

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT FOR LEGAL SERVICES (the "Agreement") is effective as of the 8th day of January, 2013, by and between Young Conaway Stargatt & Taylor, LLP ("Young Conaway"), and the Department of Safety and Homeland Security (the "DSHS") for the State of Delaware ("State"), with the approval of the Governor and the Attorney General.

WITNESSETH:

WHEREAS, on December 17, 2012, a Request for Proposal ("RFP") was issued by the DSHS to engage a law firm to act as Special Litigation Counsel ("Special Counsel") to represent Secretary Lewis Schiliro (the "Secretary") in *Michael A. Whaley and Valerie M. Robinson v. Lewis D. Schiliro*, C.A. No. 1:12-cv-0633, (the "Litigation"); and,

WHEREAS, it is the stated intent of the DSHS to engage a law firm to represent the Secretary in the Litigation; and,

WHEREAS, the DSHS received and evaluated proposals from 16 firms interested in acting as Special Counsel for the State in the Litigation and interviewed 7 firms; and,

WHEREAS, the DSHS wishes to enter into this Agreement with Young Conaway because the proposal submitted by Young Conaway was technically superior, and meets the needs of the DSHS. *See* Young Conaway's Proposal dated December 28, 2012, attached hereto as Exhibit A.

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Young Conaway and the DSHS (collectively the "Parties") hereto agree as follows:

1. Pursuant to 29 *Del. C.* §2507, Young Conaway is hereby appointed and employed as Special Counsel for the Secretary in the Litigation.
2. Young Conaway agrees to serve as Special Counsel in the Litigation during the duration of the proceedings and shall commence providing legal services on the date noted above. Notwithstanding the preceding, the Parties acknowledge that this Agreement is subject to termination at will by the DSHS, the State, or the Delaware Department of Justice ("DOJ"), with or without cause
3. Young Conaway agrees that it will assign members of its firm listed below to perform the legal services under this Agreement. Young Conaway has discounted its normal billing rates for its attorneys by at least 20%*:

| | <u>Current Billing Rate</u> | <u>Proposed Rate</u> |
|---------------------------------|-----------------------------|----------------------|
| Barry M. Willoughby, Partner | \$475 | \$355 |
| William W. Bowser, Partner | \$475 | \$355 |
| Margaret M. DiBianca, Associate | \$375 | \$300 |

Young Conaway agrees that the rate for any other attorneys who work on this engagement shall be at comparable rates to those above, taking into account each attorney's experience. The above fees are subject to adjustment on an annual basis after notice and agreement of the Parties.

*Additionally, upon the mutual agreement of the parties from time to time there may be a need to add staff attorneys whose rates shall be discounted by at least 20% and whose hourly rates shall be agreed upon prior to beginning any work on the Litigation.

4. Young Conaway shall bill the Office of the Governor no more frequently than monthly for hours spent on legal services rendered on behalf of and at the request of the Office of the Governor at the rates agreed to in paragraph 3 of this Agreement. Each invoice shall be in a format customary in the community for Delaware legal billing for services rendered; however, the DOJ shall have the right to request reasonable alterations in the format of the billing, as it deems appropriate. Young Conaway agrees to comply with the *Delaware Department of Justice Outside Counsel Billing Policy*, attached hereto as Exhibit B. Copies of the bill should be sent to the Director of Outside Counsel, the Deputy State Solicitor, and the Governor's Counsel. Bills shall be paid as provided by State law. In the event the DSHS, the State or the DOJ questions the substance of any bill or any item of work performed, Young Conaway shall provide such additional information as may reasonably be requested, and Young Conaway shall not charge any additional amount for any discussion, extra documentation or additional information required to settle any dispute regarding any issue related thereto.

5. Young Conaway agrees that it shall perform legal services as directed by the DSHS and that the DSHS, the State and shall have the right to receive copies of all documents, submissions, filings, and/or pleadings, in order to monitor, direct, and/or participate in the performance of legal services by Young Conaway under this Agreement. Prior to the release of any documents to the DOJ, the DOJ shall determine, in consultation with Young Conaway, any necessary conflict screens that need to be implemented.

6. Young Conaway agrees that all documents generated by it under this Agreement, including research, belong to the DSHS and the State and upon request will be provided. The DSHS, DOJ and the State shall have the right to use any such work product or documents as they deem is in the interest of the State, without additional compensation to Young Conaway apart from the compensation earned under this Agreement.

7. Young Conaway provided the DSHS a Certificate of Insurance from Willis of Delaware, Inc. for the following three (3) policies all dated January 4, 2013, indicating the amount and nature of Young Conaway's professional and liability insurance coverage: (1) Continental Casualty Co. Policy No. 20443; (2) Lloyds of London, Policy No. B2094, and (3)

Traveler's Insurance Co. Policy No. 39357. *See* Insurance Certificate, attached hereto as Exhibit C.

8. Young Conaway performed a screening for potential conflicts of interest on January 9, 2013, and has disclosed its report to the State and the DOJ.

Likewise, during the term of this Agreement, Young Conaway shall inform the State of any actual or prospective representation that requires disclosure to the State under the Delaware Lawyers' Rules of Professional Conduct (the "Rules"). In addition, no less than quarterly Young Conaway shall generate a conflicts check report (a "Report") and send the Report to the DOJ and the Counsel to the Governor. In the event that a conflict arises with respect to the State, Young Conaway shall submit any waiver request to the Director of Outside Counsel at the DOJ. Young Conaway shall not commence work on any matter that presents such a conflict until such time as it has notified the State in writing as required by this paragraph and received a written waiver of the conflict from the State Solicitor and Special Counsel to the Governor. Young Conaway understands and acknowledges that should the State choose not to waive any conflict, the State is free to obtain such legal services as necessary from other counsel as it deems appropriate.

Notwithstanding the foregoing, the State, the DSHS and DOJ hereby waive any objections they may have based on conflicts or potential conflicts with respect to the representation by Young Conaway of other clients regarding matters involving environmental, tax, workers' compensation, personal injury, or real estate law, and any pro bono representations of incarcerated persons, including representation in litigation against the State and in contract negotiations and other matters directly adverse to the State, in each case so long as (i) Young Conaway obtains a waiver from the non-State client agreeing to Young Conaway's concurrent or prior representation of the State and waiving any future claim of a conflict as permitted by the Rules, and (ii) Young Conaway's representation of the non-State client is, in view of this agreement, permitted by the Rules. During Young Conaway's engagement as Special Counsel, no Young Conaway attorney actively involved in the representation of the State in this matter shall be actively involved in the representation of any other client in a matter that gives rise to a conflict of interest with respect to the State.

In addition, the State understands that Young Conaway has a large corporate bankruptcy and restructuring practice, including the representation of debtors and financially troubled companies. As a result, current and prospective bankruptcy and restructuring clients or other parties to bankruptcy proceedings may owe debts to the State or any of its agencies or may otherwise hold and assert interests adverse to the State or any of its agencies. In connection with such bankruptcy and restructuring matters, the State, the DSHS and DOJ agree that Young Conaway may continue to represent or may undertake in the future to represent existing or new clients in any workout and bankruptcy related matter that is not substantially related to its work as Special Counsel, even if the interests of such clients in those other matters are adverse to the State or any of its agencies in the bankruptcy matter.

9. Young Conaway understands and acknowledges that the DSHS will work with Young Conaway to perform the legal work covered by this Agreement. Nothing in this

Agreement guarantees Young Conaway the right to perform any legal services, except those that the DSHS specifically requests Young Conaway to perform.

10. Young Conaway shall take no position on any legal matter in connection with its representation of the State under this Agreement, without consultation with and approval by the DSHS. No position shall be deemed to be the position of the DSHS and/or the State if disapproved by the DSHS. Young Conaway shall take no legal position in any court, or any federal agency or any other entity without approval of the DSHS. No opinion rendered by Young Conaway may be represented as an opinion of the Attorney General.

11. Prior to incurring any costs to be charged to the DSHS, Young Conaway shall consult with the DSHS and obtain its approval.

12. The validity of this Agreement and the rights and obligations of the Parties hereunder shall be determined in accordance with the laws of the State of Delaware and no other, except to the extent that federal law is applicable. Any litigation which may be instituted between the State and the Young Conaway regarding this Agreement shall be filed and litigated in the State of Delaware.

13. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement as of the date first above written.

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

Original on File

**STATE OF DELAWARE
DEPARTMENT OF SAFETY AND
HOMELAND SECURITY**

Original on File

By: William W. Bowser, Esq.

By: The Honorable Lewis D. Schiliro
Secretary of the DSHS

APPROVED:

Original on File

Original on File

By: The Honorable Jack A. Markell
Governor of the State of Delaware

By: Joseph R. Biden, III
Attorney General, State of Delaware