

CONTRACT FOR LEGAL SERVICES

This Contract for Legal Services (“Contract”), entered into as of the 22nd day of December, 2018, by and between **Cohen Milstein Sellers & Toll, PLLC** (hereinafter, the “Law Firm”) and the **Commonwealth of Pennsylvania State Employees’ Retirement Board** (hereinafter, the “Board”).

WHEREAS, the Board has a need for professional and specialized legal services in the matters described in Appendix A attached hereto; and

WHEREAS, the Law Firm was chosen through a sole source procurement process pursuant to Section 515 of the Commonwealth Procurement Code, with fair and reasonable compensation having been negotiated, and the Law Firm has agreed to perform such professional and specialized legal services for the Board.

NOW, THEREFORE, the Board and the Law Firm, with the intention of being legally bound, hereby agree as follows:

1. **Definitions.** The following definitions shall apply when used in this Contract:
 - a. “Chief Counsel” shall mean the Board’s Chief Counsel, who has been delegated by the Board the authority, with the concurrence of the Board Secretary, to hire any other legal counsel.
 - b. “Effective Date” shall mean: a) the date the Contract has been fully executed by the Law Firm and by the Board and all approvals required by Commonwealth contracting procedures have been obtained; or b) the date referenced in the Contract, whichever is later. The Contract shall not be a legally binding contract until after a copy of the fully-executed Contract and a Notice to Proceed have been sent to the Law Firm.
 - c. “Office of Chief Counsel” and “OCC” shall mean the Board’s Office of Chief Counsel.
 - d. “Guidelines” shall mean the Retention Guidelines for Outside Counsel promulgated by the OCC, setting forth OCC policies and procedures. The Guidelines are attached to this Contract as Appendix H and are incorporated into this Contract as if set forth fully herein. In case of a conflict between this Contract and the Guidelines, the Contract shall control.
 - e. “Notice to Proceed” shall mean a written notice sent to the Law Firm stating that the Contract has been fully executed and that the Law Firm may commence performance. The Chief Counsel shall send a Notice to Proceed to the Law Firm either via U.S. Mail or via email, and shall send a fully executed copy of the Contract with the Notice to Proceed.

f. "SERS" shall mean the Commonwealth of Pennsylvania State Employees' Retirement Board d/b/a the Commonwealth of Pennsylvania State Employees' Retirement System pursuant to the State Employees Retirement Code, 71 Pa.C.S. §§ 5101 et seq., a governmental entity of the Commonwealth of Pennsylvania (the "Commonwealth"). The Chief Counsel shall serve as the main contact for SERS and the Board for purposes of this Contract.

2. Services. The Law Firm shall perform the services described in Appendix A of this Contract.

3. Compensation. The Board shall compensate, and the Law Firm shall receive compensation, in accordance with the provisions established in Appendix B of this Contract.

4. Term of Contract.

a. The term of this Contract shall commence on the Effective Date and shall end on or before May 1, 2019, subject to when the services have been completed, as well as certain other provisions of this Contract.

b. The parties may agree to extend the term of this Contract at any time during the term of the Contract (or any renewals or extensions thereof) pursuant to Paragraph 9 of this Contract.

c. Except as specifically provided for herein, the Board, shall not be liable to pay the Law Firm for any services or work performed or expenses incurred outside of the scope and duration contemplated in this Contract.

5. Billing. The Law Firm shall submit monthly invoices to the Chief Counsel for services performed during each billing period. Each invoice shall be under cover of a letter on law firm letterhead and itemized listing the services performed by attorney and legal assistant by date, by hours worked, and by rate, and shall generally follow the formats appearing in Appendix J of this Contract. The following information must be included on all invoices. Failure to include this information may result in return of the invoice and a request for a new invoice: (1) Funds Commitment Number; (2) Invoice Date; (3) Service Dates (i.e., start and end dates for services covered by the invoice); (4) Invoice Number; and (5) Gross/Total Amount.

a. The amount shown on each invoice for labor costs shall be in accordance with the rates set forth in Appendix B of this Contract. The invoices shall also list non-labor costs (such as those incurred for travel, food, and lodging) that are permissible expenses under this Contract.

b. The Board will use its best effort to make payments on invoices within forty-five (45) days of their receipt of an invoice in final form.

c. All invoices shall contain a statement that reads substantially as follows:

The Law Firm hereby certifies that the services supplied and expenses incurred as stated in the attached invoice have met all of the required standards set forth in the Contract for Legal Services between the Law Firm and the Board.

d. All invoices or accompanying letters of transmittal shall be signed by the Law Firm and shall set out the Law Firm's federal employer identification number.

6. Consultation. The Law Firm shall consult with and keep the OCC fully informed as to the progress of all matters covered by this Contract. The Law Firm shall consult and cooperate with, and shall be responsible directly to, the OCC, and other officials as designated by the Chief Counsel on all matters applicable to the Contract, and all ancillary and consequential proceedings of any kind. The duty of the Law Firm shall be to advise, counsel, and recommend actions to the OCC (or other officials designated by the Chief Counsel), and to carry out to the best of its ability their directions. The Law Firm will not make any offer, settlement, or compromise without the written consent of the Chief Counsel. The Law Firm shall offer the OCC the opportunity to review court documents and briefs, applicable to the services provided under the Contract, prior to filing. The Law Firm shall promptly furnish the OCC with copies of all correspondence and all court documents and briefs prepared in connection with the services rendered under this Contract, and such additional documents as may be requested. Upon notification of its availability to the OCC, the Law Firm shall make all of its work product prepared in connection with the services rendered under this Contract, and other parties' pleadings, discovery, correspondence, and other relevant documents and materials, available to the OCC.

In particular, the Law Firm shall assure that the OCC can review in a timely manner all pleadings and other court documents filed or submitted by any party or issued by a court. The Law Firm shall promptly furnish the OCC with copies of all correspondence and all court filings and briefs, as received or prepared in connection with the services rendered under this Contract, and such additional documents as may be requested by the OCC. The Law Firm shall supply the OCC with a copy of any draft pleading and other court documents being prepared by the Law Firm for submission to a court and shall solicit from the OCC suggestions for improvement of the draft pleading(s) and other court documents. In order to make meaningful review and input by the OCC possible, the Law Firm shall supply copies of draft pleadings and other court documents in ample time for review and the submission of editorial suggestions by the OCC, meaning, in the usual case, not less than five (5) business days before the document is to be filed in court.

7. Subcontracting, Key Personnel, and Experts. Subcontracting, assignment, or transfer of all or part of the interest of the Law Firm in this Contract, or in the work covered by this Contract, is prohibited without the prior written approval of the Chief Counsel. In the event such consent is given, the terms and conditions of this Contract shall apply to and bind the party or parties to whom such work is subcontracted, assigned, or transferred as fully and completely as the Law Firm is hereby bound and obligated, and the Law Firm shall obtain written acknowledgement thereof from all subcontractors and experts so engaged.

The Law Firm, with respect to any replacement of key personnel assigned to this matter, shall consult with the Chief Counsel. All key personnel shall be outlined in Appendix B attached

hereto. The Chief Counsel's prior written consent to the proposed replacement assignment is required and may not be withheld unreasonably. Notwithstanding the foregoing, the Law Firm may engage experts in various fields related to the subject matter of this Contract to assist the Law Firm in the performance of its services under this Contract. The Law Firm shall be solely responsible for the hourly rates, fees, or other compensation to be paid to such experts. The terms and conditions of this Contract shall apply to and bind any subcontractors or experts engaged pursuant hereto as fully and completely as the Law Firm is hereby bound and obligated, and the Law Firm shall obtain written acknowledgement thereof from all subcontractors or experts so engaged.

8. Ownership Rights. All documents, data, and records produced by the Law Firm (and/or by any subcontractors or experts engaged hereunder) in carrying out the obligations and services hereunder, without limitation and whether preliminary or final, are and shall become and remain the property of the Board.

a. The Board shall have the right to use all such documents, data, and records without restriction or limitation and without additional compensation to the Law Firm and/or any subcontractors or experts retained by the Law Firm in connection with this Contract. Further, the Law Firm and/or any such subcontractors or experts shall have no right or interest therein.

b. Upon completion of the services hereunder and/or at the termination of this Contract, all such documents, data, and records, if requested by the Chief Counsel, shall be appropriately arranged, indexed, and delivered to the Chief Counsel by the Law Firm.

c. Any documents, data, and records given to or prepared by the Law Firm and/or any subcontractors or experts under this Contract shall not be made available to any individual or organization without the prior approval of the Chief Counsel. Any information secured by the Law Firm (and/or by any subcontractors or experts) from the Board in connection with carrying out the services under this Contract shall be kept confidential unless disclosure of such information is approved in writing by the Chief Counsel or disclosure is directed by a court or other tribunal of competent jurisdiction.

d. Notwithstanding the provisions of this Paragraph 8, the Law Firm may retain copies of documents delivered to the Board in accordance with its internal document retention policies.

9. Modifications. The Board and the Law Firm may make modifications to this Contract at any time during the term of the Contract or any renewals or extensions thereof. All changes to contract terms, including changes in the scope of work, must be incorporated into a formal written amendment to this Contract, signed by both parties, and executed in the same manner as this original Contract and in accordance with applicable law.

10. Conflict of Interest. The Law Firm represents and warrants that it (i) has no conflicting representation that has not been fully disclosed to and waived by the Chief Counsel, and (ii) shall not undertake any representation that conflicts with the performance of the services or obligations under this Contract unless such conflicting representation has been fully disclosed to and waived by the Chief Counsel. Any conflicting representation shall be promptly disclosed to

the Chief Counsel, and the Chief Counsel shall determine whether such conflict is cause for termination of this Contract. The process for obtaining conflict waivers is more fully described in the Office of Chief Counsel Conflict Waiver Procedure, which is attached as Appendix C of this Contract.

11. Inability to Perform. The Law Firm agrees that if, because of death or any other occurrence beyond the control of the Law Firm, it becomes impossible for any principal or principals, and in particular, the principals assigned to render the services set forth in this Contract, neither the Law Firm nor the surviving principals shall be relieved of their obligations to complete performance hereunder. The Law Firm, with respect to any replacement principal proposed to be assigned to this matter, shall consult with the Chief Counsel. The Chief Counsel's consent to the proposed replacement is required and may not be withheld unreasonably.

12. License to Appear. The Law Firm represents and warrants that it is duly licensed and in good standing to practice before the relevant courts in which it will appear or practice.

13. Independent Contractor. In performing the services required by this Contract, the Law Firm will act as an independent contractor and not as an employee or agent of the Board.

14. Termination Provisions. The Board has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Law Firm.

a. *Termination for Convenience.* The Board shall have the right to terminate this Contract for its convenience if the Board determines termination to be in its best interest.

b. *Termination for Cause.* The Board shall have the right to terminate this Contract for default by the Law Firm upon written notice to the Law Firm. The Board shall also have the right, upon written notice to the Law Firm, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Board erred in terminating the Contract for cause, then, at the Board's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 14(a) above.

15. Integration Clause. This Contract, including all referenced documents, constitutes the entire agreement between the parties. Terms used in appendices hereto shall have the same meanings as are ascribed in this Contract unless otherwise defined therein. No agent, representative, employee, or officer of either the Board or the Law Firm has authority to make, or has made, any statement, agreement, or representation, oral or written, in connection with this Contract, which in any way can be deemed to modify, add to, detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions contained herein. No modifications, alterations, changes, or waivers to the Contract or any of its terms shall be valid or binding unless accomplished pursuant to Paragraph 9 above.

16. Compliance. The Law Firm shall comply with all applicable provisions of state and federal constitutions, laws, rules, regulations, and judicial orders, including without limitation those pertaining to (i) nondiscrimination, sexual harassment, and equal employment opportunity,

including the provisions of the Nondiscrimination/Sexual Harassment Clause attached hereto as Appendix D and incorporated by reference, and (ii) the Americans With Disabilities Act Provisions attached hereto as Appendix G and incorporated by reference.

17. Integrity Provisions. The Law Firm agrees to comply with the Integrity Provisions, which are attached hereto as Appendix E and incorporated by reference.

18. Responsibility Provisions. The Law Firm agrees to comply with the Responsibility Provisions, which are attached hereto as Appendix F and incorporated by reference.

19. Audit Provisions. The Board shall have the right, at reasonable times and at a site designated by the Board, to audit the books, documents, and records of the Law Firm to the extent that the books, documents, and records relate to fees, costs, or pricing data for this Contract. The Law Firm agrees to maintain records that will support the fees charged and costs incurred for this Contract.

The Law Firm shall preserve books, documents, and records that relate to fees, costs, or pricing data for this Contract for a period of at least three (3) years from the date of final payment hereunder. The Law Firm shall give full and free access to all such records to the Board and/or its authorized representatives.

20. Offset Provision. The Law Firm agrees that the Board may set off the amount of any state tax liability or other obligation of the Law Firm or its subsidiaries to the Board, and/or the Commonwealth of Pennsylvania in general, against any payments due the Law Firm under any contract with the Board and/or the Commonwealth of Pennsylvania.

21. Enhanced Minimum Wage Provision. The Law Firm agrees to comply with the Enhanced Minimum Wage Provisions, which are attached hereto as Appendix I and incorporated by reference.

22. Indemnity. The Law Firm shall indemnify and defend the Board and/or SERS from and against any and all claims, demands, actions, liabilities, losses, costs, and expenses, including but not limited to adverse costs, claims or sanctions involving attorneys and other fees and costs, asserted by third parties ("Claims"), which Claims are caused by or arise from injuries or damages sustained by such third parties resulting or arising from any negligent act or omission or intentionally wrongful act of the Law Firm or any of their officers, agents, employees and/or representatives, in relation to professional services provided to the Board and/or SERS by the Law Firm under this Contract. This indemnity provision shall not apply to Claims for which payment is available under the Law Firm's professional liability insurance policies.

23. Insurance. The Law Firm represents and warrants that it carries professional liability/malpractice insurance in the amount usual and customary for firms of its size and practice areas, subject to normal deductibles, and covenants that it will maintain such coverage throughout its representation of the Board.

24. Notice. Any written notice to the Board under this Contract shall be deemed sufficient if delivered to the Board personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section:

Nicholas Joseph Marcucci
Chief Counsel
Commonwealth of Pennsylvania
State Employees' Retirement System
30 North 3rd Street, Suite 150
Harrisburg, PA 17101-1716
Telephone: 1-717-237-0226
Email: nmarcucci@pa.gov

Any written notice to the Law Firm under this Contract shall be deemed sufficient if delivered to the Law Firm personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section:

Steven J. Toll, Esquire
Cohen Milstein Sellers & Toll, PLLC
1100 New York Avenue, N.W.
Suite 500
Washington, D.C. 20005

25. Contract Controversies. In the event of a controversy or claim between the Law Firm and the Board arising from this Contract, the Law Firm must, within six months after the cause of action accrues, file a written notice of the controversy or claim with the Chief Counsel for a determination. The Chief Counsel shall send a written determination to the Law Firm within 60 days of receipt of such written notice. The decision of the Chief Counsel shall be final and conclusive unless, within 15 days after receipt of such written determination, the Law Firm files a claim with the Commonwealth of Pennsylvania Board of Claims ("Board of Claims"). Pending a final judicial resolution of a controversy or claim, the Law Firm shall proceed diligently with the performance of this Contract in a manner consistent with the interpretation of the Board, and the Board shall continue to compensate the Law Firm pursuant to the terms of this Contract.

26. Applicable Law. This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of law provisions) and the decisions of the Pennsylvania courts. The Law Firm consents to the jurisdiction of any court of the Commonwealth of Pennsylvania (including without limitation the Board of Claims) and any federal courts in Pennsylvania, waiving any claim or defense that such

forum is not convenient or proper. The Law Firm agrees that any such court shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.


27. Counterparts. This Contract may be executed in any number of separate counterparts, each of which shall be deemed an original, but the several counterparts shall together constitute but one and the same instrument.

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IN WITNESS WHEREOF, the Commonwealth of Pennsylvania State Employees' Retirement Board, and Cohen Milstein Sellers & Toll, PLLC, have caused this Contract to be executed on the date and year first above written.

**COMMONWEALTH OF PENNSYLVANIA
STATE EMPLOYEES' RETIREMENT BOARD**

Federal Employer ID #: 25-1790545

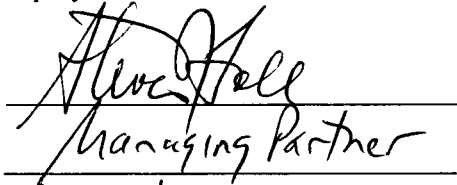
By: 

Title: Secretary of the Board

Date: 12/27/2018

**COHEN MILSTEIN SELLERS
& TOLL, PLLC**

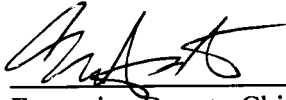
Federal Employer ID #: 52-1465235

By: 

Title: Managing Partner

Date: 12/20/18

APPROVED AS TO FORM AND LEGALITY



12/27/18

Executive Deputy Chief Counsel
Commonwealth of Pennsylvania
State Employees' Retirement Board

Date



1/2/19

Chief/Senior Deputy Attorney General
Commonwealth of Pennsylvania
Office of Attorney General

Date

FISCAL APPROVAL BY COMPTROLLER OPERATIONS

This document is approved for fiscal responsibility and budgetary appropriateness, the availability of funds:

FUND: 5026800000
G/L: 6342100
COST CENTER: 7010201000
FUNDS COMMITMENT: 4000022361
VENDOR: 536199

Samie Mellott 1/9/19
Comptroller Date

APPENDIX A

DESCRIPTION OF SERVICES

The purpose of this specific appointment is for the Law Firm to provide advice, assistance, and counsel to the Board with regard to confidentiality and other issues, including but not limited to the review of a draft Board Confidentiality Policy as it relates to the scope of confidential information.

APPENDIX B
COMPENSATION

The compensation to the Law Firm shall be as follows:

Suzanne Dugan shall be the principal attorney assigned to SERS and shall bill at \$475.00 per hour. It is anticipated that for Ms. Dugan to successfully complete the scope of work as particularly described in Appendix A above, she will require approximately 79 hours with a total cost to the Board estimated at \$ 37,605.00, with travel costs not to exceed \$ 3,075.00. The cost to the Board shall not exceed \$ 40,680.00 unless the Law Firm obtains prior written authorization to proceed from the OCC.

OCC reserves the right to add supplementary professionals at negotiated rates as this engagement may require and will update this Appendix B as necessary from time to time. The Board's principal contact for billing-related purposes will be the Chief Counsel.

APPENDIX C

OFFICE OF CHIEF COUNSEL CONFLICT WAIVER PROCEDURE

1. The Contract for Legal Services requires the lawyer(s) or law firm (collectively, the "Law Firm") to disclose promptly any and all conflicting representations, and if the Law Firm has no conflicting representations, then it shall certify to the same. Failure to disclose a conflict, or undertaking a conflicting representation without obtaining a waiver, is cause for termination of the Contract.
2. The Law Firm's request for a waiver shall be submitted in writing to the OCC. Requests shall be in letter form but may be sent electronically in PDF format.
3. The waiver request shall:
 - a. Identify all existing representations of (i) any Commonwealth of Pennsylvania agencies, and/or (ii) parties in matters involving any Commonwealth of Pennsylvania agencies;
 - b. Describe the nature of the conflict;
 - c. Set forth the measures the Law Firm will take to protect the Commonwealth of Pennsylvania and/or the Board, and their agencies, officials or employees from any prejudice or detriment if the conflict is waived, and
 - d. State that the other party the law firm represents or seeks to represent has granted a waiver (or a waiver has been sought, and if sought, a second written notice of the granting of such waiver shall be provided).
4. The Chief Counsel shall analyze the request and make all waiver decisions, and shall issue a letter to the law firm approving or denying the waiver request.
5. A file for each waiver request, including the resolution of each request, will be maintained in the OCC.

APPENDIX D

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

(Dated 8/2/2018)

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the

Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

9. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

10. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

APPENDIX E

INTEGRITY PROVISIONS

(Dated 1/14/15)

1. For purposes of these Integrity Provisions, the words “confidential information,” “consent,” “financial interest,” “gratuity,” and “Law Firm” shall have the following definitions.

a. “Confidential information” means information that (1) is not already in the public domain; (2) is not available to the public upon request; (3) is not or does not become generally known to the Law Firm from a third party without an obligation to maintain its confidentiality; (4) has not become generally known to the public through an act or omission of Contractor; or (5) has not been independently developed by the Law Firm without the use of confidential information of the Commonwealth.

b. “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Contract.

c. “Financial Interest” means:

- (1) ownership of more than a 5% interest in any business; or
- (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

d. “Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

e. “Law Firm” means the individual or entity that has entered into this Contract with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

2. The Law Firm shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to the Law Firm or that govern contracting with the Commonwealth.

3. The Law Firm shall be subject to the obligations of confidentiality with which lawyers must comply under the applicable Rules of Professional Conduct.

4. The Law Firm shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Law

Firm's employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all employees of the Law Firm.

5. The Law Firm, its affiliates, agents and employees and anyone in privity with the Law Firm shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

6. The Law Firm shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to the Law Firm's financial interest prior to Commonwealth execution of the contract. The Law Firm shall disclose the financial interest to the Commonwealth at the time of any proposal submission, or if no proposals are solicited, no later than the Law Firm's submission of the contract signed by the Law Firm.

7. The Law Firm, certifies to the best of its knowledge and belief that within the last five (5) years that it, its officers, and its affiliates have not:

a. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

b. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

c. had any business license or professional license suspended or revoked;

d. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

e. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If the Law Firm cannot so certify to the above, then it must submit along with its contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Law Firm. The Law Firm's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Law Firm shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Law Firm's certification or explanation to change. The Law Firm acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to

intervening factual circumstances or were false or should have been known to be false when entering into the contract.

8. The Law Firm shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Actions by outside lobbyists on behalf of the Law Firm are not exempt and must be reported. The Law Firm also must comply with the requirements of Section 1641 of the *Pennsylvania Election Code (25 P.S. §3260a)*.

9. When the Law Firm has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, the Law Firm shall immediately notify the Commonwealth in writing.

10. The Law Firm, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these Integrity Provisions.

11. The Law Firm shall cooperate with the Office of the Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Law Firm non-compliance with these provisions. The Law Firm agrees to make identified employees of the Law Firm available for interviews at reasonable times and places. The Law Firm, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to the Law Firm's integrity and compliance with these provisions. Such information may include, but shall not be limited to, the Law Firm's business or financial records, documents or files of any type or form that refer to or concern this contract. The Law Firm shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.

12. For violation of any of the above provisions, the Commonwealth may terminate this and any other Contract with the Law Firm, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another Law Firm to complete performance hereunder, and debar and suspend the Law Firm from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.

APPENDIX F

RESPONSIBILITY PROVISIONS

(Dated 4/5/13)

1. The Law Firm certifies, for itself and all its subcontractors, that as of the date of its execution of this Contract, that neither the Law Firm, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Law Firm cannot so certify, then it agrees to submit, along with its Contract, a written explanation of why such certification cannot be made.

2. The Law Firm also certifies, that as of the date of its execution of this Contract, it has no tax liabilities or other Commonwealth obligations.

3. The Law Firm's obligations pursuant to these provisions are ongoing from and after the effective date of this Contract through the termination date thereof. Accordingly, the Law Firm shall have an obligation to inform the Commonwealth if, at any time during the term of this Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the Law Firm to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of this Contract with the Commonwealth.

5. The Law Firm agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Pennsylvania Office of Inspector General for investigations of the Law Firm's compliance with the terms of this or any other Contract between the Law Firm and the Commonwealth, which results in the suspension or debarment of the Law Firm. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime, travel, and lodging expenses; and expert witness and documentary fees. The Law Firm shall not be responsible for investigative costs for investigations that do not result in the Law Firm's suspension or debarment.

6. The Law Firm may obtain a current list of suspended and debarred Commonwealth contractors either by searching the Internet at www.dgs.state.pa.us, or by contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125
Phone: (717) 783-6472
Fax: (717) 787-9138

APPENDIX G

THE AMERICANS WITH DISABILITIES ACT PROVISIONS

(STD-271/278A, dated 07/99)

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, the Law Firm understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, the Law Firm agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

2. The Law Firm shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Law Firm's failure to comply with the provisions of Paragraph 1 of this Appendix.

APPENDIX H

RETENTION GUIDELINES FOR OUTSIDE COUNSEL

The State Employees' Retirement Board's (the "Board") Office of Chief Counsel ("OCC") expects to have a productive, professional and cost-effective relationship with outside counsel. These Guidelines apply to all engagements for services between the Board and your law firm, regardless of the law firm office from which those legal services are performed. Any exception must be approved in advance by OCC.

I. MATTER MANAGEMENT AND REPORTING

A. The Contract for Legal Services

Your firm has been retained by the Board to perform legal services as set forth in the Contract for Legal Services ("Contract"). The Contract shall define the scope of services covered by the matter which is the subject of the Contract; a "matter" may consist of a single representation or the provision of legal services in connection with a relatively routine, high volume practice area (e.g., workers' compensation). The Contract identifies the principal OCC in-house attorney(s) responsible for managing the work. You are expected to keep the responsible OCC attorney(s) informed of all significant developments that arise, as well as seek his or her direction on strategy and tactics.

Throughout the course of your representation, you must be mindful of conflict of interest issues and disclose promptly any conflicting representation. The Conflict Waiver Procedure that is a part of the Contract sets forth the process for such disclosure. Failure to disclose a conflict, or undertaking a conflicting representation, without obtaining a waiver from the Board is cause for termination of the Contract.

B. Effective Utilization of Personnel

The OCC generally expects a single outside lawyer to be primarily responsible for each matter. Outside counsel should discuss with the OCC the staffing requirements for each matter, including the number of attorneys and staff that may work on the matter. Staffing should reflect management practices that are consistent with the delivery of the appropriate level and type of legal services required in order to achieve effective results and resource efficiency.

The OCC generally expects one lawyer to attend all relevant depositions, meetings, hearings, trial, and other proceedings, as applicable to the matter. In more complex matters, additional lawyers may be necessary to represent the Board.

In concert with the Commonwealth of Pennsylvania's commitment to workforce diversity, the Board expects each law firm it engages to use its best efforts to: (1) consider persons from diverse backgrounds for assignment to its engagements for

the Board; and (2) actively promote full and equal participation of women, racial and ethnic minority groups, and all other persons of diverse backgrounds in the legal profession, as evidenced by the firm's employment practices.

C. Reports

The OCC expects regular communications with its outside counsel. The most effective representation results from a true partnership between the OCC lawyer(s) and outside counsel.

You are expected to keep the responsible OCC attorney(s) advised of the status of the matter. In the absence of material developments that require immediate notification, you should submit at least quarterly a confidential Litigation Report for the matter and developments pertinent thereto that (1) summarizes recent filings/events; (2) provides a litigation snapshot which summarizes the case allegations; (3) provides a status of the case; and (4) identifies significant case events.

D. Correspondence, Pleadings, and Other Court Filings

No significant correspondence, pleading, or other court filing should be sent or filed without prior approval of the responsible OCC attorney(s). In general, outside counsel should keep the responsible OCC attorney(s) fully informed of all developments on a timely basis and consult with him or her on all matters of strategy, planning and proposed disposition by motion, trial or settlement, as applicable to the matter.

- Correspondence:* Copies of all correspondence received or sent on the Board's behalf by your firm to adverse/opposing parties or other third parties should be sent to the responsible OCC attorney(s).
- Pleadings and Other Court Filings:* Copies of all pleadings or other court filings received or filed on the Board's behalf by your firm should be sent to the responsible OCC attorney(s).

E. Expert Witnesses or Consultants

Where outside counsel determines that an expert witness or a special consultant is necessary for any matter, the responsible OCC attorney(s) should be consulted prior to any engagement. In making such recommendation, outside counsel should provide the responsible OCC attorney(s) with a written description of the study or testimony the expert is expected to provide, the expert's qualifications, and the rationale for using an expert in the matter. As with your firm's staffing and time on any matter, the OCC expects that recommendations concerning the use of expert witnesses and consultants will be at appropriate levels for the risk and exposure involved in the matter.

F. Pursuit of the Claims, Negotiations, Settlements and Appeals

The law firm shall not (without first obtaining the reasonable and timely instructions and/or the consent from the OCC) attempt to: (1) put forward and/or withdraw counterclaims, (2) represent the Board in other related proceedings, (3) initiate and accept services, (4) file, withdraw, or waive an appeal, (5) bring to a close a dispute or out-of-court negotiations through mutual settlement, waiver or acknowledgement, and/or (6) accept money, valuables, and/or deeds, in satisfaction of any claims and any amounts reimbursable by an adverse/opposing party, the judicial cash office, or by other official agencies. All settlement opportunities and demands must be brought promptly to the attention of the responsible OCC attorney(s), along with your recommendations. Under no circumstances should your firm agree to settle any case on the Board's behalf, enter into a consent decree or stipulation, release any substantial right, or otherwise commit the Board on any issue without the OCC's prior approval.

II. PAYMENT OF COMPENSATION

Appendix B of the Contract sets forth the compensation due to the law firm.

III. CONFIDENTIALITY AND MEDIA COVERAGE

The OCC expects absolute confidentiality regarding legal matters handled by each outside counsel. In addition, no statement may be made to the press or any other media - on or off the record - unless prior express written approval is secured from the OCC. Under no circumstances should a law firm use its representation of the Board in any of its promotional or other informational material without the prior approval of the OCC.

APPENDIX I

ENHANCED MINIMUM WAGE PROVISIONS

(Dated July 2018)

1. **Enhanced Minimum Wage.** Law Firm agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract, and for an employee's hours performing ancillary services necessary for the performance of the contracted services when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
2. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Law Firm shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Law Firm must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract, nonpayment, debarment or referral to the Office of Chief Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Law Firm shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

APPENDIX J

INVOICE FORMAT (SUMMARY)

LAWFIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

PENNSYLVANIA STATE EMPLOYEES' RETIREMENT BOARD (CLIENT#): (MATTER#)
(ADDRESS)

(FUNDS COMMITMENT#)

DATE:(DATE)
INVOICE NO.: (INVOICE#)

ATTN : (NAME OF CHIEF COUNSEL OR ATTORNEY MONITORING THE
SERVICES PERFORMED)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM
(DATE) THROUGH (DATE)
\$(TOTAL FEES)

TOTAL EXPENSE ADVANCES MADE TO YOUR ACCOUNT
FROM (DATE) THROUGH (DATE)
\$(TOTAL EXPENSE ADVANCES)

BALANCE DUE: \$(GRAND TOTAL)

FEDERAL EMPLOYER I.D. NO. (FEDERAL I.D. NUMBER)

(RESPONSIBLE ATTORNEY AT LAW FIRM) on behalf of (LAW FIRM) hereby certifies that the services supplied and expenses incurred as stated in the attached invoice have met all of the required standards set forth in the Contract for Legal Services.

(SIGNATURE)

INVOICE FORMAT (TIME DETAIL)

LAWFIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

PENNSYLVANIA STATE EMPLOYEES' RETIREMENT BOARD (CLIENT#):
(MATTER#)
(ADDRESS)

(FUNDS COMMITMENT#) DATE:(DATE)
INVOICE NO.: (INVOICE#)

ATTN : (NAME OF CHIEF COUNSEL OR ATTORNEY MONITORING THE SERVICES PERFORMED)

REGARDING: (MATTER)
TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH (DATE)

DATE	HOURS	DESCRIPTION OF SERVICES	OF	ATTORNEY

INVOICE FORMAT (TIME SUMMARY)

LAWFIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

PENNSYLVANIA STATE EMPLOYEES' RETIREMENT BOARD (CLIENT#):
(MATTER#)
(ADDRESS)

(FUNDS COMMITMENT#) **DATE:(DATE)**
INVOICE NO.: (INVOICE#)

ATTN : (NAME OF CHIEF COUNSEL OR ATTORNEY MONITORING THE SERVICES PERFORMED)

REGARDING: (MATTER)
TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH (DATE)

ATTORNEY	RATE	HOURS	TOTAL
		TOTAL	

INVOICE FORMAT (COSTS)

LAWFIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

PENNSYLVANIA STATE EMPLOYEES' RETIREMENT BOARD (CLIENT#):
(MATTER#)
(ADDRESS)

(FUNDS COMMITMENT#) DATE:(DATE)
INVOICE NO.: (INVOICE#)

ATTN : (NAME OF CHIEF COUNSEL OR ATTORNEY MONITORING THE SERVICES PERFORMED)

REGARDING: (MATTER)
TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH (DATE)

DATE	DESCRIPTION OF EXPENSES	AMOUNT
	TOTAL:	

CONTRACTOR RESPONSIBILITY VERIFICATION

Document No. 18-042

**Cohen Milstein Sellers & Toll, PLLC
1100 New York Avenue, N.W.
Suite 500
Washington, D.C. 20005**

This Contract has been reviewed and the Law Firm has been determined to be responsible in accordance with the procedures outlined in Management Directive 215.9 Amended, dated October 25, 2010.

Designated Senior Manager	Date
Commonwealth of Pennsylvania	
State Employees' Retirement Board	



CRP CHECK CERTIFICATION FORM

Contractor TIN : *****5235

Contractor Name : COHEN MILSTEIN SELLERS AND TOLL PLLC

**User Performing
CRP Check :** CWOPA\shwillrich

Results: No Record(s) Found

CONTRACTOR RESPONSIBILITY CERTIFICATION

I, the undersigned individual, hereby certify the above-referenced contractor has been determined to be a responsible contractor in accordance with the policies and procedures set forth in *Management Directive 215.9, Contractor Responsibility Program*.

I also certify that the contractor has certified in writing that:

- a. neither the contractor nor any subcontractors as defined in Management Directive 215.9, Contractor Responsibility Program are under suspension or debarment by the Commonwealth, the federal government, or any governmental entity, instrumentality, or authority or, if the contractor cannot so certify, it has instead provided a written explanation of why such certification cannot be made; and
- b. the contractor has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

Sheila M Willrich

Authorizing Signature

12/21/2018

Generated Date
