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Virginia M. Barry, Ph.D.
Commissioner of Education
Tel. 603-271-3144

Paul K. Leather
Deputy Commissioner
Tel. 603-271-7301

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
101 Pleasant Street
Concord, N.H. 03301
TEL: 603-271-2299
FAX 603-271-1953
Citizens Services Line 1-800-339-9900

May 21, 2013

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

83% General Funds
17% Federal Funds

REQUESTED ACTION

Authorize the Department of Education to utilize the services of the individuals shown below to conduct Special Education Impartial Due Process Hearings, State Board of Education Hearings, Vocational Rehabilitation Hearings, and Alternative Dispute Resolution sessions. This contract will be effective from Governor and Council Approval through June 30, 2015 in an amount not to exceed \$87,000.00 pending legislative approval of the next biennial budget. These are 17% federal funds and 83% General funds for fiscal year 2014 and 17% federal funds and 83% General funds for fiscal year 2015.

The individuals to be contracted with are as follows:

| | |
|---------------------------|---------------------|
| John P. LeBrun, Esquire | Vendor Code: 174196 |
| Amy B. Davidson, Esquire | Vendor Code: 159722 |
| Peter T. Foley, Esquire | Vendor Code: 159636 |
| Gail C. Morrison, J.D. | Vendor Code: 160818 |
| Scott F. Johnson, Esquire | Vendor Code: 177681 |

Funding is available for this contract from:

| <u>ACCOUNT NUMBER</u> | <u>FY 014</u> | <u>FY 015</u> |
|-----------------------------------|---------------|---------------|
| 06 56 56 560510 2022-046 (500464) | \$ 36,000.00 | \$ 36,000.00 |
| 06 56 56 565510 4020-046 (500464) | \$ 7,500.00 | \$ 7,500.00 |

His Excellency, Governor John H. Lynch
and the Honorable Council
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EXPLANATION

Appointment of hearing officers is a statutory requirement of administrative agencies. The department is required by State and Federal law to provide Hearing Officers to preside at Due Process Hearings and Alternative Dispute Resolution proceedings.

Candidates chosen fulfill Federal and State requirements for hearing officer/alternative dispute resolution officers in the following areas: Special Education Impartial Due Process Hearings, Vocational Rehabilitation Fair Hearings, State Board of Education hearings, mediations and neutral conferences.

Special Education Due Process hearing procedures are complex in terms of the length of time and in the legal issues brought before the hearing officer. The majority of due process hearings involve attorneys who represent school districts and parents. Federal law prohibits hearing officers from being employees of a state agency and therefore the department must enter into contracts with attorneys or other individuals with knowledge of state and federal special education laws. Federal law (Individuals with Disabilities Education Act) requires mediation be available upon request. Only twenty to thirty percent of the requests for hearing actually complete the entire process to a decision; mediation is one of the several effective tools that results in dispute resolution that is both cost efficient and less time consuming.

State Board hearings are required under 21-N:11, Duties of Board. The State Board is charged with hearing appeals and issuing decisions which are considered final decisions of the Department of Education for purposes of RSA 541. These appeals are brought to the State Board by individuals with complaints regarding school systems or the Department of Education.

Additionally, in order to comply with the provisions of RSA 200-C:12, the Rehabilitation Act amendments of 1992 and federal and state regulations pertaining to Vocational Rehabilitation, the Department of Education is contracting with individuals for the services of hearing officers. Federal law requires hearings for vocational rehabilitation clients with claims for reimbursement and/or services.

Please note that the agreements with hearing officers represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle said request, and number of cases currently outstanding for each hearing officer. Hearing officers are compensated based on the attached payment schedule. This schedule was developed based upon the median and average costs of all hearings and mediations held during a one year time span.

His Excellency, Governor John H. Lynch
and the Honorable Council
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May 21, 2013

An RFP was published in the *Manchester Union Leader* on January 27, 28 and 29, 2013, as well as published on the Department's web-page starting January 23 through February 15, 2013, for hearing officers to conduct special education due process hearings, State Board of Education hearings, mediations and neutral conferences. The five current hearing officers submitted applications that were received on or before the deadline for submitting RFP materials, which was February 15, 2013. There were no new candidates who responded this year to the RFP.

The applications were preliminarily reviewed by the Receptionist to ensure all RFP requirements were met by the candidates. After ensuring completeness, the applications were given to the Coordinator of Dispute Resolution and Constituent Complaints, who manages the hearings/alternative dispute resolution program. Subsequent to the posting of the request for proposal the current hearing officers were evaluated for job performance by the department in order to ensure they were meeting position requirements. As all candidates met the requirements of the RFP and their annual evaluations indicated all had met expectations for the position, and no other candidates responded to the RFP, it was determined to continue offering the opportunity to the candidates to perform as Hearing Officers for the 2014-15 biennium.

The role of the Coordinator of Dispute Resolution and Constituent Complaints was advisory in nature. The Coordinator's role in the process was to provide information, analysis, and recommendation 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,



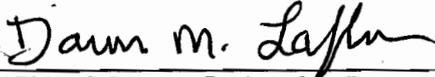
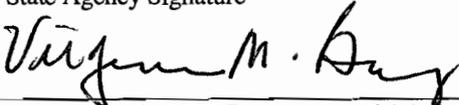
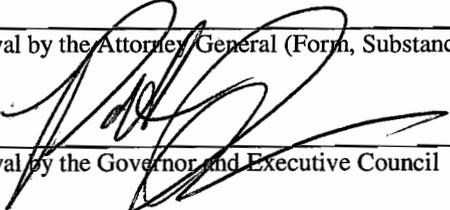
Virginia M. Barry, Ph.D.
Commissioner of Education

Subject: Conduct Agency Hearings and Alternative Dispute Resolution Sessions. FORM NUMBER P-37 (version 1/09)

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

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|--|-------------------------------------|--|-------------------------------------|
| 1.1 State Agency Name NH Department of Education | | 1.2 State Agency Address 101 Pleasant St., Concord, NH 03301 | |
| 1.3 Contractor Name Amy B. Davidson, Esq. | | 1.4 Contractor Address P.O. Box 625, Contoocook, NH 03229 | |
| 1.5 Contractor Phone Number (603)496-6730 | 1.6 Account Number See Exhibit B | 1.7 Completion Date June 30, 2015 | 1.8 Price Limitation \$87,000.00 |
| 1.9 Contracting Officer for State Agency Paul K. Leather, Deputy Commissioner of Education | | 1.10 State Agency Telephone Number 271-7301 | |
| 1.11 Contractor Signature  | | 1.12 Name and Title of Contractor Signatory Amy B. Davidson, Esquire | |
| 1.13 Acknowledgement: State of <u>NH</u> , County of <u>Merrimack</u> On <u>4/23/13</u> , 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]  | | DAWN M. LAFLAM, Justice of the Peace My Commission Expires March 20, 2018 | |
| 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. Barry, Ph.D., Commissioner of Education | |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ | | | |
| 1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>5/24/13</u> | | | |
| 1.18 Approval by the Governor 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.

Contractor Initials *[Signature]*
Date 4/23/13

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 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 *MD*
Date *4/23/13*

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.

Exhibit A

Scope of the Work:

In the role of Hearing Officer, the contractor shall:

1. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file (consisting of an accordion folder containing four labeled files: 1. Pleadings; 2. Correspondence; 3. Record; and, 4. Exhibits) to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Number the Orders in Hearing decisions under a section entitled Orders and ensure start and appropriate completion dates are included in Order.
14. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
15. Format of Hearing Officer Orders to be in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.
16. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting are the responsibility of the contractor.

Contractor Initials AMP
Date 4/23/13

EXHIBIT A – PAGE 2

17. File Weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday for the prior week.
18. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.
19. Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.

In the role of a Mediator or Neutral Officer the contractor shall:

20. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
21. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
22. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
23. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
24. Ensure timely responses to all inquiries of the parties.
25. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
26. If serving as Mediator, the Mediator shall notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
27. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting are the responsibility of the contractor.
28. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
29. Attend training sessions at the Department of Education in Concord.
30. Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.)

Contractor Initials _____
Date _____

AMM
4/23/13

Exhibit B

Payment Terms

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2015. This schedule was developed based upon the median and average costs of all hearings and mediations held during a one year time span.

| | | | |
|--|-------------|--|---|
| Mediation/Neutral Conference | | Date | |
| Upon acceptance of case - \$100* | | | |
| <ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$250 (example 9-4) • Less than 3 hours - \$150 (example: 9-noon; noon - 3) • Second Day - \$125 | | | |
| Prior to Pre-Hearing | | Date | |
| Upon acceptance of case - \$100* | | | |
| Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) <i>Total allowable for case: \$100</i> | | | |
| Sufficiency hearing - \$175 | | | |
| Hearing | | Date | |
| Pre-Hearing - \$150 | | | |
| Hearing - | | | |
| <ul style="list-style-type: none"> • 1st Day - More than 3 hours \$275; Less than 3 hours - \$150 • 2nd Day - More than 3 hours \$275; Less than 3 hours - \$150 | | | |
| Post-Hearing | | Date | |
| Prepare decision - \$250 | | | |
| <ul style="list-style-type: none"> • Hearing Decision • Summary Judgment | | | |
| Miscellaneous | Date | Details (mileage, time, other information necessary) | Payment (Less \$100.00 upon acceptance) |
| Preparation of subpoenas (Total for case) \$20 | | | |
| Mileage - \$0.51/mile** | | | Not Applicable |
| Travel time*** - \$30.00/hour, after first 2 hours** | | | |
| Training - | | | Not Applicable |
| <ul style="list-style-type: none"> • ½ day (four hours or less) - \$150.00 • Full day - \$300.00 | | | |
| Evaluation meeting \$30.00 | | | |
| File Preparation (includes Indexes, Admin file, Pre-hearing checklists) - \$20 per case if at close of settlement; withdrawal; dismissal <u>or</u> \$50 per case after full hearing and decision rendered | | | |
| Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE) | | | |
| Consultation (court, OSEP, OCR, DOE) \$30.00** | | | |
| OTHER - Describe | | | |

Items not covered in this schedule - *From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.*

Contractor Initials *MM*

Date *4/25/13*

EXHIBIT B – PAGE 2

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized. This amount includes weekly update of cases.*

***Only with prior approval from the office of legislation and hearings. Mileage is if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord.*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90.*

Account Numbers: 06 56 56 560510 2022-046 (500464) and 06 56 56 565510 4020-046 (500464)

*AMD
4/23/13*

Exhibit C

Terms and Conditions:

1. Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$87,000 for the biennium - \$43,500 for FY 14 and \$43,500 for FY 15.
2. All obligations of the State, including the continuance of payments under an approved contract shall be contingent upon the availability and continued appropriation of other funds and in no event shall the State be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate or amend the contract immediately upon giving the contractor notice of such termination or amendment.
4. Contractor will consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.
5. 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.
6. At the conclusion of proceedings, the Office of Legislation and Hearings will mail an evaluation to each party. The Coordinator of Dispute Resolution and Constituent Complaints will provide Hearing Officers with a quarterly synopsis of the evaluations. The quarterly evaluations will be used by the Coordinator of Dispute Resolution and Constituent Complaints as one of the components of the annual evaluation of contracted Hearing Officers performance.
7. All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

Conflicts of Interest

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Termination

This Agreement may be terminated by the DOE for cause immediately upon notice to the Contractor. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.

In the event that the Contractor fails to complete a case or where the Contractor has recused him/herself due to conflict of interest, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event that the Contractor fails to submit a closed case within the time period allowed by the law, or fails to comply with other record keeping or reporting requirements established by the DOE, the Contract may be terminated by the DOE immediately upon notice to the Contractor and any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event Contractor withdraws from a case prior to final disposition, under circumstances agreed to by the DOE, Contractor shall be entitled to receive credit for services rendered in that case as listed in Exhibit B.

Contractor Initials *MSA*
Date 4/23/13

EXHIBIT C – PAGE 2

The contracted individual will be paid mileage at the current state rate round-trip only with prior approval from the office of legislation and hearings. Mileage will be paid from the contracted individual's primary business address to hearing/mediation site if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venues.

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:

Amy B. Davidson, Esq.

Allstate Policy Number 9 25 152644 06/04

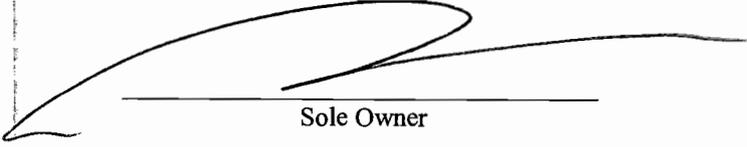
Contractor Initials AMS
Date 4/23/13

CERTIFICATE OF AUTHORITY

(Sole Proprietor)

I, Amy Davidson, as a Sole Owner of my Business, Attorney at Law, certify that I am authorized to enter into a contract with the State of New Hampshire, Department of Health and Human Services, Office of Information Systems, on behalf of myself.

IN WITNESS WHEREOF, I have hereunto set my hand as the Sole Owner of the Business this 23rd day of April, 2013


Sole Owner

STATE OF New Hampshire
COUNTY OF Merrimack

On this the 23rd day of April, 2013 before me, Dawn M. Laflam the undersigned Officer, personally appeared Amy B. Davidson, who acknowledged himself to be the Sole Owner of Law office of amy B. Davidson a Business, and that he, as such Sole Owner being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Business by ^{her} himself as Amy Davidson.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Dawn M. Laflam
Notary Public/Justice of the Peace

My Commission expires:

DAWN M. LAFLAM, Justice of the Peace
My Commission Expires March 20, 2018

RENEWAL Auto Policy Declarations

Summary

| | | |
|--|---|---|
| NAMED INSURED(S) Amy Beth Davidson PO Box 625 Contoocook NH 03229-0625 | YOUR ALLSTATE AGENT IS Colt & Assoc L.L.C. (603) 224-7444 239 Loudon Rd Concord NH 03301 | YOUR BILL lists your payment options. |
|--|---|---|

| | |
|----------------------|--|
| POLICY NUMBER | POLICY PERIOD June 4, 2013 to Dec. 4, 2013 at 12:01 a.m. standard time |
|----------------------|--|

| |
|-------------------------------------|
| DRIVER(S) LISTED Amy Beth |
|-------------------------------------|

| VEHICLES COVERED | VEHICLE ID NUMBER | LIENHOLDER |
|------------------|-------------------|------------|
| 1. 00 Honda | | None |

Total Premium

| | |
|----------------------------------|-----------------|
| Premium for 00 Honda | \$380.00 |
| Premium for Additional Coverages | \$45.30 |
| TOTAL | \$425.30 |

✓ Your total premium reflects a combined discount of \$118.00

Your Policy Effective Date is June 4, 2013

If you have any questions regarding discounts, credits, surcharges, occurrences or violations which may have impacted your premium, please contact your Allstate representative.

AUTO *510002813041503006160702*



II. RESUMÉ

AMY B. DAVIDSON
P.O. Box 625
Contoocook, New Hampshire 03229
Telephone (603)496-6730
e-mail abdavidsonlaw@msn.com

PROFESSIONAL

LAW OFFICE OF AMY B. DAVIDSON, Contoocook, NH, March 1992 – present; Private practice with concentration in juvenile, family and mental health law; Board-certified guardian *ad litem* in all New Hampshire courts; faculty for guardian *ad litem* training in the Probate Courts (fall of 2004 to present); New Hampshire Bar Association Domestic Violence Emergency (DOVE) Project panel attorney (1993 to present).

NEW HAMPSHIRE DEPARTMENT OF EDUCATION, Concord, NH, July 2001 – present; Hearing Officer/Alternative Dispute Resolution Officer. Preside over Impartial Due Process and State Board hearings and serve as a mediator and neutral evaluator in cases involving special education, student discipline, teacher contracts and other matters which come before the Department.

RIVIER COLLEGE, Nashua, NH, January 1999 – May 2001; Adjunct Faculty, Family Law Instructor, Paralegal Studies Program.

COLLEGE FOR LIFELONG LEARNING, Manchester, NH, April 1997 – May 1997; Adjunct Faculty. Family Law Instructor, Paralegal program.

DISABILITIES RIGHTS CENTER, INC., Concord, NH, March 1985 – October 1991; Staff Attorney. Represented individuals with disabilities in federal and state courts and before administrative agencies, in matters involving special education, rights to treatment and services, housing and benefits; participated in workshops, conferences and legislative activities which addressed disability-related issues.

SOUTHERN TIER LEGAL SERVICES, Bath, NY, August 1982 – March 1985; Reginald Heber Smith Community Lawyer Fellow. Represented low-income clients in cases involving housing, public benefits, education, disability and mental health; organized and conducted Social Security/SSI and special education workshops for community groups.

CORNING COMMUNITY COLLEGE, Corning, NY, fall 1982; Visiting Lecturer. Taught a course entitled “Wills and Trusts for the Layperson”.

UNIVERSITY OF NEW HAMPSHIRE SCHOOL OF LAW (FORMERLY FRANKLIN PIERCE LAW CENTER), Concord, NH, August, 1980 – March 1982; Civil Procedure Teaching Assistant. Prepared and taught weekly sessions for first year law students.

A BETTER CHANCE, INC., Concord, NH, September 1980 – June 1981, Tutor. Worked with inner city students in a residential setting; assisted with academics and college preparation.

CENTER FOR EVALUATION AND RESEARCH OF RHODE ISLAND COLLEGE, Providence, RI, May 1978 – May 1979; Graduate Research Assistant. Evaluated compensatory education programs throughout Rhode Island; responsibilities included conducting interviews, classroom observations, development of testing and survey instruments, report preparation and data analysis.

SOUTH NORFOLK COUNTY ARC, INC., Sharon, MA, August 1978 – June 1979; Assistant House Manager. Provided community-based services to eight women with developmental challenges.

EDUCATION

UNIVERSITY OF NEW HAMPSHIRE SCHOOL OF LAW, Concord, NH, Juris Doctor, 1982.

RHODE ISLAND COLLEGE, Providence, RI, Master of Arts, Social Psychology and Personality, 1979.

BOSTON UNIVERSITY, Boston, MA, Bachelor of Arts, Psychology, 1974.

BAR ADMISSIONS

STATE: New Hampshire – 1985
Massachusetts – 1984
New York – 1983

FEDERAL: U.S. District Court, District of Massachusetts - 1994
U.S. Court of Appeals for the First Circuit – 1989
U.S. District Court, District of New Hampshire – 1985
U.S. District Court, Western District of New York – 1983

PROFESSIONAL MEMBERSHIPS

New Hampshire Bar Association

MISCELLANEOUS INTERESTS

Conservation and environmental concerns;

Professional musician/piano teacher;

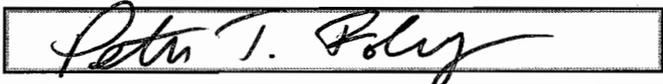
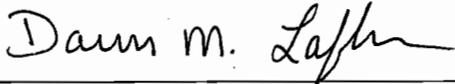
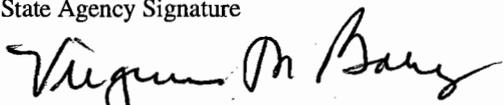
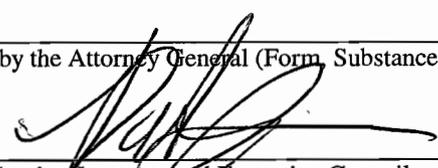
Hiking, triathlon, running, trail and road biking, kayaking, Nordic and alpine skiing, volleyball, tennis, badminton, camping.

Subject: Conduct Agency Hearings and Alternative Dispute Resolution Sessions. FORM NUMBER P-37 (version 1/09)

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

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|--|-------------------------------------|--|-------------------------------------|
| 1.1 State Agency Name NH Department of Education | | 1.2 State Agency Address 101 Pleasant St., Concord, NH 03301 | |
| 1.3 Contractor Name Peter T. Foley, Esq. | | 1.4 Contractor Address P.O. Box 2753, Concord, NH 03302 | |
| 1.5 Contractor Phone Number (603)224-6368 | 1.6 Account Number See Exhibit B | 1.7 Completion Date June 30, 2015 | 1.8 Price Limitation \$87,000.00 |
| 1.9 Contracting Officer for State Agency Paul K. Leather, Deputy Commissioner of Education | | 1.10 State Agency Telephone Number 271-7301 | |
| 1.11 Contractor Signature  | | 1.12 Name and Title of Contractor Signatory Peter T. Foley, Esquire | |
| 1.13 Acknowledgement: State of <u>NH</u> , County of <u>Merrimack</u> On <u>5/11/13</u> , 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]  | | DAWN M. LAFLAM, Justice of the Peace My Commission Expires March 20, 2018 | |
| 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. Barry, Ph.D., Commissioner of Education | |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ | | | |
| 1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>5/24/13</u> | | | |
| 1.18 Approval by the Governor 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.

Contractor Initials ATP
Date 5-1-13

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 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

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.

Exhibit A

Scope of the Work:

In the role of Hearing Officer, the contractor shall:

1. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file (consisting of an accordion folder containing four labeled files: 1. Pleadings; 2. Correspondence; 3. Record; and, 4. Exhibits) to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Number the Orders in Hearing decisions under a section entitled Orders and ensure start and appropriate completion dates are included in Order.
14. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
15. Format of Hearing Officer Orders to be in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.
16. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting are the responsibility of the contractor.

Contractor Initials PTF
Date 5-1-13

EXHIBIT A – PAGE 2

17. File Weekly case reports with the Office of Legislation and hearings by no later than noon on Monday for the prior week.
18. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.
19. Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.

In the role of a Mediator or Neutral Officer the contractor shall:

20. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
21. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
22. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
23. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
24. Ensure timely responses to all inquiries of the parties.
25. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
26. If serving as Mediator, the Mediator shall notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
27. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting are the responsibility of the contractor.
28. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
29. Attend training sessions at the Department of Education in Concord.
30. Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.)

Contractor Initials PTP

Date 5-1-13

Exhibit B

Payment Terms

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2015. This schedule was developed based upon the median and average costs of all hearings and mediations held during a one year time span.

| | | | |
|--|-------------|--|---|
| Mediation/Neutral Conference | | Date | |
| Upon acceptance of case - \$100* | | | |
| <ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$250 (example 9-4) • Less than 3 hours - \$150 (example: 9-noon; noon - 3) • Second Day - \$125 | | | |
| Prior to Pre-Hearing | | Date | |
| Upon acceptance of case - \$100* | | | |
| Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) <i>Total allowable for case: \$100</i> | | | |
| Sufficiency hearing - \$175 | | | |
| Hearing | | Date | |
| Pre-Hearing - \$150 | | | |
| Hearing - | | | |
| <ul style="list-style-type: none"> • 1st Day - More than 3 hours \$275; Less than 3 hours - \$150 • 2nd Day - More than 3 hours \$275; Less than 3 hours - \$150 | | | |
| Post-Hearing | | Date | |
| Prepare decision - \$250 | | | |
| <ul style="list-style-type: none"> • Hearing Decision • Summary Judgment | | | |
| Miscellaneous | Date | Details (mileage, time, other information necessary) | Payment (Less \$100.00 upon acceptance) |
| Preparation of subpoenas (Total for case) \$20 | | | |
| Mileage - \$0.51/mile** | | | Not Applicable |
| Travel time*** - \$30.00/hour, after first 2 hours* ** | | | |
| Training - | | | |
| <ul style="list-style-type: none"> • ½ day (four hours or less) - \$150.00 • Full day - \$300.00 | | | Not Applicable |
| Evaluation meeting \$30.00 | | | |
| File Preparation (includes Indexes, Admin file, Pre-hearing checklists) - \$20 per case if at close of settlement; withdrawal; dismissal <i>or</i> \$50 per case after full hearing and decision rendered | | | |
| Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE) | | | |
| Consultation (court, OSEP, OCR, DOE) \$30.00** | | | |
| OTHER - Describe | | | |

Items not covered in this schedule - From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.

Contractor Initials DIF
Date 5-1-13

EXHIBIT B – PAGE 2

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized. This amount includes weekly update of cases.*

***Only with prior approval from the office of legislation and hearings. Mileage is if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord.*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90.*

Account Numbers: 06 56 56 560510 2022-046 (500464) and 06 56 56 565510 4020-046 (500464)

Contractor Initials PTP
Date 5-1-13

Exhibit C

Terms and Conditions:

1. Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$87,000 for the biennium - \$43,500 for FY 14 and \$43,500 for FY 15.
2. All obligations of the State, including the continuance of payments under an approved contract shall be contingent upon the availability and continued appropriation of other funds and in no event shall the State be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate or amend the contract immediately upon giving the contractor notice of such termination or amendment.
4. Contractor will consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.
5. 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.
6. At the conclusion of proceedings, the Office of Legislation and Hearings will mail an evaluation to each party. The Coordinator of Dispute Resolution and Constituent Complaints will provide Hearing Officers with a quarterly synopsis of the evaluations. The quarterly evaluations will be used by the Coordinator of Dispute Resolution and Constituent Complaints as one of the components of the annual evaluation of contracted Hearing Officers performance.
7. All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

Conflicts of Interest

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Termination

This Agreement may be terminated by the DOE for cause immediately upon notice to the Contractor. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.

In the event that the Contractor fails to complete a case or where the Contractor has recused him/herself due to conflict of interest, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event that the Contractor fails to submit a closed case within the time period allowed by the law, or fails to comply with other record keeping or reporting requirements established by the DOE, the Contract may be terminated by the DOE immediately upon notice to the Contractor and any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event Contractor withdraws from a case prior to final disposition, under circumstances agreed to by the DOE, Contractor shall be entitled to receive credit for services rendered in that case as listed in Exhibit B.

Contractor Initials PTP
Date 5-1-13

EXHIBIT C – PAGE 2

The contracted individual will be paid mileage at the current state rate round-trip only with prior approval from the office of legislation and hearings. Mileage will be paid from the contracted individual's primary business address to hearing/mediation site if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venues.

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:

Peter T. Foley, Esq.

Amica Mutual Insurance Co. Policy Number 920628-21CH

Contractor Initials PTF
Date 5-1-13

CERTIFICATE OF AUTHORITY

(Sole Proprietor)

I, Peter T. Foley, as a Sole Owner of my Business, Foley Law Office, certify that I am authorized to enter into a contract with the State of New Hampshire, Department of Health and Human Services, Office of Information Systems, on behalf of myself.

IN WITNESS WHEREOF, I have hereunto set my hand as the Sole Owner of the Business this 1st day of May, 2013.

Peter T. Foley
Sole Owner

STATE OF New Hampshire
COUNTY OF Merrimack

On this the 1st day of May, 2013, before me, Dawn M. Laflam the undersigned Officer, personally appeared Peter T. Foley, who acknowledged himself to be the Sole Owner of Foley Law Office, a Business, and that he, as such Sole Owner being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Business by himself as Peter T. Foley.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Dawn M. Laflam
Notary Public/Justice of the Peace

My Commission expires:

DAWN M. LAFLAM, Justice of the Peace
My Commission Expires March 20, 2018

NEW HAMPSHIRE INSURANCE IDENTIFICATION CARD

This certifies that the insured shown holds an automobile liability policy issued by Amica Mutual Insurance Company. The coverage provided by this policy meets the minimum liability limits prescribed by law. NAIC # 19778

YEAR MAKE VEHICLE IDENTIFICATION NUMBER

VOLVO

POLICY NUMBER

EFFECTIVE DATE

EXPIRATION DATE

06/15/2013

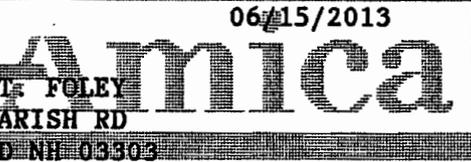
06/15/2014

INSURED

PETER T. FOLEY

65 W PARISH RD

CONCORD NH 03303



Concord Regional Office
1-877-512-6422



PETER T. FOLEY

P.O. Box 2753
Concord, New Hampshire 03302
Telephone: (603) 224-6368
Fax: (603) 227-0777
foleypt@comcast.net

EDUCATION

Georgetown University Law Center, Washington, D.C.
J.D. *cum laude*, 1981
Honors: Law Review: American Criminal Law Review
Editor, 1980-81
Member, 1979-80

Stonehill College, North Easton, Massachusetts
A.B. *magna cum laude*, 1978, *Political Science*
Honors: Lambda Epsilon Sigma Honor Society
Phi Alpha Theta Honor Society

EMPLOYMENT

LEGAL

Foley Law Office, Concord, New Hampshire
Solo Practitioner, July 1991 - present
Established and maintain private law practice specializing in
administrative/government law, mediation/hearing officer services and election
law. Representative clients: New Hampshire Department of Education, New
Hampshire Department of Justice, New Hampshire Retirement System.

GOVERNMENTAL

State of New Hampshire, Office of the Attorney General, Concord, NH
Senior Assistant Attorney General, December 1986 - January 1991
Member of management team of fifty-attorney law office with emphasis on
supervision of professional and support staff of the Office's Civil Bureau.
As Civil Litigation Coordinator, organized and oversaw all aspects of twelve-
attorney Civil Bureau's state and federal litigation, including case assignment,
discovery, pretrial practice, settlement negotiation and jury trial preparation and
presentation.

Assistant Attorney General, August 1983- December 1986
Attorney, September 1981 - August 1983
Advised state agencies and officials regarding legal aspects of departmental
administration including statutory interpretation, administrative rulemaking,
contract negotiation and contract drafting. Maintained individual litigation
caseload in state and federal courts with extensive involvement in the defense of
medical negligence claims and Section 1983 civil rights actions. Represented
state agencies and officials in civil actions in state superior and probate court,
federal district court and before state administrative bodies. Wrote legal briefs
and orally argued on behalf of state agencies and officials in civil appellate
proceedings in the New Hampshire Supreme Court and the First Circuit Court of
Appeals. State agency clients included Department of Revenue, Department of
Health and Human Services, New Hampshire Hospital and Laconia State
School.

EMPLOYMENT

HIGHER EDUCATION

**Franklin Pierce Law Center, Concord, New Hampshire
Adjunct Professor - Sports Law, August 1991 – present**

Develop, design and teach curriculum for two law school courses that use professional and amateur sports case studies to teach principles of contract, labor, antitrust, constitutional and individual rights law.

Adjunct Professor - Advanced Legal Writing, August 1996 - May 1998

Designed and taught curriculum that used “real life” court cases to teach advanced legal writing skills to second and third year law students.

POLITICAL

**Kerry-Edwards Campaign, Manchester, New Hampshire
July 2004-November 2004**

Associate New Hampshire Counsel

Member of five-person core legal team of New Hampshire Democratic State Party Coordinated Campaign with individual specialty in student voting legal intervention and protection. Unprecedented college student registration, turnout and poll access provided margin of Democratic victory in 2004 NH Presidential and Gubernatorial elections.

Dean for America, November 2003 - March 2004

Co-Legal Counsel, New Hampshire, Maine and Wisconsin GOTV Program.

Established and coordinated a network of volunteer attorneys and law students to provide Election Day registration information and legal protection to college students and other individuals seeking to register to vote in 2004 Democratic primaries.

Shaheen for Senate, September – November 2002

Gore/Lieberman 2000, October – November 2000

On-Site Legal Coordinator, Student GOTV

Student Legal Advocate and Observer of Election Day student voter registration process at Durham, NH (University of New Hampshire) and Plymouth, NH (Plymouth State University) polling centers.

MEDIA

New Hampshire Public Radio, Concord, New Hampshire

Commentator, April 1998 - 2004

Wrote, produced and recorded sports humor essays for NHPR's local segments of National Public Radio's daily news programs, *Morning Edition* and *All Things Considered*.

KUSC Radio, Los Angeles, California

Commentator, Marketplace, September 1997 – 2001

Monitor Radio, Boston, Massachusetts

Commentator, March 1995 - July 1997

Wrote, produced and recorded sports law and sports business essays for two nationally syndicated daily news programs.

BAR MEMBERSHIP

State of New Hampshire (1981)

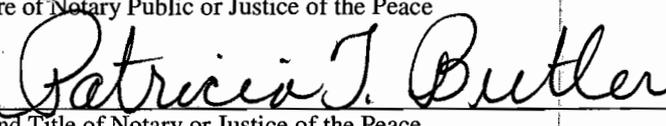
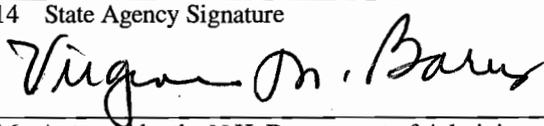
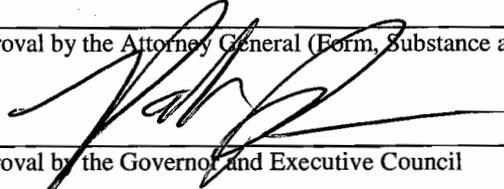
Subject: Conduct Agency Hearings and Alternative Dispute Resolution Sessions. FORM NUMBER P-37 (version 1/09)

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|--|--|---|--|
| 1.1 State Agency Name <u>NH Department of Education</u> | | 1.2 State Agency Address <u>101 Pleasant St., Concord, NH 03301</u> | |
| 1.3 Contractor Name <u>Scott F. Johnson, Esq.</u> | | 1.4 Contractor Address <u>P.O. Box 549, Warner, NH 03278</u> | |
| 1.5 Contractor Phone Number <u>(603)456-2937</u> | 1.6 Account Number <u>See Exhibit B</u> | 1.7 Completion Date <u>June 30, 2015</u> | 1.8 Price Limitation <u>\$87,000.00</u> |
| 1.9 Contracting Officer for State Agency <u>Paul K. Leather, Deputy Commissioner of Education</u> | | 1.10 State Agency Telephone Number <u>271-7301</u> | |
| 1.11 Contractor Signature  | | 1.12 Name and Title of Contractor Signatory <u>Scott F. Johnson, Esquire</u> | |
| 1.13 Acknowledgement: State of <u>NH</u> , County of <u>Merrimack</u> On <u>4/29/13</u> , 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]  | | PATRICIA T. BUTLER NOTARY PUBLIC - NEW HAMPSHIRE My Commission Expires February 6, 2018 | |
| 1.13.2 Name and Title of Notary or Justice of the Peace <u>Patricia T. Butler, Notary Public</u> | | | |
| 1.14 State Agency Signature  | | 1.15 Name and Title of State Agency Signatory <u>Virginia M. Barry, Ph.D., Commissioner of Education</u> | |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ | | | |
| 1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>5/30/13</u> | | | |
| 1.18 Approval by the Governor 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.

Contractor Initials 
Date 4/29/13

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 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 MB
Date 9/30/13

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.

[Handwritten Signature]
2/30/13

Exhibit A

Scope of the Work:

In the role of Hearing Officer, the contractor shall:

1. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file (consisting of an accordion folder containing four labeled files: 1. Pleadings; 2. Correspondence; 3. Record; and, 4. Exhibits) to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Number the Orders in Hearing decisions under a section entitled Orders and ensure start and appropriate completion dates are included in Order.
14. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
15. Format of Hearing Officer Orders to be in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.
16. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting are the responsibility of the contractor.

Contractor Initials _____
Date _____

4/8/13

EXHIBIT A – PAGE 2

17. File Weekly case reports with the Office of Legislation and hearings by no later than noon on Monday for the prior week.
18. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.
19. Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.

In the role of a Mediator or Neutral Officer the contractor shall:

20. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
21. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
22. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
23. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
24. Ensure timely responses to all inquiries of the parties.
25. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
26. If serving as Mediator, the Mediator shall notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
27. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting are the responsibility of the contractor.
28. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
29. Attend training sessions at the Department of Education in Concord.
30. Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.)

Contractor Initials
Date

[Handwritten Signature]
4/3/13

Exhibit B

Payment Terms

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2015. This schedule was developed based upon the median and average costs of all hearings and mediations held during a one year time span.

| Mediation/Neutral Conference | | Date | |
|--|------|--|--|
| Upon acceptance of case - \$100* | | | |
| <ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$250 (example 9-4) • Less than 3 hours - \$150 (example: 9-noon; noon - 3) • Second Day - \$125 | | | |
| Prior to Pre-Hearing | | Date | |
| Upon acceptance of case - \$100* | | | |
| Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) <i>Total allowable for case: \$100</i> | | | |
| Sufficiency hearing - \$175 | | | |
| Hearing | | Date | |
| Pre-Hearing - \$150 | | | |
| Hearing - | | | |
| <ul style="list-style-type: none"> • 1st Day - More than 3 hours \$275; Less than 3 hours - \$150 • 2nd Day - More than 3 hours \$275; Less than 3 hours - \$150 | | | |
| Post-Hearing | | Date | |
| Prepare decision - \$250 | | | |
| <ul style="list-style-type: none"> • Hearing Decision • Summary Judgment | | | |
| Miscellaneous | Date | Details (mileage, time, other information necessary) | Payment (Less \$100.00 upon acceptance) |
| Preparation of subpoenas (Total for case) \$20 | | | |
| Mileage - \$0.51/mile** | | | Not Applicable |
| Travel time*** - \$30.00/hour, after first 2 hours* ** | | | |
| Training - | | | Not Applicable |
| <ul style="list-style-type: none"> • ½ day (four hours or less) - \$150.00 • Full day - \$300.00 | | | |
| Evaluation meeting \$30.00 | | | |
| File Preparation (includes Indexes, Admin file, Pre-hearing checklists) - \$20 per case if at close of settlement; withdrawal; dismissal <i>or</i> \$50 per case after full hearing and decision rendered | | | |
| Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE) | | | |
| Consultation (court, OSEP, OCR, DOE) \$30.00** | | | |
| OTHER - Describe | | | |

Items not covered in this schedule - From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.

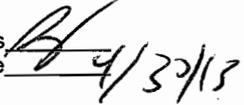
Contractor Initials 
Date 4/30/15

EXHIBIT B – PAGE 2

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized. This amount includes weekly update of cases.*

***Only with prior approval from the office of legislation and hearings. Mileage is if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord.*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90.*

Account Numbers: 06 56 56 560510 2022-046 (500464) and 06 56 56 565510 4020-046 (500464)

Contractor Initials
Date 4/30/13

Exhibit C

Terms and Conditions:

1. Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$87,000 for the biennium - \$43,500 for FY 14 and \$43,500 for FY 15.
2. All obligations of the State, including the continuance of payments under an approved contract shall be contingent upon the availability and continued appropriation of other funds and in no event shall the State be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate or amend the contract immediately upon giving the contractor notice of such termination or amendment.
4. Contractor will consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.
5. 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.
6. At the conclusion of proceedings, the Office of Legislation and Hearings will mail an evaluation to each party. The Coordinator of Dispute Resolution and Constituent Complaints will provide Hearing Officers with a quarterly synopsis of the evaluations. The quarterly evaluations will be used by the Coordinator of Dispute Resolution and Constituent Complaints as one of the components of the annual evaluation of contracted Hearing Officers performance.
7. All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

Conflicts of Interest

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Termination

This Agreement may be terminated by the DOE for cause immediately upon notice to the Contractor. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.

In the event that the Contractor fails to complete a case or where the Contractor has recused him/herself due to conflict of interest, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event that the Contractor fails to submit a closed case within the time period allowed by the law, or fails to comply with other record keeping or reporting requirements established by the DOE, the Contract may be terminated by the DOE immediately upon notice to the Contractor and any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event Contractor withdraws from a case prior to final disposition, under circumstances agreed to by the DOE, Contractor shall be entitled to receive credit for services rendered in that case as listed in Exhibit B.

Contractor Initials _____
Date _____

[Handwritten Signature]
4/3/12

EXHIBIT C – PAGE 2

The contracted individual will be paid mileage at the current state rate round-trip only with prior approval from the office of legislation and hearings. Mileage will be paid from the contracted individual's primary business address to hearing/mediation site if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venues.

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:

Scott F. Johnson, Esq.

Allmerica Financial Benefit Ins. Policy Number A2V 9123669

Contractor Initials
Date


4/30/18

CERTIFICATE OF AUTHORITY

(Sole Proprietor)

I, Scott F Johnson, as a Sole Owner of my Business, Scott F Johnson, certify that I am authorized to enter into a contract with the State of New Hampshire, Department of Health and Human Services, Office of Information Systems, on behalf of myself.

IN WITNESS WHEREOF, I have hereunto set my hand as the Sole Owner of the Business this 29 day of April, 2013.


Sole Owner

STATE OF New Hampshire
COUNTY OF Merrimack

On this the 29th day of April, 2013, before me, Patricia T. Butler undersigned Officer, personally appeared Scott F. Johnson, who acknowledged himself to be the Sole Owner of Scott F Johnson, a Business, and that he, as such Sole Owner being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Business by himself as Scott F. Johnson

IN WITNESS WHEREOF I hereunto set my hand and official seal.


Notary Public/Justice of the Peace

My Commission expires:

PATRICIA T. BUTLER
NOTARY PUBLIC - NEW HAMPSHIRE
My Commission Expires February 6, 2018

INSURANCE IDENTIFICATION CARD

(STATE) NEW HAMPSHIRE 06
COMPANY NUMBER COMPANY ALLMERICA FINANCIAL BENEFIT INS
POLICY NUMBER EFFECTIVE DATE EXPIRATION DATE
04-25-12 04-25-13
YEAR MAKE/MODEL VEHICLE IDENTIFICATION NUMBER
TOYT

AGENCY/COMPANY ISSUING CARD
DAVIS & TOWLE GROUP, INC.
115 AIRPORT RD
PO BOX 1260
CONCORD NH 03302

INSURED SCOTT JOHNSON
355 KEARSARGE MOUNTAIN RD
WARNER, NH 03278

SEE IMPORTANT INFORMATION ON REVERSE SIDE

Scott F. Johnson, Esq.

PO Box 549
Warner, NH 03278
(603) 456-2937

Experience

- 2000 - Present **Concord University School of Law**
Professor of Law. Develop and teach Administrative Law, Education Law, Health Law, Civil Procedure and Medical Products Liability courses. Create and grade student assessments and exams. Serve on various academic committees.
- 2008- Present **OPEN-NH, New Hampshire Department of Education**
Course Developer and Facilitator. Develop and facilitate online professional development courses for the New Hampshire Department of Education's Online Professional Education Network (OPEN-NH).
- 2006- Present **New Hampshire Department of Education**
Hearing Officer. Serve as a hearing officer and alternative dispute resolution officer for special education and State Board of Education cases. Duties include presiding over administrative hearings, ruling on various motions, issuing decisions, and conducting mediation sessions.
- 2005 - Present **Education Law Resource Center**
Founder. Provide information and resources about special education and related topics including preventing the use of physical restraints in schools. Provide trainings for attorneys, educators, parents, schools and organizations. Write and publish *Preventing Physical Restraints in Schools: A Guide for Parents, Educators & Professionals*. Develop website www.edlawrc.com to provide resources and information about education law
- 2003 - Present **NHedLaw, LLC**
Founder. Provide New Hampshire specific resources and training programs regarding special education and related laws including No Child Left Behind for attorneys, educators, parents, schools and organizations. Write and publish the *New Hampshire Special Education Law Manual: A Guide for Parents, Educators & Professionals*. Develop website www.nhedlaw.com.
- 2003 - 2008 **Franklin Pierce Law Center, Concord, NH**
Adjunct Professor/Visiting Professor. Developed and taught Education Law, Special Education Law, and Administrative Law classes.

Education

Franklin Pierce Law Center, Concord, NH

J.D. May, 1997 Class rank: Top 5%

- Scholar's Paper Award, First Annual Academic Convocation for Law Students, Suffolk University Law School
- Quarter-finalist, National Health Law Moot Court Competition, Southern Illinois University School of Law
- Annual Survey of New Hampshire Law, Editor

University of North Carolina at Charlotte, Charlotte, NC
B.A., Political Science, Minor in American Studies, 1992

Bar

Admitted to New Hampshire Bar November, 1997

Publications

- *Education Law: A Problem Based Approach*, with Sarah E. Redfield, Lexis-Nexis Publishing(2010).
- *Special Education Law, 4th Edition*, with Laura Rothstein, Sage Publications (2009)
- *New Hampshire Special Education Law Manual: A Guide for Parents, Educators, Advocates & Attorneys*, 4th Edition, NHedLaw, LLC (2008).
-
- *Administrative Agencies: A Comparison of New Hampshire and Federal Agencies History, Structure and Rulemaking Requirements*, 4 Pierce L. Rev. 435 (2006)
- *Preventing Physical Restraints in Schools: A Guide for Parents, Educators & Professionals*, Education Law Resource Center (2005)
- *Reexamining Rowley: A New Focus in Special Education Law*, 2 BYU Education Law Journal 561 (2003).
- *Bragdon v. Abbott: Analysis and Implications for People Living with HIV/AIDS and Other Disabilities*, 40 New Hampshire Bar Journal 1 (1999).
- *Suing Under the Americans With Disabilities Act or Seeking Disability Benefits: A Hobson's Choice for People With Disabilities*. Vol. 6, No. 1 Journal of Individual Employment Rights 49 (1997-98).
- *Opening Up Attorney Disciplinary Proceedings: Here comes the sun. It's all right?* 37 New Hampshire Bar Journal 10 (1996).

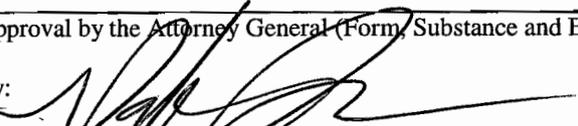
Subject: Conduct Agency Hearings and Alternative Dispute Resolution Sessions. **FORM NUMBER P-37 (version 1/09)**

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|--|--|---|--|
| 1.1 State Agency Name <u>NH Department of Education</u> | | 1.2 State Agency Address <u>101 Pleasant St., Concord, NH 03301</u> | |
| 1.3 Contractor Name <u>John P. LeBrun, Esq.</u> | | 1.4 Contractor Address <u>46 N. State St., PO Box 660, Concord, NH 03302-0660</u> | |
| 1.5 Contractor Phone Number <u>(603)224-9042</u> | 1.6 Account Number <u>See Exhibit B</u> | 1.7 Completion Date <u>June 30, 2015</u> | 1.8 Price Limitation <u>\$87,000.00</u> |
| 1.9 Contracting Officer for State Agency <u>Paul K. Leather, Deputy Commissioner of Education</u> | | 1.10 State Agency Telephone Number <u>271-7301</u> | |
| 1.11 Contractor Signature  | | 1.12 Name and Title of Contractor Signatory <u>John P. LeBrun, Esquire</u> | |
| 1.13 Acknowledgement: State of <u>NH</u> , County of <u>Merrimack</u> On <u>4/29/13</u> , 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 <u>Patricia T. Butler</u> [Seal] | | PATRICIA T. BUTLER NOTARY PUBLIC - NEW HAMPSHIRE My Commission Expires February 6, 2018 | |
| 1.13.2 Name and Title of Notary or Justice of the Peace <u>Patricia T. Butler, Notary Public</u> | | | |
| 1.14 State Agency Signature <u>Virginia M. Barry</u> | | 1.15 Name and Title of State Agency Signatory <u>Virginia M. Barry, Ph.D., Commissioner of Education</u> | |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ | | | |
| 1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>5/30/13</u> | | | |
| 1.18 Approval by the Governor 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 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 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 WPL
Date 4/29/13

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.

Exhibit A

Scope of the Work:

In the role of Hearing Officer, the contractor shall:

1. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file (consisting of an accordion folder containing four labeled files: 1. Pleadings; 2. Correspondence; 3. Record; and, 4. Exhibits) to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Number the Orders in Hearing decisions under a section entitled Orders and ensure start and appropriate completion dates are included in Order.
14. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
15. Format of Hearing Officer Orders to be in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.
16. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting are the responsibility of the contractor.

Contractor Initials JM
Date 9/29/13

EXHIBIT A – PAGE 2

17. File Weekly case reports with the Office of Legislation and hearings by no later than noon on Monday for the prior week.
18. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.
19. Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.

In the role of a Mediator or Neutral Officer the contractor shall:

20. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
21. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
22. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
23. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
24. Ensure timely responses to all inquiries of the parties.
25. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
26. If serving as Mediator, the Mediator shall notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
27. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting are the responsibility of the contractor.
28. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
29. Attend training sessions at the Department of Education in Concord.
30. Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.)

Contractor Initials JPL
Date 4/29/13

Exhibit B

Payment Terms

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2015. This schedule was developed based upon the median and average costs of all hearings and mediations held during a one year time span.

| | | | |
|--|-------------|--|---|
| Mediation/Neutral Conference | | Date | |
| Upon acceptance of case - \$100* | | | |
| <ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$250 (example 9-4) • Less than 3 hours - \$150 (example: 9-noon; noon - 3) • Second Day - \$125 | | | |
| Prior to Pre-Hearing | | Date | |
| Upon acceptance of case - \$100* | | | |
| Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) <i>Total allowable for case: \$100</i> | | | |
| Sufficiency hearing - \$175 | | | |
| Hearing | | Date | |
| Pre-Hearing - \$150 | | | |
| Hearing - | | | |
| <ul style="list-style-type: none"> • 1st Day - More than 3 hours \$275; Less than 3 hours - \$150 • 2nd Day - More than 3 hours \$275; Less than 3 hours - \$150 | | | |
| Post-Hearing | | Date | |
| Prepare decision - \$250 | | | |
| <ul style="list-style-type: none"> • Hearing Decision • Summary Judgment | | | |
| Miscellaneous | Date | Details (mileage, time, other information necessary) | Payment (Less \$100.00 upon acceptance) |
| Preparation of subpoenas (Total for case) \$20 | | | |
| Mileage - \$0.51/mile** | | | Not Applicable |
| Travel time*** - \$30.00/hour, after first 2 hours* ** | | | |
| Training - | | | Not Applicable |
| <ul style="list-style-type: none"> • ½ day (four hours or less) - \$150.00 • Full day - \$300.00 | | | |
| Evaluation meeting \$30.00 | | | |
| File Preparation (includes Indexes, Admin file, Pre-hearing checklists) - \$20 per case if at close of settlement; withdrawal; dismissal <u>or</u> \$50 per case after full hearing and decision rendered | | | |
| Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE) | | | |
| Consultation (court, OSEP, OCR, DOE) \$30.00** | | | |
| OTHER - Describe | | | |

Items not covered in this schedule - *From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.*

Contractor Initials JMC
Date 4/29/13

EXHIBIT B – PAGE 2

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized. This amount includes weekly update of cases.*

***Only with prior approval from the office of legislation and hearings. Mileage is if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord.*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90.*

Account Numbers: 06 56 56 560510 2022-046 (500464) and 06 56 56 565510 4020-046 (500464)

Contractor Initials JPL
Date 4/29/13

Exhibit C

Terms and Conditions:

1. Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$87,000 for the biennium - \$43,500 for FY 14 and \$43,500 for FY 15.
2. All obligations of the State, including the continuance of payments under an approved contract shall be contingent upon the availability and continued appropriation of other funds and in no event shall the State be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate or amend the contract immediately upon giving the contractor notice of such termination or amendment.
4. Contractor will consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.
5. 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.
6. At the conclusion of proceedings, the Office of Legislation and Hearings will mail an evaluation to each party. The Coordinator of Dispute Resolution and Constituent Complaints will provide Hearing Officers with a quarterly synopsis of the evaluations. The quarterly evaluations will be used by the Coordinator of Dispute Resolution and Constituent Complaints as one of the components of the annual evaluation of contracted Hearing Officers performance.
7. All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

Conflicts of Interest

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Termination

This Agreement may be terminated by the DOE for cause immediately upon notice to the Contractor. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.

In the event that the Contractor fails to complete a case or where the Contractor has recused him/herself due to conflict of interest, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event that the Contractor fails to submit a closed case within the time period allowed by the law, or fails to comply with other record keeping or reporting requirements established by the DOE, the Contract may be terminated by the DOE immediately upon notice to the Contractor and any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event Contractor withdraws from a case prior to final disposition, under circumstances agreed to by the DOE, Contractor shall be entitled to receive credit for services rendered in that case as listed in Exhibit B.

Contractor Initials JVK
Date 4/29/13

EXHIBIT C – PAGE 2

The contracted individual will be paid mileage at the current state rate round-trip only with prior approval from the office of legislation and hearings. Mileage will be paid from the contracted individual's primary business address to hearing/mediation site if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venues.

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:

John L. LeBrun, Esq.

State Farm Policy Number 0012602-D19-29C

Contractor Initials JLC
Date 9/29/13

CERTIFICATE
(Corporation Without Seal)

I Stephen R. Goldman, Clerk/Secretary of the Goldman + LeBrun, P.A. do hereby certify that: (1) I am the duly elected and acting Clerk/Secretary of the Goldman + LeBrun PA a New Hampshire corporation (the "Corporation"); (2) I maintain and have custody and am familiar (State of incorporation) with the minute books of the Corporation; (3) I am duly authorized to issue certificates with respect to the contents of such books; (4) the following are true, accurate and complete copies of the resolutions adopted by the Board of Directors of the Corporation at a meeting of the said Board of Directors on the 22 day of August, 2007, which meeting was duly held in accordance with New Hampshire law and (State of incorporation) the by-laws of the Corporation:

RESOLVED: That this Corporation enter into a contract with the State of New Hampshire, acting by and through the Office of Information Systems of the Department of Health and Human Services, providing for the performance by the Corporation of certain LEGAL services, and that the President (and Vice President) (and the Treasurer) (or any of them acting singly) be and hereby (is) (are) authorized and directed for and on behalf of this Corporation to enter into the said contract with the State and to take any and all such actions and to execute, acknowledge and deliver for and on behalf of this Corporation any and all documents, agreements and other instruments (and any amendments, revisions or modifications thereto) and (she) (he) (any of them) may deem necessary, desirable or appropriate to accomplish the same;

RESOLVED: That the signature of any officer of this corporation affixed to any instrument or document in or contemplated by these resolutions shall be conclusive evidence of the authority of said officer to bind this Corporation thereby;

(5) the foregoing resolutions have not been revoked, annulled, or amended in any manner whatsoever, and remain in full force and effect as of the date hereof; (6) the following person(s) (has) (have) been duly elected to and now occupy the office(s) indicated below:

Stephen R. Goldman President
John P. LeBrun Vice President
Ann V. Goldman Treasurer

and; (7) the corporation has no seal.

IN WITNESS WHEREOF I have hereunto set my hand as the Clerk/Secretary of the Corporation this 6th day of MAY, 2013

STATE OF New Hampshire
COUNTY OF Merrimack

Stephen R. Goldman
Clerk/Secretary

On this the 6th day of May, 2013, before me, Cheryl Nelson the undersigned, personally appeared Stephen R. Goldman, who acknowledged her/himself to be the Clerk/Secretary of Goldman + LeBrun, P.A., a corporation, and that she/he as such Clerk/Secretary being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by her/himself as Clerk/Secretary.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(SEAL)

My Commission expires:



Cheryl Nelson
Notary Public/Justice of the Peace

State Farm
 NEW HAMPSHIRE
INSURANCE CARD

INSURED LE BRUN, JOHN AND MUTL
POLICY NUMBER GOLDMAN 21 EDRIM DA VOL
YR MAKE TOYOTA EFFECTIVE
MODEL JAN 20 2013 TO JUL 20 2013
AGENT (603)224-5298 NAIC
PHONE 2018-876
A BODILY INJURY/PROPERTY DAMAGE LIABILITY
C MEDICAL PAYMENTS
D COMPREHENSIVE
G 250 DEDUCT COLLISION
R1, U

SEE REVERSE SIDE FOR ADDITIONAL COVERAGE INFORMATION

RESUME

John P. LeBrun
5 Pearl Street
Henniker, NH 03242

E-MAIL: johnl@gllaw.net

Ph: (603) 224-9042

EDUCATION:

- 1983 - J.D. - Franklin Pierce Law Center
Concord, N.H.
- 1976 - M.A. - University of Rhode Island
Kingston, R.I.
Major in Economics
- 1975 - B.A. - Rhode Island College
Providence, R.I.
Major in Economics

WORK EXPERIENCE:

- 1990 - Present Goldman & LeBrun, P.A.
Concord, New Hampshire
Partner - General Practice Law Firm
- 1984 - 1990 Law Office of Stephen R. Goldman, P.A.
Concord, New Hampshire
Associate - General Practice Law Firm
- 1975 - 1976 Instructor of Economics (part-time)
Fisher Junior College
- 1982 - 1994 Instructor of Economics, Business Law
and Real Estate Law (part-time)
New Hampshire College
- 1985 - 1990 Instructor (part-time) Notre Dame College

HEARING OFFICER EXPERIENCE:

- 1990 - Present Hearing Officer - State of New Hampshire
Department of Education
- Due Process Hearings
 - State Board Hearings
 - Mediations

OTHER ADMINISTRATIVE EXPERIENCE

1996 - Present Defense Counsel, Concord District Court
Involuntary Emergency Admission (IEA) Hearings

1986 - 1996 Special Justice, Concord District Court
Involuntary Emergency Admission (IEA) Hearings

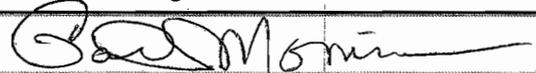
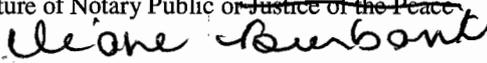
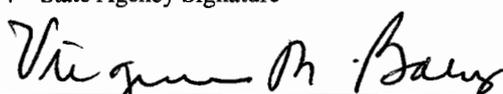
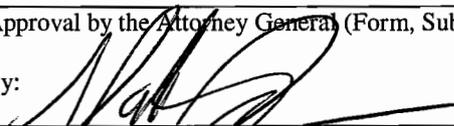
Subject: Conduct Agency Hearings and Alternative Dispute Resolution Sessions. **FORM NUMBER P-37 (version 1/09)**

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|---|---|--|---|
| 1.1 State Agency Name NH Department of Education | | 1.2 State Agency Address 101 Pleasant St., Concord, NH 03301 | |
| 1.3 Contractor Name Gail C. Morrison, J.D., C.M.M. | | 1.4 Contractor Address P.O. Box 133, Sanbornton, NH 03269 | |
| 1.5 Contractor Phone Number (603)286-4596 | 1.6 Account Number See Exhibit B | 1.7 Completion Date June 30, 2015 | 1.8 Price Limitation \$87,000.00 |
| 1.9 Contracting Officer for State Agency Paul K. Leather, Deputy Commissioner of Education | | 1.10 State Agency Telephone Number 271-7301 | |
| 1.11 Contractor Signature  | | 1.12 Name and Title of Contractor Signatory Gail C. Morrison, J.D., C.M.M. | |
| 1.13 Acknowledgement: State of NH , County of Merrimack On 4-24-2013 , 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] | | DIANE BURBANK, Notary Public My Commission Expires February 2, 2016 | |
| 1.13.2 Name and Title of Notary or Justice of the Peace Diane Burbank, Notary | | | |
| 1.14 State Agency Signature  | | 1.15 Name and Title of State Agency Signatory Virginia M. Barry, Ph.D., Commissioner of Education | |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ | | | |
| 1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: 5/30/13 | | | |
| 1.18 Approval by the Governor 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 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 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

DM
4/24/13

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.

Exhibit A

Scope of the Work:

In the role of Hearing Officer, the contractor shall:

1. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
2. Maintain accurate file management system for all administrative hearings as directed by the Office of Legislation and Hearings. Return the complete hearings file (consisting of an accordion folder containing four labeled files: 1. Pleadings; 2. Correspondence; 3. Record; and, 4. Exhibits) to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
3. Maintain administrative file checklist as directed by the Office of Legislation and Hearings.
4. Maintain confidential computer and telephone communications. Utilize a state issued email account for administrative hearing purposes.
5. Maintain accurate electronic recording/record of all administrative pre-hearings and hearings.
6. Conduct Pre-hearing conference with parties to hearing. Discuss in detail items in Pre-hearing Checklist at pre-hearing conference and memorialize in pre-hearing order as directed by the Office of Legislation and Hearings.
7. Explain subpoena process to parties. Issue subpoenas as necessary.
8. Ensure all administrative hearings are held within statutory deadlines unless Hearing Officer grants continuances for specific extensions of time. Any such extension must be documented immediately by the Hearing Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which a decision will be rendered.
9. Make written findings of facts following the hearing.
10. Make written rulings of law following the hearing.
11. Issue timely responses to all motions/continuance requests of the parties.
12. Issue a written Hearing Officer decision by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Hearing Officer, to the Office of Legislation and Hearings who shall mail decision to parties by certified mail.
13. Number the Orders in Hearing decisions under a section entitled Orders and ensure start and appropriate completion dates are included in Order.
14. Provide an electronic version in Microsoft Office Word, or as directed by the Office of Legislation and Hearings, of the Hearing Officer decision to the Office of Legislation and Hearings.
15. Format of Hearing Officer Orders to be in accordance with the Hearing Officers' Guide to Administrative Process, or as otherwise directed by the Office of Legislation and Hearings.
16. Draft decisions, notify parties of rescheduled hearings and perform attendant secretarial duties such as rescheduling of hearings, bookkeeping, up-to-date billing and accounting are the responsibility of the contractor.

Contractor Initials 

Date 4/24/13

EXHIBIT A – PAGE 2

17. File Weekly case reports with the Office of Legislation and hearings by no later than noon on Monday for the prior week.
18. Attend training sessions at the Department of Education in Concord as scheduled by the Office of Legislation and Hearings.
19. Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.

In the role of a Mediator or Neutral Officer the contractor shall:

20. Upon assignment of a case by the Office of Legislation and Hearings, conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
21. Maintain accurate file management system for all Alternative Dispute Resolutions as directed by the Office of Legislation and Hearings. Return the complete hearings file to the Office of Legislation and Hearings as directed by the Office of Legislation and Hearings following completion of proceeding.
22. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
23. Ensure all Alternative Dispute Resolution procedures are held within statutory deadlines unless Alternative Dispute Resolution Officer allows continuances for specific extensions of time. Any such extension must be documented immediately by the Alternative Dispute Resolution Officer who will indicate in writing who requested extension, when the extension was granted, the reason for the extension, and the new end date by which the matter will be concluded.
24. Ensure timely responses to all inquiries of the parties.
25. Provide a written agreement and/or non-agreement by end date listed on initial scheduling notice, or, in the case of a continuance granted, by the new end date established by parties and Alternative Dispute Officer, to the Office of Legislation and Hearings.
26. If serving as Mediator, the Mediator shall notify the Hearing Officer and Office of Legislation and Hearings of the outcome of mediation sessions in a timely manner.
27. Draft written agreement and/or non-agreement, notify parties of rescheduled proceedings and attendant secretarial duties such as rescheduling of mediation/neutral conferences, bookkeeping, up-to-date billing and accounting are the responsibility of the contractor.
28. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
29. Attend training sessions at the Department of Education in Concord.
30. Once selected, the ultimate number and type of case assignment (e.g. hearings or alternative dispute resolution) shall be at the sole discretion of the Office of Legislation and Hearings.)

Contractor Initials SM
Date 4/24/13

Exhibit B

Payment Terms

The contracts represent an unspecified dollar amount per hearing officer. This allows the Department the opportunity to distribute in-coming requests for alternative dispute resolution and hearings and balance the workload among the hearing officers, basing the distribution on such factors as type of request, experience needed to handle such request, and number of cases currently outstanding for each hearing officer.

In consideration of the services to be performed by the Contractor, the State agrees to pay Contractor in accordance with the payment schedule provided below, commencing on the date of Governor and Council approval through June 30, 2015. This schedule was developed based upon the median and average costs of all hearings and mediations held during a one year time span.

| | | | |
|--|-------------|--|---|
| Mediation/Neutral Conference | | Date | |
| Upon acceptance of case - \$100* | | | |
| <ul style="list-style-type: none"> • Full Day (More than 3 hours) - \$250 (example 9-4) • Less than 3 hours - \$150 (example: 9-noon; noon - 3) • Second Day - \$125 | | | |
| Prior to Pre-Hearing | | Date | |
| Upon acceptance of case - \$100* | | | |
| Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) <i>Total allowable for case: \$100</i> | | | |
| Sufficiency hearing - \$175 | | | |
| Hearing | | Date | |
| Pre-Hearing - \$150 | | | |
| Hearing - | | | |
| <ul style="list-style-type: none"> • 1st Day - More than 3 hours \$275; Less than 3 hours - \$150 • 2nd Day - More than 3 hours \$275; Less than 3 hours - \$150 | | | |
| Post-Hearing | | Date | |
| Prepare decision - \$250 | | | |
| <ul style="list-style-type: none"> • Hearing Decision • Summary Judgment | | | |
| Miscellaneous | Date | Details (mileage, time, other information necessary) | Payment (Less \$100.00 upon acceptance) |
| Preparation of subpoenas (Total for case) \$20 | | | |
| Mileage - \$0.51/mile** | | | Not Applicable |
| Travel time*** - \$30.00/hour, after first 2 hours* ** | | | |
| Training - | | | |
| <ul style="list-style-type: none"> • ½ day (four hours or less) - \$150.00 • Full day - \$300.00 | | | Not Applicable |
| Evaluation meeting \$30.00 | | | |
| File Preparation (includes Indexes, Admin file, Pre-hearing checklists) - \$20 per case if at close of settlement; withdrawal; dismissal <u>or</u> \$50 per case after full hearing and decision rendered | | | |
| Actual postage up to \$20.00 per case (Mailing of orders, mailing file folder to DOE) | | | |
| Consultation (court, OSEP, OCR, DOE) \$30.00** | | | |
| OTHER - Describe | | | |

Items not covered in this schedule - From time to time there may be an unusual situation that arises where a hearing officer is required to perform a hearing-related task for which no monetary reimbursement has been contemplated. In those situations, the department will consider reimbursement based on either the per diem rate, as set out for training, a flat fee rate analogous to one of the above rates or no payment as it determines is warranted by the situation.

Contractor Initials GM
Date 4/24/13

EXHIBIT B – PAGE 2

**If travel involved or an unusual situation arises, this money will be applied to the amount before any additional payment is authorized. This amount includes weekly update of cases.*

***Only with prior approval from the office of legislation and hearings. Mileage is if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord.*

****See explanation for upon acceptance of case – the \$30.00/hour, after the first two hours will NOT apply to first 2 hours of travel time – i.e. payment for 3 hour round trip will be \$30 not \$90.*

Account Numbers: 06 56 56 560510 2022-046 (500464) and 06 56 56 565510 4020-046 (500464)

Contractor Initials

Date

BM
4/24/13

Exhibit C

Terms and Conditions:

1. Unless otherwise deleted or modified by mutual agreement between the State of New Hampshire and the contractor, all terms and conditions contained within the State of New Hampshire Form P-37 contract shall be incorporated into the contract. The current estimated amount to be budgeted by the State of New Hampshire to fund this project is \$87,000 for the biennium - \$43,500 for FY 14 and \$43,500 for FY 15.
2. All obligations of the State, including the continuance of payments under an approved contract shall be contingent upon the availability and continued appropriation of other funds and in no event shall the State be liable for any payments in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate or amend the contract immediately upon giving the contractor notice of such termination or amendment.
4. Contractor will consult Hearing Officers' Guide to Administrative Procedures whenever a question arises as to proper procedure prior to contacting the Office of Legislation and Hearings.
5. 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.
6. At the conclusion of proceedings, the Office of Legislation and Hearings will mail an evaluation to each party. The Coordinator of Dispute Resolution and Constituent Complaints will provide Hearing Officers with a quarterly synopsis of the evaluations. The quarterly evaluations will be used by the Coordinator of Dispute Resolution and Constituent Complaints as one of the components of the annual evaluation of contracted Hearing Officers performance.
7. All Hearing Officer Contracts are subject to suspension or termination on the grounds of misfeasance, malfeasance or nonfeasance.

Conflicts of Interest

Upon assignment of a new case, Contractor shall make reasonable and diligent efforts to obtain and review relevant documents to determine if any potential conflicts of interest exist in the case. Record-keeping systems shall be maintained which facilitate the early and efficient identification of conflicts of interest.

Termination

This Agreement may be terminated by the DOE for cause immediately upon notice to the Contractor. This Agreement may be terminated by either party without cause upon thirty days prior notice in writing.

In the event that the Contractor fails to complete a case or where the Contractor has recused him/herself due to conflict of interest, any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event that the Contractor fails to submit a closed case within the time period allowed by the law, or fails to comply with other record keeping or reporting requirements established by the DOE, the Contract may be terminated by the DOE immediately upon notice to the Contractor and any funds paid for such case(s) shall be reimbursed and any funds payable shall be forfeited.

In the event Contractor withdraws from a case prior to final disposition, under circumstances agreed to by the DOE, Contractor shall be entitled to receive credit for services rendered in that case as listed in Exhibit B.

Contractor Initials SM

Date 5/24/13

EXHIBIT C – PAGE 2

The contracted individual will be paid mileage at the current state rate round-trip only with prior approval from the office of legislation and hearings. Mileage will be paid from the contracted individual's primary business address to hearing/mediation site if and only if a proceeding is held outside of Concord. Department will not pay mileage from home office to Concord venues.

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:

Gail C. Morrison, J.D., C.M.M.

Vermont Mutual Insurance Co. Policy #PA1 8-02-94-29

Contractor Initials
Date

GCM
4/24/03

CERTIFICATE OF AUTHORITY

(Sole Proprietor)

I, Gail Morrison, as a Sole Owner of my Business, Agree Mediation Services, certify that I am authorized to enter into a contract with the State of New Hampshire, Department of Health and Human Services, Office of Information Systems, on behalf of myself.

IN WITNESS WHEREOF, I have hereunto set my hand as the Sole Owner of the Business this 24 day of April 24, 2013.

Gail Morrison
Sole Owner

STATE OF New Hampshire
COUNTY OF Merrimack

On this the 24th day of April, 2013 before me, Diane Burbank the undersigned Officer, personally appeared Gail Morrison, who acknowledged himself to be the Sole Owner of Agree Mediation Services a Business, and that he, as such Sole Owner being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Business by himself as Sole Owner.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Diane Burbank
Notary Public/Justice of the Peace

My Commission expires:

DIANE BURBANK, Notary Public
My Commission Expires February 2, 2016

**Vermont Mutual Group
Personal Auto Policy Coverage Declarations**

To report a claim call your Agent
or the Company at 800-435-0397



Named Insured:

GAIL MORRISON
PO BOX 133
SANBORNTON, NH 03269-0133

Agent:

DAVIS & TOWLE GROUP - PENACOOK
115 AIRPORT ROAD
PO BOX 1260
CONCORD, NH 03302-1260
603-224-9551

Policy Number:

Policy Period:

06/10/2012 to 06/10/2013 12:01 AM Standard Time

Policyholder Since:

06/10/2002

Insurance Provided By:

VERMONT MUTUAL INSURANCE CO
P O BOX 188 89 STATE STREET MONTPELIER, VT 05601-0188

ACCOUNT CURRENT

YOUR POLICY HAS BEEN CHANGED - CHANGE REQUESTED BY AGENT

REVISED ANNUALIZED POLICY PREMIUM
RETURN PREMIUM FOR COVERAGES FROM 09/15/2012

PERSONAL AUTO PROTECTION

(Coverage applies only if a premium or limit is shown)

Description of Auto(s) - All Principally Garaged At The Above Address Unless Otherwise Stated

Auto 2

Auto 3

Description: HOND
VIN/Symbol:
Rated Driver: GAIL MORRISON
Use / Territory: PLEASURE
Class Code:

| COVERAGES | LIMITS | PREMIUM | LIMITS | PREMIUM |
|---------------------------------------|------------------|-----------|------------------|-----------|
| A. BI (per person/per accid) | 250,000/500,000 | \$ 100.00 | 250,000/500,000 | \$ 100.00 |
| Property Damage | 100,000 | \$ 78.00 | 100,000 | \$ 78.00 |
| B. Medical Payments (per person) | 10,000 | \$ 19.00 | 10,000 | \$ 19.00 |
| C. Uninsured/Underinsured | | | | |
| BI (per person/per accid) | 250,000/500,000 | \$ 39.00 | 250,000/500,000 | \$ 39.00 |
| Property Damage | 25,000 | \$ INCL | 25,000 | \$ INCL |
| D. Coverage for Damage to Your Auto | | | | |
| Other than Collision | \$50 Deductible | \$ 66.00 | \$50 Deductible | \$ 66.00 |
| Collision | \$250 Deductible | \$ 238.00 | \$250 Deductible | \$ 238.00 |
| Miscellaneous Coverages | | | | |
| Towing | 50 | \$ 6.00 | 50 | \$ 6.00 |
| Transportation Expenses | 20/600 | \$ INCL | 20/600 | \$ INCL |
| Tapes, Records, Discs, & Other Media | | \$ | | \$ |
| Excess Sound Reproducing Equipment | | \$ | | \$ |
| Audio, Visual & Data Elect. Equipment | | \$ | | \$ |
| Auto Loan - Other Than Collision | | \$ | | \$ |
| Auto Loan - Collision | | \$ | | \$ |
| Auto Advantage Endorsement | | \$ 200.00 | | \$ 200.00 |
| Premium Per Vehicle | | \$ 576.00 | | \$ 576.00 |
| Total Tax/Fee/Surcharge | | \$ | | \$ |

RECEIVED

OCT 22 2012

Davis & Towle Insurance Group

Countersigned:

By

Authorized Representative

PROPOSAL

NEW HAMPSHIRE DEPARTMENT OF EDUCATION HEARING OFFICER; ALTERNATIVE DISPUTE RESOLUTION OFFICER

Resume

GENERAL:

1. Name *Gail Morrison*
2. Residential Address *83 Stage Road, Sanbornton, NH 03269*
Telephone *603-286-4596*
3. Business Address *Agree Mediation Services, PO Box 133, Sanbornton, NH, 03269*
Telephone *603-286-4596*
4. Place of Birth *Salem, Massachusetts*
5. Length of residence in the State of New Hampshire *45 years*
6. Social Security Number *032-32-4207*
7. Federal I.D. Number *90-0087971*
Gail Morrison, Agree Mediation Services
PO Box 133, Sanbornton, NH 03269

EDUCATION:

| 8. a) Colleges/Law Schools Attended | Dates of Attendance | Degrees Received | Undergraduate Major |
|-------------------------------------|---------------------|---------------------|---------------------------|
| <i>UNH Law School</i> | <i>1982-1985</i> | <i>Juris Doctor</i> | |
| <i>Salem State University</i> | <i>1961-1965</i> | <i>BS</i> | <i>Education, English</i> |

b) Special training

Please see Attachment 1

PROFESSIONAL ADMISSIONS:

9. *NH Marital Mediation Certification Board* *June 4, 2003 continuing*

EMPLOYMENT AND RELATED HISTORY

10.
Please see Attachment 2

11. Criminal record

Vehicle registration violation, 1982

12. Ethical violations

None

13. Insurance

*Columbia Casualty Company
Arbitrators and Mediators Professional Liability Insurance*

PROFESSIONAL AND OTHER ACTIVITIES:

14. Business Associations

*N. H. Conflict Resolution Association, 2000 and continuing,
Board of Directors, 2001-2009
Association for Conflict Resolution, national, 2005-present*

ATTACHMENT 1

Preparation

B.S., 4 years, Salem State University, May 1965.

J.D., 3 years, University of New Hampshire Law School, May 1985.

Mediation, 60 hours Basic Course, Esther Tardy Wolfe, J.D. 1996.

Mediation, 40 hours Core Training in marital mediation. Olivia Ruel, Ph.D and Greg Martin, Esq., trainers, 2002.

Victims of Violence Meet the Offender, A Journey Toward Healing and Strength, Advanced Victim Offender Training, 40 hours, Mark Umbreit, Ph.D. and Karin Ho, sponsored by the NH Department of Corrections, 2001.

Victim-Offender Mediation, 32 hour course, Ariel Brugger, Director, Just Solutions, Brattleboro, sponsored by Carroll County Mediation, 2001.

Basic Mediation Course, 32 hours, Greg Hessel, Director, Cheshire Mediation, sponsored by Carroll County Mediation, 2000, audited as sponsor.

Continuing Education

Mediating Financial Issues. 6 hours, NH Conflict Resolution Association (hereinafter NHCRA), 2011

Legal Update: Mediating Alternative Marriages; 3 hours, Amoskeag Continuing Education, 2010

Ethics for Mediators. 3 hours, P. Blanchette PA, 2009

Ethical Standards for Mediators, 3 hours, Amoskeag Continuing Education, 2009

Tools of Awareness in Conflict, 2.75 hours, NH CRA, 2008

Advanced Mediation Training, 3 hours, OMA, Leonard Riskin, Federal District Court, 2008

Mediation Advocacy, 3 hours, OMA, Leonard Riskin, Federal District Court, 2008

Promoting Safety in Mediation, P. Blanchette PA, 2008

Domestic Violence and Mediation at the Crossroads, NHCRA, 2008

Conquering Cognitive and Emotional Barriers, Devine Resolutions and Round Table Mediation, 6 hours, 2007

NH Family Court Processes and Mediation, DHHA/DCSS/NHCRA, 2 hours, 2007

NH Child Support and Uniform Support Orders, DHHA/DCSS/NHCRA, 4 hours, 2007

Education Law Conference. July 26, 2007, CLE and Post-conference, July 27, 2007

Premises & Standards of Ethical Practice for Mediators: It's About Decision-Making. 5.25 hours, sponsor: New Hampshire (hereinafter NHCRA), 2006

Parental Rights & Responsibilities Act. 3 hours, Amoskeag Continuing Education, Honey Hastings, Esq., 2005

Attribution Theory and Its Role in Mediation. 1 hour, NHCRA, 2005

Legal Issues for Non-Traditional Families. 3 hours, NH Bar Association, 2005

Mediation Training Specific to NH: Family Law Update and Domestic Violence Workshop for Mediators. 8 hours, Alternative Center for Mediation, 2005

Family Wars: Alienation of Children, ADR in NH, Bringing Peace Into the Room. 4 hours, NHCRA, 2004

Standing in the Fire: Mediation Styles & Practice vis a vis Our Ethics. 3 hours, NHCRA, 2004

The Continuum of Conflict in Divorce & Family Mediation. 3 hours, NHCRA, 2004

Culture, Perception, Decision Making and Conflict, Michael L. Fischler, Ed.D. and Mark J. Fischler, J.D., 2 hours, sponsor: NHCRA, 2003.

Impasse: Keynote Address, Rev. Dr. Winthrop Puffer, .75 hour, sponsor: NHCRA, 2003

Diversity Workshop. 4.5 hours, Dorie Shaw, Esq. and Helen DeHaven, Esq., sponsor: NHCRA, 2003

New Hampshire Family Law Update, 3 hours, Honey Hastings, Esq., sponsor: NHCRA, 2003

~~Mediation and Domestic Violence: The Interface, 6 hours, Karen McCall Gramitt, NH Health and Human Services trainer, Linda Griebisch, Public Policy Director, New Hampshire Coalition Against Domestic and Sexual Violence, Scott Hampton, Psy. D., Director of Ending the Violence, sponsor: NHCRA, 2002~~

Adolescent Depression, Melissa Pearow, M.S., 1.5 hours, sponsored by NHCRA, 2002.

Trends in Juvenile Law, Hon. Pamela Albee, panel chair, 1.5 hours, sponsored by NHCRA, 2002.

Additional Applicable Training

First District Court, Intern, Judge Martin F. Loughlin, 1985.

New Hampshire Family and Housing Law Clinic, Intern, Bruce Friedman, 1983-1985.

Certificate of Attendance

Sponsor: Amoskeag Continuing Education
Activity Title: **Legal Updates for Family Law Professionals**
Date: 30 March 2012
Location: Temple, NH

Name: 

NH LAWYERS

NHMCLE Board has approved this program for: 3 hours General CLE credit

MEDIATORS

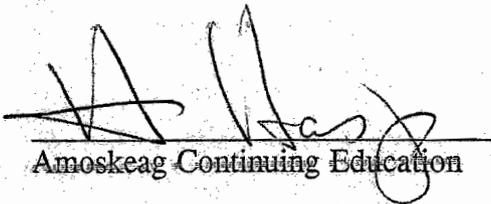
FMCB has approved this program for: 3 hours of Legal Update credit

NH GALs

NH GAL Board has approved this program for: 3 hours credit

VT LAWYERS

VT Bar has approved this program for: 3 hours General credit

 for
Amoskeag Continuing Education