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ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL



December 24, 2019

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

Your Excellency and Members of the Council:

REQUESTED ACTION

Authorize the Department of Justice to **retroactively** amend a **sole source** contract with David Conley, Esquire, P.A., Vendor #203504-B001, Concord, New Hampshire, for the purpose of serving as a Hearings Officer for appeals for any of the environmental councils of the Department of Environmental Services from January 1, 2020 to June 30, 2021 effective upon Governor and Executive Council Approval. 57% Transfers from Other Agency, 43% General Funds.

Funding is available as follows, with the ability to adjust encumbrances, through the Budget Office, if needed and justified:

02-20-20-200510-2613	Current	Contract	Amended	
Environmental	Contract	Increase	Contract	Contract
046-500460, Consultants	<u>FY 2020</u>	<u>FY 2020</u>	<u>FY2020</u>	<u>FY 2021</u>
	\$8,500	\$16,500	\$25,000	\$25,000

Amended Contract Total: \$50,000

EXPLANATION

This item is **retroactive** because the contract was not received by this office in time for the December 18, 2019 Governor and Council Meeting. This item is **sole source** because David Conley, Esquire, is currently performing these functions for the Department of Justice and it is important to continue this contract for continuity and integrity of the environmental council hearings.

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
December 24, 2019
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RSA 21-M:3, VIII-IX, an act relative to appeals of decisions by the Department of Environmental Services, authorizes the Attorney General to appoint one or more individuals to serve as a hearings officer for appeals to any of the environmental councils established under RSA 21-O. David Conley, Esquire was originally selected from other applicants and chosen to serve as a Hearings Officer for any of the environmental councils of the Department of Environmental Services.

The original contract between the Department of Justice and Attorney Conley was for \$8,500 and did not qualify as a Governor and Executive Council item. The Department chose to continue the contract through the end of the Fiscal Year 2020-2021 biennium and increase the contract to compensate for the additional hearings.

Please let me know if you have any questions concerning this request. Your consideration is greatly appreciated.

Respectfully submitted,



Gordon J. MacDonald
Attorney General

#2597982

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE
FIRST CONTRACT AMENDMENT

This amendment ("Amendment") is by and between the Department of Justice ("DOJ") and David Conley, Esquire, P.A. ("Contractor").

WHEREAS, pursuant to an Agreement ("Contract"), the Contractor agreed to perform certain services upon the terms and conditions specified in the Contract, and in consideration of payment by the Department of Justice of certain sums specified therein;

WHEREAS, pursuant to the provisions of paragraph 18; Amendment, the Contract may be amended, waived or discharged by written instrument executed by the parties thereto;

WHEREAS, the Contractor and the Department of Justice have agreed to amend the Contract in certain aspects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Contract, and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification of Contract

1a. Remove section 1.3, Contractor Name, in its entirety and replace, therefore, with the following:

1.3 David Conley, Esquire, P.A.

1b. Remove section 1.7, Completion Date, in its entirety and replace, therefore, with the following:

1.7 Completion Date: June 30, 2021

1c. Remove section 1.8, Price Limitation, in its entirety and replace, therefore, with the following:

1.8 Price Limitation: \$50,000

1d. EXHIBIT A; Scope of Services, Remove section #1, in its entirety and replace, therefore, with the following:

1. David Conley, Esquire, P.A. as "Contractor" will perform as a hearings officer on behalf of the Department of Justice as "DOJ".

1e. EXHIBIT C; Special Provisions: Remove section #3, in its entirety and replace, therefore, with the following:

3. Form P-37 paragraph 14 is modified as follows:

The Contractor shall, at its sole expense, obtain and maintain in force professional liability insurance.


2. Effective Date of Amendment

2a. This Amendment shall take effect, retroactive to January 1, 2020, upon the approval of the Governor and Executive Council.

3. Continuance of Agreement

3a. Except as specifically amended and modified by the terms and conditions of this Amendment, the Contract and the obligations of the parties hereunder, shall remain in full force and effect with the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties set their hand as of the day and year first above written.




David Conley, Esquire, P.A.
Contractor

12/19/19

Date

Notary Public or Justice of the Peace Acknowledgement:

State of New Hampshire, County of Merrimack On 12, 19, 2020, before the undersigned officer, personally appeared the person identified as the Contractor, or satisfactorily proven to be the person whose name is associated with the Contractor and acknowledged that s/he executed this document in the capacity indicated.



Signature of Notary Public or Justice of the Peace

Demitrice Thibeau - Notary

Name and Title of Notary Public or Justice of the Peace

Kathleen Carr

Kathleen B. Carr
Director of Administration

12/23/19

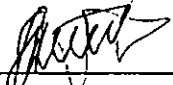
Date


Demitrice K. Thibeau
Notary Public, State of New Hampshire
My Commission Expires May 15, 2024

Department of Administrative Services
Division of Personnel

Date

Approved by the Attorney General (Form, Substance and Execution)



Attorney

12/23/2019
Date

DAVID F. CONLEY is a sole practitioner in Concord, NH, where his private practice consists of tax, business and estate planning. Mr. Conley has served as a law clerk for the U.S. Tax Court (1975) and as an attorney in the Office of Chief Counsel, U.S. Treasury Department. (1976-1980) He chaired the tax department of Sulloway & Hollis, PLLC from 1980 until his retirement in 2002. Following retirement, Mr. Conley has served as special counsel to the New Hampshire Securities Bureau . He has also served as a prosecutor for the New Hampshire Department of Justice, handling professional disciplinary matters before the Boards of Accountancy and Appraisers. Mr. Conley currently presides over appeals of New Hampshire Department of Environmental Services permitting decisions. He is a member and past chair of the Tax Section of the New Hampshire Bar Association and the American Bar Association and former chair of the Greater Concord Chamber of Commerce. He has served as a member of the Board of Trustees of the Concord Hospital Trust and is a member of its Planned Giving and Major Gifts Committee. Mr. Conley is admitted to practice in New Hampshire and Maine. He is honored to have been nominated by his peers for inclusion in *The Best Lawyers in America* under several categories, including tax, estate planning, and tax litigation for more than thirty years. Mr. Conley is a graduate of the University of Nebraska and the Arizona State University College of Law.


David F. Conley, Esq., P.A.

Corporate Resolution

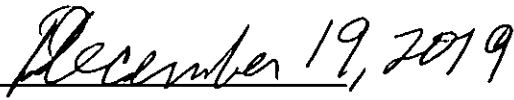
I, David F. Conley, Esq., hereby certify that I am the sole Shareholder, Director and duly elected President and Secretary of David F. Conley, Esq., P.A., ("the Corporation") a professional corporation organized and validly existing under the laws of the State of New Hampshire. I hereby certify that the following is a true copy of a vote I have taken on December 19, 2019:

VOTED: That David F. Conley, Esq., President of the Corporation, is duly authorized to enter into contracts or agreements on behalf of the Corporation with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any documents that may in his judgment be desirable or necessary to effect the purposes of this Vote.

I hereby certify that said Vote has not ben amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person listed above currently occupies the positions indicated and that he has full authority to bind the Corporation. To the extent there are any limits on the authority of any listed individual to bind the Corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.



David F. Conley, Esq.



Date

State of New Hampshire

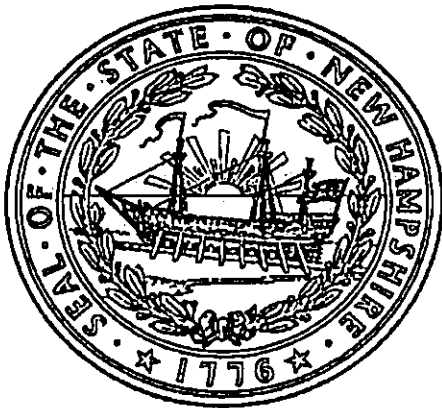
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that DAVID F. CONLEY, ESQ. PROFESSIONAL ASSOCIATION is a New Hampshire Professional Profit Corporation registered to transact business in New Hampshire on May 22, 2002. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 404922

Certificate Number : 0004630593



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 18th day of December A.D. 2019.

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State



**LAWYERS PROFESSIONAL LIABILITY POLICY
DECLARATIONS – NEW HAMPSHIRE**

Agency:
703131

Branch:
912

Policy Number:
287383052

Insurance is provided by Continental Casualty Company,
151 North Franklin Street Chicago IL 60606
A Stock Insurance Company.

1. NAMED INSURED AND MAILING ADDRESS:
David F. Conley, Esq., PA
20 Westbourne Road
Concord, NH 03301

NOTICE TO POLICYHOLDERS:
This is a Claims Made and Reported policy. It applies only to those claims that are both first made against the insured and reported in writing to the Company during the policy period, or any Extended Reporting Period if applicable. Please review the policy carefully and discuss this coverage with your insurance agent or broker.

2. POLICY PERIOD:

Inception: 06/04/2019
at 12:01 A.M. Standard Time at the address shown above

Expiration: 06/04/2020

3. LIMITS OF LIABILITY:

Each Claim: \$100,000
Aggregate: \$300,000

Death or Disability and Non-Practicing
Extended Reporting Period Limit of Liability:

Each Claim: \$100,000
Aggregate: \$300,000

4. DEDUCTIBLES:

Inclusive of Claims Expenses

Aggregate: \$5,000

5. POLICY PREMIUM:

Annual Premium: \$1,727.00
Total Amount Due: \$1,727.00

Includes CNA Risk Management Seminar Credit of \$ 0.00

6. FORMS AND ENDORSEMENTS ATTACHED AT INCEPTION:

G-118011-A (Ed. 06/2015), G-118012-A28C (Ed. 12/2001), G-118014-A (Ed. 12/2011), G-118016-ACC (Ed. 12/2011), G-118029-A (Ed. 04/2008), G-118039-A28 (Ed. 04/2008), G-118063-A28 (Ed. 12/2001), G-118064-A28 (Ed. 09/2015)

7. WHO TO CONTACT:

To report a claim:
CNA – Claims Reporting
P.O. Box 8317
Chicago, IL 60680-8317
Fax: 866-773-7504 / Online: www.cna.com/claims
Email: SpecialtyProNewLoss@cna.com
Lawyers Claim Reporting Questions: 800-540-0762


Countersignature

6/3/19
Date


Authorized Representative

06/03/2019
Date



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

AGREEMENT

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

GENERAL PROVISIONS

I. IDENTIFICATION.

1.1 State Agency Name State of New Hampshire, Department of Justice		1.2 State Agency Address 33 Capitol Street Concord NH 03301	
1.3 Contractor Name David Conley, Esquire, P.A. LLC		1.4 Contractor Address 20 Westbourne Road Concord NH 03301	
1.5 Contractor Phone Number 603-224-4324	1.6 Account Number 02-20-20-200510-2613-500460	1.7 Completion Date December 31, 2019	1.8 Price Limitation \$8,500
1.9 Contracting Officer for State Agency Kathleen Carr		1.10 State Agency Telephone Number 603-271-1234	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory David Conley, Esquire	
1.13 Acknowledgement: State of <u>Colorado</u> County of <u>Summit</u> On <u>6/28/2019</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] 		<div style="border: 1px solid black; padding: 5px; text-align: center;"> KATHRYN R. SCHMITZ NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20144048315 MY COMMISSION EXPIRES 11-21-2020 </div>	
1.13.2 Name and Title of Notary or Justice of the Peace <u>Kathryn R Schmitz, Notary Public State of Colorado</u>			
1.14 State Agency Signature <u>Kathleen Carr</u> Date: <u>7/16/19</u>		1.15 Name and Title of State Agency Signatory <u>Kathleen Carr, Director of Admin.</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) (if applicable) By: _____ On: _____			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

Diagon RA # 195047 7-19-19 \$5,000.00
 PO # 103079
 W.O. 11101488

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

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

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

4. CONDITIONAL NATURE OF AGREEMENT.

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

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

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

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

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

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

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

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

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

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

7. PERSONNEL.

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

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

Contractor Initials AC
Date 6/28/19

Agreement. This provision shall survive termination of this Agreement.

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

8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

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

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

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

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

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

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

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

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

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

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

14. INSURANCE.

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

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

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

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

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

15. WORKERS' COMPENSATION.

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

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

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

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

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

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

19. CONSTRUCTION OF AGREEMENT AND TERMS.

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

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

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

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

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

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

EXHIBIT A

SCOPE OF SERVICES

1. David Conley, Esquire, P.A. LLC, as "Contractor" will perform duties as a hearings officer on behalf of the Department of Justice as "DOJ".
2. Contractor services shall be specific to hearings for the Department of Environmental Services as per RSA 21-M:3 VIII.
3. Contractor will perform the duties as hearing officer in a timely manner, and shall exercise control over the length of the hearings to minimize irrelevant, repetitive or cumulative testimony, being mindful of the complexity of the specific matter.
4. If Contractor wishes to terminate the contract for reasons beyond the control of the Contractor, he shall give the DOJ thirty (30) days' notice of the request to terminate, which shall be subject to the final discretion of the DOJ.
5. Contractor will provide a DOJ assessment form at the close of the hearing to the parties, including but not limited to the Councils, the Department of Environmental Services, any intervenors and counsel to parties for each hearing conducted by Contractor for submission to the DOJ.
6. Contractor will perform a conflict assessment for each hearing immediately upon referral of each matter and thereafter as needed. If any conflict exists Contractor shall notify the Director of the Division of Legal Counsel immediately.
7. All Contractor correspondence and submittals shall be directed to:
State of New Hampshire
Department of Justice
Director of Legal Counsel
33 Capitol Street
Concord NH 03301
603-271-1392

Contractor Initials: AC

Date: 6/28/19

EXHIBIT B

CONTRACT PRICE, METHOD OF PAYMENT AND TERMS OF PAYMENT

1. The Contractor shall receive payments at a rate of \$49 per hour in return for services performed as described in "EXHIBIT A".
2. Contractor shall submit invoices with time sheets accounting for all hours worked on a bi-weekly basis by close of business on Fridays to the designated contact at the Civil Bureau for payment approval.
3. Payment for services will be made within thirty (30) days following receipt of invoice as approved by the Director of the Division of Legal Counsel. Said payment shall be made out to the Contractor's accounts receivables address per the Financial System for the State of New Hampshire.
4. The State's obligation to compensate and reimburse the Contractor under this Agreement shall not exceed the price limitation set forth in form P-37 section 1.8.

Contractor Initials:

Date:

AC
6/18/19

EXHIBIT C
SPECIAL PROVISIONS

1. Form P-37 paragraph 7.1 is modified as follows:

7.1 To the extent necessary to perform the function of hearing officer, 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. The Contractor may request administrative support from the Department of Environmental Services administrative staff assigned to support the Councils.

2. Form P-37 paragraph 13 is modified as follows:

13. INDEMNIFICATION. In performing the functions of hearing officer, the Contractor is acting in a quasi-judicial capacity and shall be entitled to all immunities and protections afforded to an official acting in such a capacity. The State will defend and indemnify regarding any such claims under RSA 99-D. 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.

- 3 / Form P-37 paragraph 14 is modified as follows:

The Insurance requirements of Paragraph 14 are waived

4. Form P-37 paragraph 15 is modified as follows:

The Workers compensation requirements of paragraph 15 are not required as Contractor is a sole practitioner in his law practice and has no employees.

5. There are no other special provisions of this contract.

Contractor Initials: *SLC*

Date: *6/28/19*