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Virginia M. Barry, Ph.D. Commissioner of Education Tel. 603-271-3144 Paul K. Leather
Deputy Commissioner of Education
Tel. 603-271-3801

STATE OF NEW HAMPSHIRE DEPARTMENT OF EDUCATION 101 Pleasant Street Concord, N.H. 03301 TEL: 603-271-2299 FAX 603-271-4034 Citizens Services Line 1-800-339-9900

January 7, 2013

Her Excellency, Governor Margaret Wood Hassan and the Honorable Council State House Concord, NH 03301 100% GENERAL Kunds

#### **REQUESTED ACTION**

1. Authorize the Department of Education to utilize the services of Albert N. Suied, ANP Transcription (VC #219780) to provide transcription service as required by 300 CFR 512(a)(4). This contract will be effective from Governor and Council Approval through June 30, 2013 in an amount not to exceed \$7,000.00. Source of funds: 100% General Funds.

Funding is available from:

06-56-56-560510-2022-235-500784

FY 013 \$7,000.00

The individuals to be contracted with are as follows:

Albert N. Suied, ANP Transcription

Vendor Code: 219780

#### **EXPLANATION**

Federal law requires the Department of Education to provide due process hearings to settle disputes between the parents of a student with an educational disability and school districts. The Amendments of 1997 to the Individuals with Disabilities Act, and the reauthorized Individuals with Disabilities Education Improvement Act 2004, 20 USC 1415 (h)(3), allow parents, upon request, the right to a written verbatim record of a special education administrative hearing and resulting decision. 300 CFR 509(c)(2), which implements this statutory change, states that records of the hearing must be provided at no cost to the parents. Additionally, RSA 541-A:31,VII provides that upon the request of any party or upon the agency's initiative, the record of all oral proceedings shall be transcribed by the agency if the requesting party or agency shall pay all reasonable costs for such transcription.

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An RFP for the biennium 2012-13 was published in the *Manchester Union Leader* on May 1 and 2, 2011, and on the Department's web-page starting May 1<sup>st</sup>, for contractors to provide services as transcriber of official records of pre-hearing conferences and due process hearings, as requested for adjudicative hearings. Two proposals for current transcriber of official records were received on or before the deadline for submitting RFP materials, which was May 6, 2011. There was one new candidate that responded this year.

The applications were preliminarily reviewed by the Coordinator of Dispute Resolution and Constituent Complaints who manages the hearings program. Subsequent to the posting of the request for proposal the current transcriber of official records was determined to be meeting position requirements. As both candidates met the requirements of the RFP it was determined to offer the opportunity to both candidates utilizing a short form contract for each fiscal year of the biennium so that the Department would have a back-up when and if needed. Both applicants were agreeable to a short form contract for each fiscal year of the biennium in lieu of a long form contract. In June of 2012; however, one of the contracted official record transcribers notified the Department that they were no longer able to offer their services due to illness. As such, and due to a recent unanticipated increase in requests for official record transcriptions that will exceed a short form contract amount, the determination was made to offer a long form contract for the remainder of the biennium to the sole remaining official record transcriber.

The committee members responsible for the review of the request for proposal included the following individuals: Stephen W. F. Berwick, Coordinator of Dispute Resolution and Constituent Complaints and Mary L. Mayo, Program Assistant in the Office of Legislation and Hearings.

The scoring for this proposal was conducted employing a consensus model.

The role of the committee members was advisory in nature. They provided information, analysis, and recommendations that were presented to the Commissioner of Education.

The Commissioner of Education reviews the information provided and makes the final decision regarding the award of such grants.

Respectfully submitted,

Virgina M. Barry, Ph.D. Commissioner of Education

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Subject:

#### **AGREEMENT**

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

#### **GENERAL PROVISIONS**

1. IDENTIFICATION.					
1.1 State Agency Name		1.2 State Agency Address			
NH Department of Education		101 Pleasant St., Concord, NH 03301			
1.3 Contractor Name		1.4 Contractor Address			
Albert Suied, ANP Transcriptions		75 Montebello Rd, Suite 303, Suffern, NY 10901			
1.5 Contractor Phone	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation		
Number (845)369-8624	See Exhibit B	June 30, 2013	\$7,000.00		
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number			
Paul K. Leather, Deputy Commissioner of Education		271-3801			
1.11 Contractor Signature		1.12 Name and Title of Contractor Signatory			
		Albert Suied			
1.13 Acknowledgement: State	of N.J., County of B	ergen			
	e the undersigned officer, personal ame is signed in block 1.11, and ac				
1.13.1 Signature of Notary Pub	lic or Justice of the Peace				
[Seal]	n Tie Cor	mm. Exp. 8/1/2013			
1.13.2 Name and Title of Notary or Justice of the Peace					
1.14 State Agency Signature		1.15 Name and Title of State Agency Signatory			
Virginia M		Virginia M. Barry, Ph.D., Commissioner of Education			
1.16 Approvately the N.H. Department of Administration, Division of Personnel (if applicable)					
Ву:		Director, On:			
1.17 Approval by the Attorney	General (Form, Substance and Ex-				
By:  1.18 Approval by the Governor	Palf	On: 11/20/12			
1.18 Approval by the Governo.	r and Executive Council				
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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("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. 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 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

#### 12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

or other emoluments provided by the State to its employees.

The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written 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 \$250,000 per claim and \$2,000,000 per occurrence; and
- 14.1.2 fire and extended coverage insurance 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.
- 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 fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials Date WILLIAM

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) 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.

#### 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.

Contractor Initials
Date

#### Scope of the Work:

- 1. The official record of administrative pre-hearing and hearing proceedings is currently the audio cassette tape recorded by the hearing officer. The successful candidate(s) will transcribe the tapes in order to provide a verbatim written transcript as required under appropriate state and federal law and regulation;
- Official record will be forwarded electronically by the transcriber at the NH Department of Education, Office of Legislation and Hearings unless otherwise indicated by Office of Legislation and Hearings;
- 3. Provide one copy of transcription in electronic format provided on a CD or electronic mail;
- 4. Transcription shall have one inch margins on each side of page; and left justified;
- Transcriptions shall be 12 pt print;
- 6. In instances of multiple days of proceedings for the same case, the contractor shall date and paginate each day of the transcription separately;
- 7. At the end of each transcript, the contractor shall attach a certification which shall be signed, dated and as follows:

On (date), I provided a tra	anscript of the Office	cial Record lat	oeled "	," to	the
Department of Education,	Office of Legislation	on and Hearin	gs. I cer	tify that	this
represents a true and correct	copy of the official re	ecord of the pro	ceeding(s)	transcribe	d.
Signature	Date				

- 8. Transcriptions shall be rendered within the time-frame identified by the Department of Education (30 calendar days for twenty or fewer audio cassette tapes consisting of full to ¾ full audio cassette tapes; 45 calendar days for twenty-one to thirty audio cassette tapes of full to ¾ full audio cassette tapes; 60 calendar days for thirty-one to forty cassette tapes of full to ¾ full audio cassette tapes and within 7 business days for expedited transcripts);
- 9. Ensure timely response to inquiries from Department of Education;
- 10. Transcriber shall maintain confidentiality of all personally identifiable information about a student and not disclose any information concerning the tapes or their contents to anyone without the written consent of the Department of Education's Office of Legislation and Hearings in accordance with the provisions of the Family Education Rights and Privacy Act of 1974 (20 USC 1232g) and other relevant state and federal law;

Contractor Initials FS
Date io W

- 11. Typing of transcripts, bookkeeping, up-to-date billing and accounting are the responsibility of the Official Record Transcriber.
- 12. Conversion of audio cassette tapes to digital files upon request.
- 13. A contract to provide the services for Official Record Transcriber requires Governor and Council approval. It is anticipated that the effective date for the contract will be on or after date if Governor and Council approval. The contract will extend through June 30, 2013 with an option to renew for an additional two-year term.

Contractor Initials 15
Date 10/W/17

#### ESTIMATED BUDGET: LIMITATION ON PRICE: PAYMENT

#### Estimated Budget

The cost of providing services, transcribing the audio and providing one copy of transcription in electronic format provided on a CD, or as directed by the Office of Legislation and Hearings, is \$2.25 per page.

The cost of converting audio cassette tapes (presently 4 track) to digital files will be \$50 per tape under 3 hours; \$90 per tape under 6 hours.

Limitation on Price

The total costs for all services shall not exceed \$7,000.00 for FY 2013.

#### Method of Payment

Payment to be made based on invoices, which are supported by a summary of activities that have taken place in accordance with the terms of the contract. If otherwise correct and acceptable, payment will be made for 100% of the expenditure listed up to the point at which the cumulative amount of payments made against the contract is equal to 100% of the contract price. Invoices will be submitted to the statecontracting officer:

> Stephen W. F. Berwick Legislation/Hearings New Hampshire Department of Education 101 Pleasant Street Concord, NH 03301

> > Contractor Initials\_\_ Date\_\_

#### **Terms and Conditions:**

- 1. When delivering services under an approved contract, the contractor shall work under the direct supervision of the Coordinator of Dispute Resolution and Constituent Complaints in the Office of Legislation and Hearings for this project.
- 2. An Official Record Transcriber is subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance. Such investigation may be initiated by the Coordinator of Dispute Resolution and Constituent Complaints, the Deputy Commissioner or the Commissioner.

#### **SPECIAL PROVISIONS**

Waive Insurance and Bond requirements 14-14.2 of contract.

Contractor will carry appropriate levels of personal automobile insurance during the term of this contract, per the coverage levels as set forth in the attached policies:

Please note candidate lives in New York State and will not travel to pick-up or deliver services to New Hampshire. Audio cassette tapes will be sent to vendor by US Mail and returned by US Mail to agency from vendor. Transcripts will be sent to agency by vendor using CD or electronic mail.

Authorize the payment for services rendered and approved in lieu of withholding at least 25% of the total value of the contract.

Contractor Initials US

Date w/20/1

## State of New Hampshire Department of State

#### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that ANP Reporting Inc. a(n) New Jersey corporation, is authorized to transact business in New Hampshire and qualified on May 16, 2011. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, 1 hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 3<sup>rd</sup> day of October, A.D. 2012

William M. Gardner Secretary of State

## **CERTIFICATE OF AUTHORITY**

I, I right remove, Secretary/Clerk of Avi Reporting do hereby certify that:
(1) I maintain and have custody of and am familiar with the minute books of the organization;
(2) I am authorized to issue certificates with respect to the contents of such books;
of director of the association at a meeting of that board on, which meeting was held in accordance with the law of the state of incorporation and the by-laws of the organization;
(4) The foregoing resolution is in full force and effect, unamended, as of the date hereof; and
(5) The following persons lawfully occupy the offices indicated below:
President Vice President Secretary , Treasurer  IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary/Clerk of the organization this 3 day of Secretary 2012.
STATE OF NEW HAMPSHIRE
COUNTY OF BUGU
On <u>Sectors</u> 2012, before the undersigned officer personally appeared the person identified in the foregoing certificate, known to me to be the Secretary/Clerk of the organization identified in the foregoing certificate, and acknowledge that she/he executed the forgoing certificate.
In witness whereof I hereunto set my hand and official seal.

Notary Public/Justice of the Peace Comm. Exp. 8/1/2013