

71 *Beak*

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

January 27, 2016

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

Your Excellency and Members of the Council:

REQUESTED ACTION

Authorize the Department of Justice to amend a **sole source** contract with Attorney Andrew Eills, 35 Pleasant Street, Concord, NH 03301 (Vendor #250040) **retroactive** to January 1, 2016 by increasing the amount by \$40,995 from \$9,995 to \$50,990 and by extending the completion date from June 30, 2016 to June 30, 2017 for the purpose of providing a hearings officer for the Banking Department effective upon the date of Governor and Council approval through June 30, 2017. 100% Agency Income.

Funds are available in account #02-20-20-200510-2611, Department of Justice, Consumer Protection, as follows:

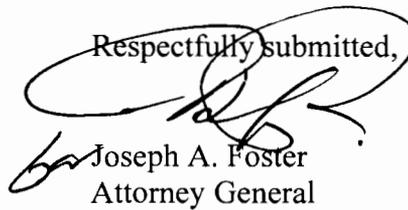
<u>Class</u>	<u>Description</u>	<u>FY 2016 Amount</u>	<u>FY2017 Amount</u>
046-500460	Consultants	\$27,995	\$22,995

EXPLANATION

This contract is **sole source** because this is the third year that Attorney Eills has been providing this service for the Banking Department under the direction of the Department of Justice and he is familiar with the process and expectations of both Departments. This contract is **retroactive** to January 1, 2016 because the cases in which Attorney Eills became involved last year are requiring for more time and are more complex than anticipated and there was a delay compiling anticipated expenses from Attorney Eills. These cases are expected to be lengthy and the additional contract price limitation is necessary in order to pay Attorney Eills through June 30, 2017. He serves as a hearings officer on an as-needed basis when the regularly assigned hearings officer is recused from a case.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Foster', is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Joseph A. Foster
Attorney General

Enc.

#1343286

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE
FIRST CONTRACT AMENDMENT

This amendment (the "Amendment") is by and between the Department of Justice and Andrew Eills (the "Contractor").

WHEREAS, pursuant to an Agreement (the "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 1.8; Price Limitation of the Contract, the Contract may be amended, waived or discharged by written instrument executed by the parties thereto;

WHEREAS, the Department of Justice has identified that the needs of the Banking Department for the Contractor's service on matters currently assigned will exceed the contract price and completion date;

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

- a. General Provisions; Block 1.7; Completion Date, amend the end date from June 30, 2016 to June 30, 2017.
- b. General Provisions; Block 1.8; Price Limitation, to increase the contract by \$40,995, from \$9,995 to \$50,990.
- c. Exhibit B; Replaced with attached revised Exhibit B.
- d. Exhibit C; Replaced with attached revised Exhibit C.

2. Effective Date of Amendment

- a. This Amendment shall take effect upon Governor and Council approval.

3. Continuance of Agreement

- a. 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.

Andrew Eills
Andrew Eills
Contractor

1/25/2016
Date

Notary Public or Justice of the Peace Acknowledgement:

State of New Hampshire County of Merrimack On 1/25, 2016, 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.

Jennifer Cawelt
Signature of Notary Public or Justice of the Peace

Jennifer Cawelt, Notary Public
Name and Title of Notary Public or Justice of the Peace

Kathleen Carr
Kathleen B. Carr
Director of Administration

1/25/16
Date

Sara Hillebrand
Department of Administration
Division of Personnel

1-25-16
Date



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

[Signature]
Attorney

1/26/16
Date

**EXHIBIT B REVISED FIRST CONTRACT AMENDMENT
CONTRACT PRICE AND METHOD OF PAYMENT**

1. The Contractor shall receive payment at \$175 per hour in exchange for services provided as per EXHIBIT A.
2. The Contractor shall utilize time sheets to accurately track the work provided for the Department of Justice.
3. Invoices shall be submitted by the Contractor to the Department of Justice Business Office on a biweekly basis. The Contractor shall be paid on a biweekly basis. An invoice for the preceding two weeks must be completed and received by the Department of Justice Business Office prior to payment.
4. Final Payment for services will be made within thirty (30) days following receipt of all required reports to the Department of Justice Business Office. Said payment shall be made out to the Contractor's accounts receivables address per the Financial System for the State of New Hampshire.
5. 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: ARE

Date: 1/25/18

**EXHIBIT C REVISED FIRST CONTRACT AMENDMENT
SPECIAL PROVISIONS**

1. Sections 7.1, 7.2, 13, 14 of the General Provisions do not apply to this contract.
2. Section 11 of the General Provisions is deleted and modified as follows:

CONTRACTOR'S RELATION TO THE STATE; In the performance of the agreement the Contractor is, in all respects, an independent contractor and is neither an agent nor an employee of the State. The Contractor will not receive any benefits, worker's compensation or other emoluments provided by the State to its employees. However, it is expressly recognized that performing Hearing Officer functions are quasi-judicial in nature and that the Contractor will be acting as a State Official with all authority and immunities associated with the functions of a hearings officer for the State while performing the duties under this contract.

3. The protections of RSA 99-D afforded to State officials and employees are hereby extended to the Contractor.
4. The Contractor will fall under the supervision of Associate Attorney General Richard Head.
5. This agreement does not encompass, nor does it engage the Contractor to assist the Attorney General or the Banking Department in any matter not described above. In particular, it is understood and acknowledged that the Contractor or his firm Wadleigh, Starr & Peters (WS&P) at any given time is engaged in representing various clients in matters and proceedings as to which the State of New Hampshire and/or various agencies, boards, commissions, and personnel thereof are or may potentially be parties adverse to the firm's clients. Accordingly, as a condition of the contractor's agreement to undertake this matter, the Office of the Attorney General (OAG) specifically agrees that this engagement shall not preclude the firm from continuing or undertaking such representation, now or in the future, provided the same is unrelated to the matter which is the subject of this engagement. All appropriate precautions will be taken to ensure that any confidential information gained from this representation or developed by the contractor's work on this matter will not be disclosed to members of the firm in connection with other matters, or used in any way by the firm during the course of representing other clients in connection with other matters. Notwithstanding the above, so that the OAG may undertake an informed consent to any potential conflict of interest, WS&P agrees to notify the OAG in writing of any present or future matter undertaken by the firm during the pendency of this engagement where the State of New Hampshire, or Banking Department is a party. Further, it is agreed that during the pendency of these matters WS&P will not bring any litigation against the Banking Department.

Contractor Initials: ABE

Date: 1/25/15

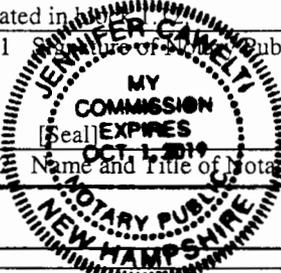
Subject: Contract - Andrew Eills FORM NUMBER P-37 (version 1/09)

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Justice		1.2 State Agency Address 33 Capitol Street, Concord, NH 03301	
1.3 Contractor Name Andrew Eills		1.4 Contractor Address 35 Pleasant Street	
1.5 Contractor Phone Number (603) 715-9188	1.6 Account Number 2611-046-500460	1.7 Completion Date June 30, 2016	1.8 Price Limitation \$9,995
1.9 Contracting Officer for State Agency Kathleen Carr		1.10 State Agency Telephone Number (603) 271-4000	
1.11 Contractor Signature <i>Andrew B. Eills</i>		1.12 Name and Title of Contractor Signatory Andrew B. Eills, ESQ	
1.13 Acknowledgement: State of NH , County of Merrimack On 6-24-15 , 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 <i>Jennifer Caweltt</i> Public or Justice of the Peace 			
1.13.2 Name and Title of Notary or Justice of the Peace <i>Jennifer Caweltt, Legal Assistant</i>			
1.14 State Agency Signature <i>Kathleen Carr</i>		1.15 Name and Title of State Agency Signatory Kathleen Carr, Director of Administration	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <i>Sara J. Hurlingham</i> Director, On: 6-24-15			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: <i>[Signature]</i> On: 7-15-15			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

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 ASL
Date 6-2-15

EXHIBIT A

SCOPE OF SERVICES

Date: Effective through June 30, 2016

Contractor Name: Andrew Eills
Contractor Address: 35 Pleasant Street
Concord, NH 03301

Services to be provided:

1. The Contractor shall provide services as a Hearings Officer on an as needed basis, as determined at the sole discretion of the Banking Department, for Banking Department Administrative Hearings.
2. The Hearings Officer's duties shall be to perform all functions necessary to adjudicate administrative matters before the Department that are assigned to the Hearings Officer, including but not limited to issuance of notices, ruling on pre-hearing motions, conducting pre-hearing conferences, conducting administrative hearings, ruling on post-hearing motions, and issuing final orders.
3. The Contractor will begin to provide services upon Governor and Council approval and will continue to provide services until June 30, 2016.
4. The Contractor must provide the Department of Justice 30 days notice prior to terminating the contract.
5. The Department of Justice may suspend or terminate this contract at any time and without cause upon written notice to the Contractor.

EXHIBIT B

CONTRACT PRICE AND METHOD OF PAYMENT

Contract period through June 30, 2016

1. The total amount of all payments made to the Contractor for the performance of the services during the period of the contract shall not exceed \$9,995. The hourly rate of pay is \$175.00.
2. The Contractor shall utilize time sheets to accurately track the work provided for the Department of Justice.
3. Invoices shall be submitted by the Contractor to the Department of Justice Business Office on a biweekly basis. The Contractor shall be paid on a biweekly basis. An invoice for the proceeding two weeks must be completed and received by the Department of Justice Business Office prior to payment.

EXHIBIT C

SPECIAL PROVISIONS

Contract period through June 30, 2016

1. Sections 7.1, 7.2, 13, 14 of the General Provisions do not apply to this contract.
2. Section 11 of the General Provisions is deleted and modified as follows:

CONTRACTOR'S RELATION TO THE STATE, In the performance of the agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. The Contractor will not receive any benefits, worker's compensation or other emoluments provided by the State to its employees.

3. The protections of RSA 99-D afforded to State officials and employees are hereby extended to the Contractor.
4. The Contractor will fall under the supervision of Associate Attorney General Richard Head.
5. This agreement does not encompass, nor does it engage the Contractor to assist the Attorney General or the Banking Department in any matter not described above. In particular, it is understood and acknowledged that the Contractor or his firm Andrew Eills Law Offices, PLLC at any given time is engaged in representing various clients in matters and proceedings as to which the State of New Hampshire and/or various agencies, boards, commissions, and personnel thereof are or may potentially be parties adverse to the firm's clients. Accordingly, as a condition of the contractor's agreement to undertake this matter, the Office of the Attorney General (OAG) specifically agrees that this engagement shall not preclude the firm from continuing or undertaking such representation, now or in the future, provided the same is unrelated to the matter which is the subject of this engagement. All appropriate precautions will be taken to ensure that any confidential information gained from this representation or developed by the contractor's work on this matter will not be disclosed to members of the firm in connection with other matters, or used in any way by the firm during the course of representing other clients in connection with other matters. Notwithstanding the above, so that the OAG may undertake an informed consent to any potential conflict of interest, Andrew Eills Law Offices, PLLC agrees to notify the OAG in writing of any present or future matter undertaken by the firm during the pendency of this engagement where the State of New Hampshire, or Banking Department is a party. Further, it is agreed that during the pendency of these matters Andrew Eills or Andrew Eills Law Offices, PLLC will not bring any litigation against the Banking Department.