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STATE OF NEW HAMPSHIRE
DEPARTMENT OF BUSINESS AND ECONOMIC AFFAIRS
OFFICE OF WORKFORCE OPPORTUNITY

172 Pembroke Road Concord, New Hampshire 03301
Phone: 603-271-7275 www.nhworks.org

September 12, 2018

His Excellency, Governor Christopher T. Sununu
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize Business and Economic Affairs (BEA), Office of Workforce Opportunity (OWO), to enter into a **sole source** contract with Cindy Naiditch (VC#203514), Chichester, NH for \$10,000 for the provision of financial services effective October 31, 2018 or upon G&C approval, whichever is later, through June 30, 2019. **100% Federal Funds (Workforce Innovation and Opportunity Act (WIOA) Funds)**

Funding for this contract is to be encumbered from account titled: Office of Workforce Opportunity as follows:

	<u>FY 2019</u>
03-22-22-220510-14530000-103-502664 Contracts for Operational Services	\$ 10,000

EXPLANATION



This is a **sole source** contract to secure professional financial management services to support federal grant management activities within the Office of Workforce Opportunity. A contract in the amount of \$9,900 for the provision of financial services, which did not require G&C approval, was approved by the Commissioner of Business & Economic Affairs (BEA) for a period of performance between January 31, 2018 and December 30, 2018. These funds have been fully expended.

This request is to enter into a contract for services effective October 31, 2018 or upon G&C approval, whichever is later, with a contract end date of June 30, 2019. The total of the two contract awards for this contractor equals \$19,900. Ms. Naditch is knowledgeable of WIOA grant management and the required federal reporting to maintain compliance with WIOA requirements, which is not knowledge that can be provided by other staff at this time. The extended hiring phase to fill and train for this position makes this contract necessary to ensure the continuity of timely monthly federal draws, quarterly financial reporting and similar responsibilities. This request is supported by the State Workforce Innovation Board, who is responsible for ensuring that federal funds are expended and reported in accordance with WIOA rules and regulations.

The Attorney General's Office has approved this contract amendment as to form, substance and execution.

Respectfully submitted,


Wildolfo (Will) Arvelo,
Director of Economic Development

Concurred,

Taylor Caswell,
Commissioner


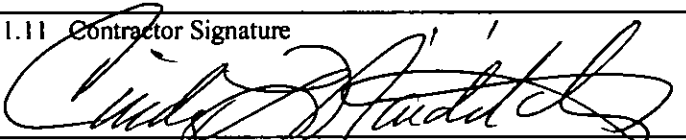
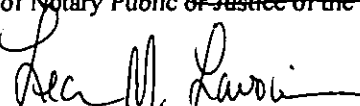
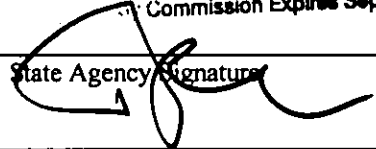


Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Dept. of Business & Economic Affairs (Office of Workforce Opportunity)		1.2 State Agency Address 172 Pembroke Road Concord, NH 03301	
1.3 Contractor Name Cindy L. Naiditch		1.4 Contractor Address 10 Hillview Drive Chichester, NH 03258	
1.5 Contractor Phone Number 603-798-3896	1.6 Account Number 22-14530000-103-502664	1.7 Completion Date June 30, 2019	1.8 Price Limitation \$10,000
1.9 Contracting Officer for State Agency Jacqueline Heuser, Director OWO		1.10 State Agency Telephone Number (603) 271-0337	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Cindy L. Naiditch	
1.13 Acknowledgement: State of NH, County of Merrimack On Sept. 13, 2018, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary Public or Justice of the Peace Notary Public Commission Expires September 27, 2022			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Taylor Caswell, Commissioner Date: 9/12/18	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By:  Acting Director, On: 10/17/2018			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 10/4/18			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.


7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Contractor Initials

Date


9/13/18

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

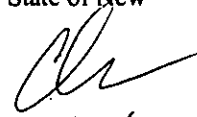
14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.


9/13/18

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (*"Workers' Compensation"*).

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

EXHIBIT A

TERM & EXTENSION

This cost reimbursement contract for services, is a sole-source agreement and formalizes a long-standing relationship between the Office of Workforce Opportunity and Cindy Naiditch, through which Naiditch performed WIOA Fiscal Administration services in the past. The period of service shall begin October 31, 2018 and terminate on June 30, 2019, or at which point funds allocated within this contract agreement are fully expended, whichever is earlier. Total payments under this agreement shall not exceed \$10,000.00 and shall be expended consistent with the terms and conditions outlined in Exhibit B of this agreement.

STATEMENT OF WORK

Naiditch shall provide the following services:

1. Provide financial management services to maintain accurate and timely federal reporting.
2. Assist in training and effective transfer of knowledge to new financial administrator via phone, email and on-site when appropriate.
3. Ensure WIOA 9130 quarterly reports and grant close-out reports are accurate, complete, and submitted timely to avoid penalty and/or audit findings, until such time as the new financial administrator is fully trained to carry out these functions.
4. Serve as a resource to the State Auditors should OWO be audited during the contract period.

Confidentiality: Naiditch agrees to maintain the confidentiality of any information regarding project applications or participants and/or their immediate families that may be obtained through providing services under this contract. Naiditch agrees to take reasonable steps to ensure the physical security of such data under its control and that it will inform each of its employees, vendors and sub-recipients having any involvement with personal data or other confidential information of the laws and regulations relating to confidentiality.

EXHIBIT B

PRICE LIMITATION

Cindy Naiditch agrees to provide the Office of Workforce Opportunity with the services indicated in the Exhibit A of this agreement within the limitations of this agreement as shown below.

Ms. Naiditch agrees to perform specified services in a professional manner and in accordance with the specifications. Services to be provided are based on estimated costs associated with the services.

The conditions and responsibilities outlined in this agreement are subject to the availability of resources. Any party may, after thirty (30) days written notification, suspend this agreement if funds become unavailable to carry out this agreement or if Ms. Naiditch is no longer willing to carry out the agreement. Upon termination, all allowable expenses incurred by Ms. Naiditch prior to the termination date will be reimbursed.

Total agreement not to exceed \$10,000.00

TERMS OF PAYMENT

1. Payments under this contract shall not exceed \$10,000.00, to be billed at a rate of \$50.10 per hour for services rendered. (Calculated on current hourly rate plus benefits)
2. Reimbursement for out of state travel costs shall be an allowable expenditure under this agreement as agreed upon prior approval/agreement by the contractor and the OWO Director.
3. Invoices for services rendered must be submitted using an agreed upon format, and include the information specified therein. Invoices shall be submitted for payment within 30 days of the service/product delivered. All fiscal documents, including invoices, must include the contract number and CFDA #'s 17.258/17.259/17.278.
4. The Office of Workforce Opportunity will make every effort to issue payments for invoices received within 30 working days.
5. No assignment or subcontracting of any of Naiditch' s rights or responsibilities under this contract shall be effective unless approved in writing by the Office of Workforce Opportunity or unless clearly described in the Statement of Work, except that Naiditch may assign rights to the fees from this contract.
6. It is understood and agreed that this contract will be funded proportionately through the WIOA and other federal grant funding streams. In the event that such funding is reduced, suspended or terminated for any reason, or if WIOA grant terms are significantly changed, the Office of Workforce Opportunity shall have the right to terminate this contract, to de-obligate funds or to negotiate appropriate modifications to this contract.

EXHIBIT C

ADDITIONAL TERMS

Cindy Naiditch is a sole proprietor. For the purpose of this sole proprietor contract for services, Paragraph 14 of the P-37 is waived; as well as, the requirement for a Certificate of Vote.

WIOA ASSURANCES AND CERTIFICATIONS

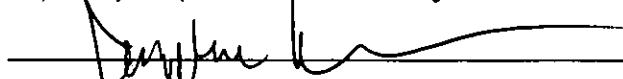
1. This agreement is funded under the Workforce Innovation and Opportunity Act of 2014. In the event that such funding is reduced, suspended or terminated for any reason, or if WIOA grant terms are significantly changed, the OWO or the Contractor shall have the right to terminate this agreement, to de-obligate funds or to negotiate appropriate modifications to this agreement.
2. This Agreement and Exhibits A, B, and C constitute the entire agreement between the DBEA, OWO, and Cindy Naiditch supersedes all prior agreements and understandings.

Justification for Non-Competitive Procurement Checklist

Cindy L. Naiditch Contract for Services (See Governor and Counsel Letter for Written Justification)

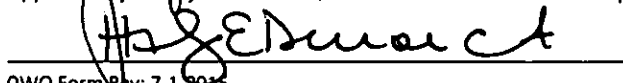
	SUGGESTED CONTENT FOR SOLE SOURCE JUSTIFICATION LETTER	Check	Comments
1	A brief description of the program and the product or service being contracted has been provided	<input checked="" type="checkbox"/>	See Exhibit A of the contract agreement
2	Explanation of why it is necessary to contract non-competitively, to include the following:	<input checked="" type="checkbox"/>	Contractor has performed in this capacity in the past and has extensive knowledge and expertise specific to the work of OWO and federal grant management. Contractor is available as needed.
	<ul style="list-style-type: none"> • Expertise of the contractor 	√	
	<ul style="list-style-type: none"> • Management 	√	
	<ul style="list-style-type: none"> • Knowledge of the program 	√	
	<ul style="list-style-type: none"> • Responsiveness 	√	
	<ul style="list-style-type: none"> • Expertise or experience of personnel 	√	
	<ul style="list-style-type: none"> • Results of market survey determining competition availability (or if one was not conducted, why not?) 		
3	Time Constraints:	<input checked="" type="checkbox"/>	
	<ul style="list-style-type: none"> • When contractual coverage is required, and why 		Immediate need to perform fiscal management of OWO grants while new staff (without direct experience) is training. An extensive job search did not result in identifying an individual with the specific grant management skills needed.
	<ul style="list-style-type: none"> • Impact on program if dates are not met (make sure to include the financial impact in dollars) 		Inexperienced grant management and federal reporting could result in substantial disallowed costs for the State to pay out of state general funds, if not properly documented/expended. Audit findings can be costly and time intensive to resolve.
	<ul style="list-style-type: none"> • How long it would take for another contractor to reach the same level of competence (equate in dollars, if desired) 	√	It would take another contractor up to six months to learn rules and process necessary
4	Uniqueness	<input checked="" type="checkbox"/>	WIOA Federal Grant Management
5	Any other points that should be covered to "sell the case."	<input checked="" type="checkbox"/>	
6	Declaration that this action is in the "best interest" of the grantor agency and/or the Federal Government.	<input checked="" type="checkbox"/>	This service is necessary to ensure federal grant management and reporting is accurate and timely to avoid disallowed costs.

Prepared by: Jacqueline Heuser, WIOA Program Director



Date: 9/14/18

Approved by: Hilary Denoncourt, BEA Finance and Business Operations Office of the Commissioner



Date: 9/14/18