otherwise set forth as being without limitation in the indemnification paragraph above, the limit of liability shall be as follows: CONTRACTOR's liability for any damages arising out of, or related to the AGREEMENT, whether in contract, tort or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the amount paid to the CONTRACTOR for work performed under this AGREEMENT, or (ii) one million dollars (\$1,000,000), whichever is greater.

Notwithstanding the above, the CONTRACTOR and the State shall not be liable for any consequential, indirect or special damages of any kind which may result from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the State, the CONTRACTOR, or by others. The CONTRACTOR shall be fully responsible for performance of work by and conduct of its staff and subcontractor's staff and that the DIVISION reserves the right to request removal of any CONTRACTOR staff or subcontractor staff if, in the DIVISION's discretion, such staff is not performing in accordance with the AGREEMENT.

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 DIVISION 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.

E. Reports and Findings

Any and all reports and findings rendered to the DIVISION by the CONTRACTOR shall be the exclusive property of the DIVISION and subject to its exclusive use and control. The CONTRACTOR hereby waives any and all rights to such reports and findings and the control thereof.

The CONTRACTOR shall take all appropriate action to protect the confidentiality of all information supplied to it or developed by it during the course of its performance under the terms of the AGREEMENT.

F. Ownership

CONTRACTOR will retain all right, title and interest in and to all materials developed by it prior to the Effective Date of this AGREEMENT and/or developed outside of CONTRACTOR's obligations hereunder.

G. Records Access

DIVISION staff, others authorized by the DIVISION such as representatives of the Federal government, or other STATE agencies authorized by STATE law, shall have access to and the right to examine the books, documents, work papers, documentation of charges, or other records of the CONTRACTOR involved in transactions relating to this AGREEMENT during the contract period and for a period of six years after final payment for said services. The CONTRACTOR will make all records, including related documents of any and all subcontractors, available to New York State.

H. Work Paper Retention and Availability

The work papers to be prepared by the CONTRACTOR during the AGREEMENT will be the CONTRACTOR'S property although copies thereof and access to them will be made available, upon request, to the DIVISION, representatives of the Federal government and STATE agencies when authorized by the DIVISION, and other STATE agencies authorized by existing law, for a period of six (6) years following the date of the final payment under the contract. All such requests, and their disposition, shall be authorized by the DIVISION.

The CONTRACTOR agrees to make personnel available to explain fully all data, materials, and work papers developed during the engagement for a period of six (6) years following the date of the final payment under the contract.

X. DISPUTES AND DISSATISFACTION/CONFLICT RESOLUTION

In the event the DIVISION is dissatisfied with the CONTRACTOR's performance of the Services provided under the Agreement, including but not limited to a breach of the Agreement on the part of the CONTRACTOR, the DIVISION shall notify the CONTRACTOR of the dispute in writing. In the event the CONTRACTOR has any disputes with the DIVISION, the CONTRACTOR shall notify the DIVISION in writing. Such notification in both cases shall hereinafter be referred to as "Notice of Conflict", or in the case of contract breach, "Notice of Default".

If either the DIVISION or the CONTRACTOR notifies the other of such dispute or dissatisfaction, the Party receiving the notification shall then make good faith efforts to amicably resolve the problem or settle the dispute, including meeting with the notifying Party's representatives to diligently attempt to reach a mutually satisfactory result.

In the event of a dispute, both Parties will continue to fulfill their performance obligations under the Agreement.

Nothing shall limit either Party's ability to pursue all legal remedies. If the Parties are unable to amicably resolve the dispute after the steps described above, then either Party may seek legal or equitable relief in a court of competent jurisdiction.

XI. TERMINATION

- A. The DIVISION 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 DIVISION. 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 STATE, and for any subsequent services that are accepted by the STATE, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the DIVISION. The CONTRACTOR agrees to cooperate to the fullest respect with any successor consultants and contractors.
- B. After receipt of the Notice of Termination, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the Notice.
- C. The CONTRACTOR shall submit its termination claim to the DIVISION promptly after receipt of a Notice of Termination, but in no event later than 30 days from the effective date thereof, unless one or more extensions in writing are granted by the DIVISION upon written request of the CONTRACTOR within such 30-day period or authorized extension thereof. Upon failure of the CONTRACTOR to submit its termination claim within the time allowed, the DIVISION may determine, on the basis of available information, the amount, if any, due to the CONTRACTOR by reason of termination, and shall thereupon pay to the CONTRACTOR the amount so determined.
- D. The CONTRACTOR agrees to transfer title to the DIVISION, and to deliver in the manner, at the time, and to the extent, if any, directed by the DIVISION, such information and work products for which the CONTRACTOR produced and received compensation by the DIVISION.
- E. In addition, non-compliance with the procurement laws as noted in Section XIII of this AGREEMENT will lead to contract termination.

XII. FORCE MAJEURE

Neither party will be liable for losses, defaults, or damages under this AGREEMENT which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this AGREEMENT, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire or any other cause beyond the

reasonable control of the party that was so delayed or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

XIII. COMPLIANCE WITH PROCUREMENT LAWS

- A. By execution of this AGREEMENT, the CONTRACTOR certifies that information provided to the State of New York with respect to the Vendor Responsibility Questionnaire, Procurement Lobbying Certifications, Contractor Disclosure Forms (A and B) 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 this AGREEMENT by reference hereto and that any misrepresentation of fact in the Questionnaire and attachments, or in any CONTRACTOR responsibility information that may be requested by the DIVISION, may result in termination of this AGREEMENT. During the term of this AGREEMENT, any changes in the provided Questionnaire shall be disclosed to the DIVISION, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the AGREEMENT.

Should it be determined at any time that the CONTRACTOR is not responsible, the DIVISION will notify the CONTRACTOR in writing setting forth the basis for the determination and affording the CONTRACTOR reasonable time in which to refute the determination, justify why the basis for the determination is not relevant to this AGREEMENT or to take corrective action to eliminate the responsibility impediment. If the responsibility condition cannot be reconciled to the satisfaction of the DIVISION and the State of New York, the AGREEMENT will be terminated by written notification.

- C. CONTRACTOR hereby acknowledges that State Finance Law Section 163(4)(g) imposes certain reporting requirements on the contractor doing business with New York 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/gbull/g-226.htm>.
- D. IRAN DIVESTMENT ACT

By entering into this Contract, Contractor certifies 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" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regsg/docs/ListofEntities.pdf> and further certifies that it will not utilize on such 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 the Contract will be required to certify that it is not on the Prohibited Entities List before the DIVISION may approve a request for Assignment of Contract.

During the term of the Contract, should the DIVISION receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the DIVISION 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 DIVISION shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The DIVISION reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

XIV. ENTIRE AGREEMENT

This AGREEMENT and its Appendices 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. This AGREEMENT shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto. Appendix A, Standard Clauses for New York State Contracts, Appendix B, the Request for Proposals dated June 5, 2012, and Appendix C, the Proposal submitted by the CONTRACTOR dated July 9, 2012, are hereby made a part of this AGREEMENT as if fully set forth at length herein.

XV. 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.

XVI. USE BY OTHER STATE AGENCIES

The DIVISION shall have the option to extend the terms and conditions related to the scope of services covered by this AGREEMENT to any New York State agency.

XVII. ADDITIONAL SERVICES

The DIVISION may, at any time, by written notice, request changes or additions to work or services within the general scope of this AGREEMENT (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of this AGREEMENT, an equitable adjustment shall be agreed upon by the Parties and made in the price using the billing rates set forth in the AGREEMENT, and the CONTRACTOR shall be notified in writing accordingly. A change to the scope of the AGREEMENT would be subject to the approval of OSC. Nothing in this clause shall excuse the CONTRACTOR from proceeding with this AGREEMENT as modified.

XVIII. INTERPRETATION

In the event of any discrepancy, disagreement or ambiguity among the following documents - this AGREEMENT, Appendix A (Standard Clauses for New York State Contracts), Appendix B (Request for Proposal) and Appendix C (Proposal) - they shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

- A. Appendix A – Standard Clauses for New York State Contracts
- B. This AGREEMENT as it appears prior to the signature page incorporated herein
- C. Appendix B – Request for Proposal dated June 5, 2012
- D. Appendix C – Proposal dated July 9, 2012

XIX. ADDITIONAL PROVISIONS

This AGREEMENT shall be deemed executory only to the extent of moneys annually appropriated and available for this purpose, and no liability on account thereof shall be incurred by the DIVISION beyond the amount appropriated. It is understood that neither this assignment nor any representation by any public employee or officer creates any legal or moral obligation to request to appropriate, or make available, moneys for the purpose of the AGREEMENT.

XX. GOVERNING LAW/STANDARD CLAUSES

This AGREEMENT shall be governed by the laws of the State of New York Appendix A, Standard Clauses for NYS Contracts, attached hereto is expressly made a part of the AGREEMENT as fully as if set forth at length herein.

C000419

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:

McKinsey & Company, Inc. Washington D.C.

NEW YORK STATE DIVISION OF THE BUDGET

By: [Signature]
Name: Vivian Riefberg

By: [Signature]
Name: Joan Hope

Title: Director

Title: Administrative Officer

Date: 9/25/12

Date: 10/2/12

**Attorney General:
ERIC T. SCHNEIDERMAN**

**State Comptroller:
THOMAS P. DINAPOLI**

By: [Signature]
Date: OCT 04 2012
[Signature]
LORRAINE I. REMO
PRINCIPAL ATTORNEY

By: [Signature]
Date: OCT 30 2012
[Signature]
THE STATE COMPTROLLER

**C000419 -- AMENDMENT 1
MANAGEMENT CONSULTING SERVICES AGREEMENT
BETWEEN
THE NEW YORK STATE DIVISION OF THE BUDGET
AND
MCKINSEY & COMPANY, INC. WASHINGTON, D.C.**

The Parties agree to amend Contract C000422 (hereinafter "CONTRACT" or "AGREEMENT") entered into on September 1, 2012, by and between the New York State Division of the Budget (hereinafter "DIVISION" or "DOB") whose main office and principal place of business is State Capitol, Room 128, Albany, New York, 12224, and McKinsey & Company, Inc. Washington, D.C. (hereinafter referred to as "McKinsey" "CONTRACTOR", or "Secondary Management Consultant"), with offices located at 1200 19th Street, NW, Suite 1100, Washington, DC 20036.

Contract C000419 is hereby amended as follows:

1. The second paragraph of Section III – Compensation, Subsection A is revised to read as follows:

The above rates shall apply to all hourly compensation paid under this AGREEMENT. The CONTRACTOR and the DIVISION may agree to establish and document in a mutually agreed-upon SOW a firm, fixed-price cost for completed individual services and/or deliverables accepted by the DIVISION. Such firm, fixed-price costs shall be established based on the hourly rates set forth herein. Payment for completed individual services and/or deliverables accepted by the DIVISION and established with agreed-upon firm, fixed-price costs shall be compensated at that total firm, fixed-price cost set forth in the SOW, regardless of the actual number of hours expended to provide said services and/or deliverables. The not-to-exceed hourly rates are inclusive of any reproduction, travel, postage or other expenses related to the engagement.

2. The contract ceiling is increased by [REDACTED] Section III – Compensation, Subsection B is revised to read as follows:

B. Total payment under this AGREEMENT shall not exceed : [REDACTED]

3. Section VIII – Compliance with Procurement Laws, Subsection B is revised to read as follows:

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 DIVISION, 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 DIVISION, 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 DIVISION, 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 DIVISION, 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 DIVISION 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 with the appropriate DIVISION officials or staff, this AGREEMENT may be terminated by the DIVISION at the CONTRACTOR'S expense where the CONTRACTOR is determined by the DIVISION to be non-responsible. In such event, the DIVISION may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

4. Appendix A: Standard Clauses for New York State Contracts (December 2011) to the AGREEMENT is replaced by Appendix A: Standard Clauses for New York State Contracts (December 2012) as attached.

Except as modified herein, all terms and conditions of the AGREEMENT shall remain in full force and effect through the extended expiration date.

Approved by:

MCKINSEY & COMPANY, INC.
WASHINGTON

By: _____
Name: Brian Goble
Title: Principal
Date: 04/15/2013

NEW YORK STATE
DIVISION OF THE BUDGET

By: _____
Name: Joan Hoff
Title: Administrative Officer
Date: 4/16/13

Attorney General:
ERIC T. SCHNEIDERMAN

By: _____
Date: _____

APPROVED AS TO FORM
NYS ATTORNEY GENERAL

APR 16 2013

LORHAINE I. REMO
PRINCIPAL ATTORNEY

State Comptroller:
THOMAS P. DINAPOLI

By: _____
Date: 4/19/13

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 Washington, DC }
 : SS.:
COUNTY OF _____ }

On the 15th day of April in the year 20 13, before me personally appeared Biniam Gebre, known to me to be the person who executed the foregoing instrument. who. being duly sworn by me did depose and say that he resides at

Town of _____, County of _____,
State of _____; 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): he is the PRESIDENT of MCKENZIE & COMPANY INC. WASHINGTON D.C., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation 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 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 DISTRICT OF COLUMBIA
My Commission Expires July 31, 2013

Notary Public
Registration No. _____

State of: Washington, DC

ADDITIONAL ATTACHMENTS

Appendix A: Corporation's Standard Clauses For Contracts

Appendix B: Request for Proposal dated June 5, 2012

Appendix C: Proposal dated July 9, 2012