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Frank Edelblut  
Commissioner

JUN 18 '21 AM 8:50 Christine M. Brennan  
Deputy Commissioner



STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, NH 03301  
TEL. (603) 271-3495  
FAX (603) 271-1953

June 7, 2021

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

**REQUESTED ACTION**

Authorize the Department of Education to contract with 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, in an amount not to exceed \$155,000.00, effective upon Governor and Council approval through June 30, 2023. 35% Federal funds, 65% General funds

John P. LeBrun, Esquire	Vendor Code: 263763
Amy B. Davidson, Esquire	Vendor Code: 159722
Peter T. Foley, Esquire	Vendor Code: 159636
Scott F. Johnson, Esquire	Vendor Code: 177681
Briana Hyde, Esquire	Vendor Code: 278089
Carol Stamatakis, Esquire	Vendor Code: 354082

Funds to support this request are anticipated to be available in the following accounts in FY 2022 and FY 2023, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council Approval, if needed and justified, Governance, VR Field Programs–Federal, and IDEA-Special Education–Elem/Sec:

<u>ACCOUNT NUMBER</u>	<u>FY 22</u>	<u>FY 23</u>
06-56-56-560510-20220000-046-500464 Consultants	\$48,500.00	\$48,500.00
06-56-56-560510-20220000-102-500731 Contracts for Program Services	\$ 1,500.00	\$ 1,500.00
06-56-56-565010-25380000-046-500464 Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562010-25040000-046-500464 Consultants	<u>\$20,000.00</u>	<u>\$20,000.00</u>
	\$77,500.00	\$77,500.00

### **EXPLANATION**

An RFP was published in the *Manchester Union Leader* on January 22, 23, and 24, 2021, as well as published in the January 20, 2021 issue of the NH Bar Association's NH Bar Journal, and also published on the Department's web-page starting January 4, 2021 through January 25, 2021, 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. There was one new candidate.

The committee members responsible for the review of the request for proposals included the following individuals: Diana Fenton, Esquire, Chief of the Governance Unit; Rebecca Fredette, Administrator of the Bureau of Student Support; Lisa Hinson-Hatz, State Director for Vocational Rehabilitation Services; and, Christopher G. Bond, Esquire, Attorney for the Office of the Commissioner.

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

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

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

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

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
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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 payment terms outlined in Exhibit C. This schedule was developed based upon the median and average costs of all hearings and mediations held during a one-year time span.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frank Edelblut', with a stylized flourish at the end.

Frank Edelblut  
Commissioner of Education

FE:sb:emr

**Attachment A**  
 Bid Summary Scoring Sheet  
 Hearing Officers

**Proposal Criteria in the RFP**

Expertise/Experience in the field of Administrative Hearings	30
Demonstrated competency in written and verbal communication	20
Experience with Special Education, General Education and Vocational Rehabilitation law	30
Training and experience as a mediator	20
<b>Total</b>	<b>100</b>

**6 Proposals Received**

Amy Davidson  
 Scott Johnson

Peter Foley  
 Briana Hyde

John LeBrun  
 Carol Stamatakis

**Reviewer Scores**

	Amy Davidson	Peter Foley	John LeBrun	Scott Johnson	Briana Hyde	Carol Stamatakis
Chris B	85	80	80	86	96	75
Lisa H	100	100	100	100	100	70
Diana F	85	80	70	90	85	75
Rebecca F	100	100	95	95	100	55
Average	92.5	90	86.25	92.75	95.25	68.75

**Review Process**

The RFP review took place on February 26, 2021. The RFP review panel consisted of the following employees from the Department of Education:

**Reviewer Qualifications**

Christopher G. Bond, Esquire, Attorney for the Office of the Commissioner. Chris was chosen to review the Hearing Officer and Alternative Dispute Resolution Officer contracts due to his experience in administrative law and his role as attorney for the Department of Education and State Board of Education.

Lisa Hinson-Hatz, State Director for Vocational Rehabilitation Services. Lisa was chosen to review the Hearing Officer and Alternative Dispute Resolution Officer contracts due to her experience with Vocational Rehabilitation law as well as her role as State Director for Vocational Rehabilitation which assists eligible New Hampshire citizens with disabilities secure suitable employment and financial and personal independence by providing rehabilitation services.

Diana Fenton, Esquire, Chief of the Governance Unit. Diana was chosen to review the Hearing Officer and Alternative Dispute Resolution Officer contracts due to her experience in administrative law and her role as administrator of the adjudicative processes for the Department of Education.

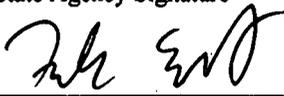
Rebecca Fredette, Administrator of the Bureau of Student Support. Becky was chosen to review the Hearing Officer and Alternative Dispute Resolution Officer contracts due to her experience with Special Education law as well as her role as Administrator of the Bureau of Student Support, which oversees programs targeted to students most in need of additional support in special education.

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

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

<b>1.1 State Agency Name</b> NH Department of Education		<b>1.2 State Agency Address</b> 101 Pleasant Street, Concord, NH 03301	
<b>1.3 Contractor Name</b> John P. LeBrun, Esq.		<b>1.4 Contractor Address</b> 25 Pearl Street, Henniker, NH 03242	
<b>1.5 Contractor Phone Number</b> (603) 496-5215	<b>1.6 Account Number</b> See Exhibit B	<b>1.7 Completion Date</b> June 30, 2023	<b>1.8 Price Limitation</b> \$155,000.00
<b>1.9 Contracting Officer for State Agency</b> Diana E. Fenton, Esq.		<b>1.10 State Agency Telephone Number</b> 271-3189	
<b>1.11 Contractor Signature</b>  Date: 05/28/21		<b>1.12 Name and Title of Contractor Signatory</b> John P. LeBrun, Esq.	
<b>1.13 State Agency Signature</b>  Date: 6-8-21		<b>1.14 Name and Title of State Agency Signatory</b> Frank Edelblut, Commissioner of Education	
<b>1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)</b> By: _____ Director, On: _____			
<b>1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable)</b> By:  Christopher Bond, Attorney On: 6/9/21			
<b>1.17 Approval by the Governor and Executive Council (if applicable)</b> G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials   
 Date 5/28/21

**2. 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 B 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 1.17, 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 1.13 ("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 affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. 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 reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C 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 applicable 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 employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property 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 The Contractor 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

JPL  
5/28/21

**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 cured, 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.
- 8.3. 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.

**9. TERMINATION.**

- 9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.
- 9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

**10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

- 10.1 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.
- 10.2 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.
- 10.3 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.

**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.**

- 12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.
- 12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor Initials JVL  
Date 5/28/24

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 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 ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

#### 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. The 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. **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.

17. **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.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

**EXHIBIT A**

**Special Provisions**

Additional Exhibits D-G

**Federal Certification 2 CFR 200.415**

Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

**Insurance Waiver**

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. 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 policy:

State Farm

## EXHIBIT B

### Scope of Services

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 **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. 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.

*Contract between John P. LeBrun, Esq. and the New Hampshire Department of Education*

Contractor Initials JPL  
Date 5/23/21

EXHIBIT B – PAGE 2

15. Format Hearing Officer Orders 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.
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.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. 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.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. 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.
23. Ensure timely responses to all inquiries of the parties.
24. 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.
25. 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.
26. 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.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

## EXHIBIT C

### Method of Payment

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, 2023. This schedule was developed based on 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"> <li>• Full Day (More than 3 hours) - \$250 (example 9-4)</li> <li>• Less than 3 hours - \$150 (example: 9-noon; noon - 3)</li> <li>• Second Day - \$125</li> </ul>			
Prior to Pre-Hearing		Date	
Upon acceptance of case - \$100*			
Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) Total allowable for case: \$100			
Sufficiency hearing - \$175			
Hearing		Date	
Pre-Hearing - \$150			
Hearing -			
<ul style="list-style-type: none"> <li>• 1<sup>st</sup> Day - More than 3 hours \$275; Less than 3 hours - \$155</li> <li>• 2<sup>nd</sup> Day - More than 3 hours \$275; Less than 3 hours - \$155</li> </ul>			
Post-Hearing		Date	
Prepare decision - \$255			
<ul style="list-style-type: none"> <li>• Hearing Decision</li> <li>• Summary Judgment</li> </ul>			
Report and Recommendation - \$200 (State Board)			
State Board - Findings of Fact/Rulings of Law - \$55 (State Board)			
Miscellaneous	Date	Details (mileage, time, other information necessary)	Payment (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			
<ul style="list-style-type: none"> <li>• ½ day (four hours or less) - \$150.00</li> <li>• Full day - \$300.00</li> </ul>			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 or \$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			

EXHIBIT C – PAGE 2

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.

\*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.

Limitation on Price: This contract will not exceed \$155,000.00.

Source of Funding: Funds to support this request are anticipated to be available in the following accounts in FY 2022 and FY 2023, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council Approval, if needed and justified, Governance, VR Field Programs–Federal, and IDEA-Special Education–Elem/Sec:

<u>ACCOUNT NUMBER</u>		<u>FY 22</u>	<u>FY 23</u>
06-56-56-560510-20220000-046-500464	Consultants	\$48,500.00	\$48,500.00
06-56-56-560510-20220000-102-500731	Contracts for Program Services	\$ 1,500.00	\$ 1,500.00
06-56-56-565010-25380000-046-500464	Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562010-25040000-046-500464	Consultants	<u>\$20,000.00</u>	<u>\$20,000.00</u>
		\$77,500.00	\$77,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301

Contractor Initials VP  
Date 5/28/22

## EXHIBIT D

### Contractor Obligations

Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address **administrative, contractual, or legal remedies** in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Reference: 2 C.F.R. § 200.326 and 2 C.F.R. 200, Appendix II, required contract clauses.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

The Contractor, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

#### **Breach**

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **Fraud and False Statements**

The Contractor understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Contractor represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Contractor and any company that the Contractor represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

#### **Environmental Protection**

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)

The Contractor is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement.

#### **Procurement of Recovered Materials**

In accordance with Section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), State agencies and agencies of a political subdivision of a state that are using appropriated Federal funds for procurement must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Contractor Initials JPL  
Date 5/21/21

**Exhibit E**

**Federal Debarment and Suspension**

- a. By signature on this Contract, the Contractor certifies its compliance, and the compliance of its Sub-Contractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
  2. Does not have a proposed debarment pending;
  3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Where the Contractor or its Sub-Contractor is unable to certify to the statement in Section a.1. above, the Contractor or its Sub-Contractor shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Contractor or Sub-Contractor is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Contractor or its Sub-Contractor shall submit a written explanation to the DOE. The certification or explanation shall be considered in connection with the DOE's determination whether to enter into Contract.
- d. The Contractor shall provide immediate written notice to the DOE if, at any time, the Contractor or its Sub-Contractor, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

Contractor Initials JPL  
Date 1/28/21

**Exhibit F**

**Anti-Lobbying**

The Contractor agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, execute the following Certification:

The Contractor certifies, by signing and submitting this contract, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfillin.pdf>).
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The DOE shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

Contractor Initials WAL  
Date 1/28/26

## Exhibit G

### **Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality**

#### **Rights to Inventions Made Under a Contract or Agreement**

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the DOE.

Any discovery or invention that arises during the course of the contract shall be reported to the DOE. The Contractor is required to disclose inventions promptly to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

#### **Confidentiality**

All Written and oral information and materials disclosed or provided by the DOE under this agreement constitutes Confidential Information, regardless of whether such information was provided before or after the date on this agreement or how it was provided.

The Contractor and representatives thereof, acknowledge that by making use of, acquiring or adding to information about matters and data related to this agreement, which are confidential to the DOE and its partners, must remain the exclusive property of the DOE.

Confidential information means all data and information related to the business and operation of the DOE, including but not limited to all school and student data contained in NH Title XV, Education, Chapters 186-200.

Confidential information includes but is not limited to, student and school district data, revenue and cost information, the source code for computer software and hardware products owned in part or in whole by the DOE, financial information, partner information (including the identity of DOE partners), Contractor and supplier information, (including the identity of DOE Contractors and suppliers), and any information that has been marked "confidential" or "proprietary", or with the like designation. During the term of this contract the Contractor agrees to abide by such rules as may be adopted from time to time by the DOE to maintain the security of all confidential information. The Contractor further agrees that it will always regard and preserve as confidential information/data received during the performance of this contract. The Contractor will not use, copy, make notes, or use excerpts of any confidential information, nor will it give, disclose, provide access to, or otherwise make available any confidential information to any person not employed or contracted by the DOE or subcontracted with the Contractor.

#### **Ownership of Intellectual Property**

The DOE shall retain ownership of all source data and other intellectual property of the DOE provided to the Contractor in order to complete the services of this agreement. As well the DOE will retain copyright ownership for any and all materials, patents and intellectual property produced, including, but not limited to, brochures, resource directories, protocols, guidelines, posters, or reports. The Contractor shall not reproduce any materials for purposes other than use for the terms under the contract without prior written approval from the DOE.

Contractor Initials JPL  
Date 1/28/21

State Farm Mutual Automobile Insurance Company  
PO Box 888818  
Dunwoody, GA 30356-9814



AT2  
LEBRUN, JOHN

A-2018 A

## AUTO RENEWAL

[REDACTED]

### Your State Farm Agent

RICH YACYSHYN

Office: 603-224-5298

Address: 171 N MAIN ST STE 1  
CONCORD, NH 03301-5088

*If you have a new or different car, have added any drivers, or have moved, please contact your agent.*

Thank you for choosing State Farm.

**Policy Number:**  
Policy Period: January 20, 2021 to July 20, 2021

**Vehicle:**  
[REDACTED]

**Principal Driver:**  
JOHN P LEBRUN

**CONVENIENT PAYMENT OPTION:** You may use one of State Farm's alternate payment plans which divides your present premium into two separate payments.

You may pay one half of the amount due, \$207.60 on JAN 20 2021.

The remaining half will be due on MAR 21 2021. We'll send you a reminder notice.

We also have available a plan to let you pay your premium in monthly installments. For details on this plan and to

determine if you qualify, please contact your State Farm agent.

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon

(continued on next page)

Policy Number:  
Prepared November 9, 2020  
1004583

Page number 1 of 4

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143562 202 01-15-2018.

Power To Pay  
Your Way



Online  
statefarm.com/pay



Mobile  
Use the  
State Farm mobile app



Call  
Automated Line: 1-800-440-0998  
Your agent: 603-224-5298



Mail  
Send us  
a check



Visit your  
State Farm  
agent

Key code:



Insured: LEBRUN, JOHN

[REDACTED]

Make payment to State Farm

State Farm Insurance Companies  
P.O. Box 588002  
North Metro, GA 30029-8002



For Office Use Only

AUTO REN

2-A2 A  
APP DT 03-01-2021

2018-FBC4  
MUTL VOL

[REDACTED]

**Principal Driver & Assigned Drivers**

For each automobile, the **Principal Driver** is the individual who most frequently drives it.

Each driver is designated as an **Assigned Driver** on the household automobile that they most frequently drive. Your

premium may be influenced by the information shown for these drivers.

**IMPORTANT NOTICE REGARDING YOUR PREMIUM**

State Farm works hard to offer you the best combination of price, service, and protection. The amount you pay for automobile insurance is determined by many factors such as the coverages you have, where you live, the kind of car you drive, how your car is used, who drives the car, and information from consumer reports.

You have the right to request, no more than once during a 12-month period, that your policy be re-rated using a current credit-based insurance score. Re-rating could result in a lower rate, no change in rate, or a higher rate. If you would like us to reevaluate your credit-based insurance score or have any questions on how your premium was determined, please contact your State Farm agent.

**COVERAGE AND LIMITS** See your policy for an explanation of these coverages.

<b>A</b>	Liability	
	Bodily Injury	250,000/500,000
	Property Damage	100,000
<b>C</b>	Medical Payments	10,000
<b>D</b>	Comprehensive	
<b>G</b>	250 Deductible Collision	
<b>R1</b>	Auto Rental & Travel Expense	
	80% Per Day, \$500 Max	
<b>U</b>	Uninsured Motor Vehicle	
	Bodily Injury	250,000/500,000
<b>Amount Due</b>		

The claim experience on your make and model of vehicle has resulted in an increase to your vehicle rating group for comprehensive coverage.

The claim experience on your make and model of vehicle has resulted in an increase to your vehicle rating group for collision coverage.

The claim experience on your make and model of vehicle has resulted in an increase to your liability rating group for bodily injury and/or property damage coverages.

If any coverage you carry is changed to give broader protection with no additional premium charge, we will give you the broader protection without issuing a new policy, starting on the date we adopt the broader protection.

**DISCOUNTS** These adjustments have already been applied to your premium.

Multiple Line	✓
Safe Driver	✓
See enclosed notice for more information about this discount.	
<b>Total Discounts</b>	

# RESUME

John P. LeBrun

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## 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:

- 2015-Present Law Office John P. LeBrun, PLLC  
25 Pearl Street  
Henniker, NH 03242
- 1990-2015 Goldman & LeBrun, PA  
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
- Vocational Rehabilitation Fair Hearings

2.

**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

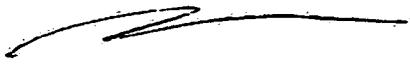
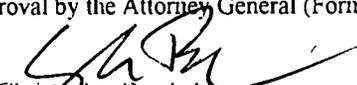
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 101 Pleasant Street, 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, 2023	1.8 Price Limitation \$155,000.00
1.9 Contracting Officer for State Agency Diana E. Fenton, Esq.		1.10 State Agency Telephone Number 271-3189	
1.11 Contractor Signature  Date: 5/24/21		1.12 Name and Title of Contractor Signatory Amy B. Davidson, Esq.	
1.13 State Agency Signature  Date: 6-8-21		1.14 Name and Title of State Agency Signatory Frank Edelblut, Commissioner of Education	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable)  By:  Christopher Bond, Attorney On: 6/4/21			
1.17 Approval by the Governor and Executive Council (if applicable)  G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials   
 Date 5/24/21

**2. 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 B 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 1.17, 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 1.13 ("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 affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. 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 reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C 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 applicable 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 employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property 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 The Contractor 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 cured, 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. 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.

## 9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, 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 B. In addition, at the State's

discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

## 10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 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.

10.2 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.

10.3 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.

**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.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise

out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 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 ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

#### 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. The 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. **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.

17. **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.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

**EXHIBIT A**

**Special Provisions**

Additional Exhibits D-G

**Federal Certification 2 CFR 200.415**

Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

**Insurance Waiver**

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. 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 policy:

Allstate Insurance Company

## EXHIBIT B

### Scope of Services

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 **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. 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.

Contract between Amy B. Davidson, Esq. and the New Hampshire Department of Education

EXHIBIT B – PAGE 2

15. Format Hearing Officer Orders 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.
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.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. 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.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. 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.
23. Ensure timely responses to all inquiries of the parties.
24. 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.
25. 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.
26. 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.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

**EXHIBIT C**

**Method of Payment**

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, 2023. This schedule was developed based on 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"> <li>• Full Day (More than 3 hours) - \$250 (example 9-4)</li> <li>• Less than 3 hours - \$150 (example: 9-noon; noon - 3)</li> <li>• Second Day - \$125</li> </ul>			
Prior to Pre-Hearing		Date	
Upon acceptance of case - \$100*			
Determination on Motions - \$50 (Motion to Continue; Dispositive; Dismissal; Reconsideration; Discovery) Total allowable for case: \$100			
Sufficiency hearing - \$175			
Hearing		Date	
Pre-Hearing - \$150			
Hearing -			
<ul style="list-style-type: none"> <li>• 1<sup>st</sup> Day - More than 3 hours \$275; Less than 3 hours - \$155</li> <li>• 2<sup>nd</sup> Day - More than 3 hours \$275; Less than 3 hours - \$155</li> </ul>			
Post-Hearing		Date	
Prepare decision - \$255			
<ul style="list-style-type: none"> <li>• Hearing Decision</li> <li>• Summary Judgment</li> </ul>			
Report and Recommendation - \$200 (State Board)			
State Board - Findings of Fact/Rulings of Law - \$55 (State Board)			
Miscellaneous	Date	Details (mileage, time, other information necessary)	Payment (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			
<ul style="list-style-type: none"> <li>• ½ day (four hours or less) - \$150.00</li> <li>• Full day - \$300.00</li> </ul>			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 or \$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			

EXHIBIT C – PAGE 2

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.

\*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.

Limitation on Price: This contract will not exceed \$155,000.00.

Source of Funding: Funds to support this request are anticipated to be available in the following accounts in FY 2022 and FY 2023, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council Approval, if needed and justified, Governance, VR Field Programs–Federal, and IDEA-Special Education–Elem/Sec:

<u>ACCOUNT NUMBER</u>	<u>FY 22</u>	<u>FY 23</u>
06-56-56-560510-20220000-046-500464 Consultants	\$48,500.00	\$48,500.00
06-56-56-560510-20220000-102-500731 Contracts for Program Services	\$ 1,500.00	\$ 1,500.00
06-56-56-565010-25380000-046-500464 Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562010-25040000-046-500464 Consultants	<u>\$20,000.00</u>	<u>\$20,000.00</u>
	\$77,500.00	\$77,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301

## EXHIBIT D

### Contractor Obligations

Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address **administrative, contractual, or legal remedies** in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Reference: 2 C.F.R. § 200.326 and 2 C.F.R. 200, Appendix II, required contract clauses.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

The Contractor, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

#### **Breach**

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **Fraud and False Statements**

The Contractor understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Contractor represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Contractor and any company that the Contractor represents may be subject to prosecution under the provision of 18 USC § 1001 and § 1020.

#### **Environmental Protection**

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)

The Contractor is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement.

#### **Procurement of Recovered Materials**

In accordance with Section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), State agencies and agencies of a political subdivision of a state that are using appropriated Federal funds for procurement must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Contractor Initials AWB  
Date 2/24/21

**Exhibit E**

**Federal Debarment and Suspension**

- a. By signature on this Contract, the Contractor certifies its compliance, and the compliance of its Sub-Contractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
  2. Does not have a proposed debarment pending;
  3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Where the Contractor or its Sub-Contractor is unable to certify to the statement in Section a.1. above, the Contractor or its Sub-Contractor shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Contractor or Sub-Contractor is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Contractor or its Sub-Contractor shall submit a written explanation to the DOE. The certification or explanation shall be considered in connection with the DOE's determination whether to enter into Contract.
- d. The Contractor shall provide immediate written notice to the DOE if, at any time, the Contractor or its Sub-Contractor, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

Contractor Initials MM  
Date 5/24/21

Exhibit F

Anti-Lobbying

The Contractor agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, execute the following Certification:

The Contractor certifies, by signing and submitting this contract, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfllin.pdf>).
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The DOE shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

Contractor Initials MM  
Date 3/24/21

## Exhibit G

### Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

#### Rights to Inventions Made Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the DOE.

Any discovery or invention that arises during the course of the contract shall be reported to the DOE. The Contractor is required to disclose inventions promptly to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

#### Confidentiality

All Written and oral information and materials disclosed or provided by the DOE under this agreement constitutes Confidential Information, regardless of whether such information was provided before or after the date on this agreement or how it was provided.

The Contractor and representatives thereof, acknowledge that by making use of, acquiring or adding to information about matters and data related to this agreement, which are confidential to the DOE and its partners, must remain the exclusive property of the DOE.

Confidential information means all data and information related to the business and operation of the DOE, including but not limited to all school and student data contained in NH Title XV, Education, Chapters 186-200.

Confidential information includes but is not limited to, student and school district data, revenue and cost information, the source code for computer software and hardware products owned in part or in whole by the DOE, financial information, partner information (including the identity of DOE partners), Contractor and supplier information, (including the identity of DOE Contractors and suppliers), and any information that has been marked "confidential" or "proprietary", or with the like designation. During the term of this contract the Contractor agrees to abide by such rules as may be adopted from time to time by the DOE to maintain the security of all confidential information. The Contractor further agrees that it will always regard and preserve as confidential information/data received during the performance of this contract. The Contractor will not use, copy, make notes, or use excerpts of any confidential information, nor will it give, disclose, provide access to, or otherwise make available any confidential information to any person not employed or contracted by the DOE or subcontracted with the Contractor.

#### Ownership of Intellectual Property

The DOE shall retain ownership of all source data and other intellectual property of the DOE provided to the Contractor in order to complete the services of this agreement. As well the DOE will retain copyright ownership for any and all materials, patents and intellectual property produced, including, but not limited to, brochures, resource directories, protocols, guidelines, posters, or reports. The Contractor shall not reproduce any materials for purposes other than use for the terms under the contract without prior written approval from the DOE.

Contractor Initials ABD  
Date 3/24/01

**Renewal auto policy declarations**



Auto Insurance | Gold | Standard | In-state | Fire

0111111111

**Total Premium** for the Policy Period

Please review your insured vehicles and verify their VINs are correct.

Vehicles covered	Identification Number (VIN)	Premium
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Additional coverages

**If you pay in installments\*** [REDACTED]

**If you pay in full (includes FullPay<sup>SM</sup> Discount)** [REDACTED]

**Summary**

Named Insured(s)  
 Amy B Davidson, [REDACTED]  
 Mailing address  
 [REDACTED]  
 Policy number  
 [REDACTED]

\* Your bill will be sent separately. Before making a payment, please refer to your latest bill, which includes payment options and installment fee information. If you do not pay in full, you will be charged an installment fee(s). If you do not pay your bill by the due date shown on your billing statement, you may be charged a late fee.

Your policy provided by  
**Allstate Fire and Casualty Insurance Company**  
 Policy period  
 Beginning **March 5, 2021** through  
**September 5, 2021** at 12:01 a.m.  
 standard time

Your Allstate agency is  
**Colt-Vien and Assoc**  
 197 Loudon Rd/S 230  
 Concord NH 03301  
 (603) 224-7444  
 BVien@allstate.com

**Discounts** (included in your total premium)

Multiple Policy	[REDACTED]	Responsible Payer	[REDACTED]
Antilock Brakes	[REDACTED]	Passive Restraint	[REDACTED]
Electronic Stability Control	[REDACTED]		
<b>Total discounts</b>	[REDACTED]		

Some or all of the information on your Policy Declarations is used in the rating of your policy or it could affect your eligibility for certain coverages. Please notify us immediately if you believe that any information on your Policy Declarations is incorrect. We will make corrections once you have notified us, and any resulting rate adjustments, will be made only for the current policy period or for future policy periods. Please also notify us immediately if you believe any coverages are not listed or are inaccurately listed.

<b>Policy discounts</b>			
Multiple Policy	[REDACTED]	Responsible Payer	[REDACTED]
<b>1999 Audi A4 Avant discounts</b>			
Antilock Brakes	[REDACTED]	Passive Restraint	[REDACTED]
<b>2017 Honda Fit discounts</b>			
Antilock Brakes	[REDACTED]	Electronic Stability Control	[REDACTED]
Passive Restraint	[REDACTED]		

**Listed drivers on your policy\***

Amy Davidson - [REDACTED]

\*Are there licensed drivers not listed above who either reside in your household (even if temporarily away from home) or are guests staying in your home for an extended period? If so, please contact us so your policy information and coverage is up to date. There are circumstances under which a loss may not be covered by this policy because the auto was being operated by someone residing at your house who is not listed on the policy. Additional detail about how we treat undisclosed drivers can be found in your policy.

**AMY B. DAVIDSON**

**PROFESSIONAL**

**LAW OFFICE OF AMY B. DAVIDSON**, Contoocook, NH, March 1992 – present; Private practice with concentration in mental health and disability law; represent individuals with mental illness at involuntary admission and guardianship hearings, administrative hearings and New Hampshire Supreme Court appeals. Panel attorney, New Hampshire Bar Association Domestic Violence Emergency (DOVE) Project (1993 to present). Experienced in family and juvenile law. Served as guardian *ad litem* in New Hampshire courts, 1994 to 2014 (Board certified, 2004 – 2014); faculty for guardian *ad litem* training in the Probate Courts, 2004 to 2014.

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

**RIVIER UNIVERSITY**, 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.

**DISABILITY 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/Staff Attorney. 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.

**UNIVERSITY OF NEW HAMPSHIRE SCHOOL OF LAW**, 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 FRANKLIN PIERCE 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  
NHBA Mental & Physical Disabilities Law Section

### **MISCELLANEOUS INTERESTS**

Animal welfare and rescue; volunteering for local animal shelters;

Conservation and environmental concerns;

Professional musician/piano teacher;

Competitive triathlete and runner; also enjoy trail and road biking, kayaking, Nordic and alpine skiing, snowshoeing, swimming, hiking, volleyball, tennis, badminton, skating.

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

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1. State Agency Name NH Department of Education		2. State Agency Address 101 Pleasant Street, Concord, NH 03301	
1.3 Contractor Name Peter T. Foley, Esq.		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, 2023	1.8 Price Limitation \$155,000.00
1.9 Contracting Officer for State Agency Diana E. Fenton, Esq.		10. State Agency Telephone Number 271-3189	
1.11 Contractor Signature  Peter T. Foley		1.12 Name and Title of Contractor Signatory Peter T. Foley, Esq.	
Date: 6/1/21			
1.13 State Agency Signature  		1.14 Name and Title of State Agency Signatory Frank Edelblut, Commissioner of Education	
Date: 6-8-21			
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ Director, On: _____			
16. Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By:  Christopher Bond, Attorney On: 6/9/21			
17. Approval by the Governor and Executive Council <i>(if applicable)</i>  G&C Item number: _____ G&C Meeting Date: _____			

**2. 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 B 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 1.17, 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 1.13 ("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 affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. 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 reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C 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 80:7c 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 applicable 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 employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property 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 The Contractor 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 cured, 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. 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.

#### **9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement.

#### **10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

10.1 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.

10.2 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.

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

**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.**

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 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 ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

#### **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. The 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. 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.

**17. 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.

**18. CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**19. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

## EXHIBIT A

### Special Provisions

Additional Exhibits D-G

#### **Federal Certification 2 CFR 200.415**

Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).

#### **Insurance Waiver**

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. 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 policy:

Amica Mutual Insurance Company

## EXHIBIT B

### Scope of Services

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 **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. 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.

**EXHIBIT B – PAGE 2**

15. Format Hearing Officer Orders 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.
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.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. 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.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. 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.
23. Ensure timely responses to all inquiries of the parties.
24. 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.
25. 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.
26. 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.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

## EXHIBIT C

### Method of Payment

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, 2023. This schedule was developed based on 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"> <li>• Full Day (More than 3 hours) - \$250 (example 9-4)</li> <li>• Less than 3 hours - \$150 (example: 9-noon; noon - 3)</li> <li>• Second Day - \$125</li> </ul>			
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"> <li>• 1<sup>st</sup> Day – More than 3 hours \$275; Less than 3 hours - \$155</li> <li>• 2<sup>nd</sup> Day - More than 3 hours \$275; Less than 3 hours - \$155</li> </ul>			
Post-Hearing		Date	
Prepare decision - \$255			
<ul style="list-style-type: none"> <li>• Hearing Decision</li> <li>• Summary Judgment</li> </ul>			
Report and Recommendation - \$200 (State Board)			
State Board – Findings of Fact/Rulings of Law - \$55 (State Board)			
Miscellaneous	Date	Details (mileage, time, other information necessary)	Payment (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable

Travel time*** - \$30.00/hour, after first 2 hours***			
Training - • 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			

**EXHIBIT C – PAGE 2**

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.*

*\*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.*

Limitation on Price: This contract will not exceed \$155,000.00.

Source of Funding: Funds to support this request are anticipated to be available in the following accounts in FY 2022 and FY 2023, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council Approval, if needed and justified, Governance, VR Field Programs–Federal, and IDEA-Special Education–Elem/Sec:

<u>ACCOUNT NUMBER</u>	<u>FY 22</u>	<u>FY 23</u>
06-56-56-560510-20220000-046-500464 Consultants	\$48,500.00	\$48,500.00
06-56-56-560510-20220000-102-500731 Contracts for Program Services	\$ 1,500.00	\$ 1,500.00
06-56-56-565010-25380000-046-500464 Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562010-25040000-046-500464 Consultants	<u>\$20,000.00</u>	<u>\$20,000.00</u>
	\$77,500.00	\$77,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301

*Contract between Peter T. Foley, Esq. and the New Hampshire Department of Education*

## EXHIBIT D

### Contractor Obligations

Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address **administrative, contractual, or legal remedies** in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Reference: 2 C.F.R. § 200.326 and 2 C.F.R. 200, Appendix II, required contract clauses.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

The Contractor, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

#### **Breach**

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **Fraud and False Statements**

The Contractor understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Contractor represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Contractor and any company that the Contractor represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

#### **Environmental Protection**

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)

The Contractor is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement.

#### **Procurement of Recovered Materials**

In accordance with Section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), State agencies and agencies of a political subdivision of a state that are using appropriated Federal funds for procurement must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Contractor Initials PTF  
Date 6/1/21

## Exhibit E

### Federal Debarment and Suspension

- a. By signature on this Contract, the Contractor certifies its compliance, and the compliance of its Sub-Contractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
  1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
  2. Does not have a proposed debarment pending;
  3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Where the Contractor or its Sub-Contractor is unable to certify to the statement in Section a.1. above, the Contractor or its Sub-Contractor shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Contractor or Sub-Contractor is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Contractor or its Sub-Contractor shall submit a written explanation to the DOE. The certification or explanation shall be considered in connection with the DOE's determination whether to enter into Contract.
- d. The Contractor shall provide immediate written notice to the DOE if, at any time, the Contractor or its Sub-Contractor, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

Contractor Initials PTF  
Date 6/1/21

## Exhibit F

### Anti-Lobbying

The Contractor agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, execute the following Certification:

The Contractor certifies, by signing and submitting this contract, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfllin.pdf>).
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The DOE shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

Contractor Initials PTF  
Date 6/1/21

## Exhibit G

### Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

#### Rights to Inventions Made Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the DOE.

Any discovery or invention that arises during the course of the contract shall be reported to the DOE. The Contractor is required to disclose inventions promptly to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

#### Confidentiality

All Written and oral information and materials disclosed or provided by the DOE under this agreement constitutes Confidential Information, regardless of whether such information was provided before or after the date on this agreement or how it was provided.

The Contractor and representatives thereof, acknowledge that by making use of, acquiring or adding to information about matters and data related to this agreement, which are confidential to the DOE and its partners, must remain the exclusive property of the DOE.

Confidential information means all data and information related to the business and operation of the DOE, including but not limited to all school and student data contained in NH Title XV, Education, Chapters 186-200.

Confidential information includes but is not limited to, student and school district data, revenue and cost information, the source code for computer software and hardware products owned in part or in whole by the DOE, financial information, partner information (including the identity of DOE partners), Contractor and supplier information, (including the identity of DOE Contractors and suppliers), and any information that has been marked "confidential" or "proprietary", or with the like designation. During the term of this contract the Contractor agrees to abide by such rules as may be adopted from time to time by the DOE to maintain the security of all confidential information. The Contractor further agrees that it will always regard and preserve as confidential information/data received during the performance of this contract. The Contractor will not use, copy, make notes, or use excerpts of any confidential information, nor will it give, disclose, provide access to, or otherwise make available any confidential information to any person not employed or contracted by the DOE or subcontracted with the Contractor.

#### Ownership of Intellectual Property

The DOE shall retain ownership of all source data and other intellectual property of the DOE provided to the Contractor in order to complete the services of this agreement. As well the DOE will retain copyright ownership for any and all materials, patents and intellectual property produced, including, but not limited to, brochures, resource directories, protocols, guidelines, posters, or reports. The Contractor shall not reproduce any materials for purposes other than use for the terms under the contract without prior written approval from the DOE.

Contractor Initials PTF  
Date 6/1/21

# Amica Mutual Insurance Company

Lincoln, Rhode Island

Page 1 of 3

## DECLARATIONS

## PERSONAL AUTO POLICY NO.

### NAMED INSURED AND ADDRESS

Peter T. Foley

### POLICY PERIOD: 12:01 A.M., STANDARD TIME

From: MARCH 4, 2021

To: SEPTEMBER 4, 2021

E-policy Email:

1	2009 VOLVO XC70 T6 AWD 4 Door Utility - 4WD VIN USE: AVERAGE DAILY MILEAGE 63 MILES	Heritage Family Federal Credit Union 30 Allen Street Rutland, VT 05701
2	2002 TOYOTA TUNDRA SR5 4 Door Pickup - 4WD VIN USE: AVERAGE DAILY MILEAGE 13 MILES	

The Auto(s) or Trailer(s) described in this policy is principally garaged at the above address unless otherwise stated on the coverage pages.

SAFE DRIVER PLAN CHARGEABLE POINTS - 2.0

RATES ARE BASED ON THE FOLLOWING HOUSEHOLD DRIVERS	
1	Peter T. Foley
2	
3	
4	
5	
6	

# Amica Mutual Insurance Company

Lincoln, Rhode Island

Page 2 of 3

## CONTINUATION OF DECLARATIONS FOR PERSONAL AUTO POLICY NO.

**NAMED INSURED**  
Peter T. Foley

CONTINUATION OF DECLARATIONS FOR PERSONAL AUTO POLICY NO.			
		AUTO 1 2009 VOLV	AUTO 2 2002 TOYO
<b>A. LIABILITY</b>	\$ 100,000 each person	\$ 212.00	\$ 169.00
Bodily Injury	\$ 300,000 each accident		
Property Damage	\$ 50,000 each accident	\$ 207.00	\$ 165.00
<b>B. MEDICAL PAYMENTS</b>	\$ 5,000 each person	\$ 38.00	\$ 36.00
<b>C. UNINSURED MOTORISTS</b>	\$ 100,000 each person	\$ 43.00	\$ 43.00
Bodily Injury	\$ 300,000 each accident		
<b>D. DAMAGE TO YOUR AUTO</b> (ACV means Actual Cash Value)			
1. Collision Loss	AUTO 1    AUTO 2		
ACV minus deductible of	\$ 500    \$1000	\$ 273.00	\$ 222.00
2. Other Than Collision Loss	AUTO 1    AUTO 2		
ACV minus deductible of	\$ 100    \$ 100	\$ 89.00	\$ 111.00
<b>TOWING AND LABOR COSTS</b>	\$ 100 each disablement	\$ 11.00	\$ 14.00
<b>OPTIONAL TRANSPORTATION EXPENSES</b>	AUTO 1                  AUTO 2		
FULL SAFETY GLASS COVERAGE		\$ 14.00	\$ 18.00
(UNDERINSURED MOTORISTS INCLUDED WITH UNINSURED MOTORISTS)			
AUTO LOAN/LEASE COVERAGE		\$ 25.00	NOT COVERED
<b>GARAGING LOCATION</b> 1-OFF STREET 2-OFF STREET			

TOTAL PREMIUM FOR EACH AUTO	\$ 912.00	\$ 778.00
	TOTAL PREMIUM	\$ 1,690.00

# Amica Mutual Insurance Company

Lincoln, Rhode Island

Page 3 of 3

## CONTINUATION OF DECLARATIONS FOR PERSONAL AUTO POLICY NO.

### NAMED INSURED

Peter T. Foley

PASSIVE RESTRAINT DISCOUNT AUTO 2  
ANTI-THEFT DEVICE DISCOUNT AUTO 1  
MULTI-LINE DISCOUNT-HOME  
ELEC STABILITY CONTROL DISCOUNT AUTO 1  
SIDE RESTRAINT DISCOUNT AUTO 1  
MULTI-CAR DISCOUNT  
LOYALTY DISCOUNT  
E-DISCOUNT

PP 00 01 01 05 PERSONAL AUTO POLICY  
AM 05 28 07 13 AMENDMENT OF PERSONAL AUTO POLICY PROVISIONS  
PP 01 76 02 17 AMENDMENT OF POLICY PROVISIONS - NEW HAMPSHIRE  
PP 13 01 12 99 COVERAGE FOR DAMAGE TO YOUR AUTO EXCLUSION ENDORSEMENT  
PP 13 06 01 09 CUSTOM EQUIPMENT EXCLUSION ENDORSEMENT  
AM 00 70 12 09 FULL SAFETY GLASS COVERAGE  
PP 03 35 09 93 AUTO LOAN/LEASE COVERAGE  
PP 13 33 02 08 LOSS PAYABLE CLAUSE - NEW HAMPSHIRE  
AM 00 18 02 01 MUTUAL PROVISIONS - NON-DIVIDEND POLICY  
PP 23 40 10 15 PUBLIC OR LIVERY CONVEYANCE EXCLUSION ENDORSEMENT  
PP 03 03 04 86 TOWING AND LABOR COSTS COVERAGE  
NH 04 45 10 17 UNINSURED MOTORISTS COVERAGE - NEW HAMPSHIRE

This policy shall not be valid unless countersigned by our authorized agent or representative.

Countersigned by.....

*Dinari DuPort*

Authorized Representative

# PETER T. FOLEY

## 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 (Private Sector)***

**Foley Law Office**, Concord, New Hampshire

**July 1991 - present**

Established and maintain private law practice specializing in administrative/government law, mediation services, election law and sports law. Representative clients: NH State Board of Education, NH Department of Education, New Hampshire Retirement System.

### ***HIGHER EDUCATION***

**University of New Hampshire School of Law**, Concord, New Hampshire

**Adjunct Professor - Sports Law, August 1992 – present**

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.

**Colby-Sawyer College**, New London, New Hampshire

**Adjunct Professor – Sports Law, August 2004 – May 2005**

Designed and taught curriculum for undergraduate course teaching key principles of the law and business of the sports industry to students majoring Colby-Sawyer’s sports management program.

### ***MEDIA***

**New Hampshire Public Radio**, Concord, New Hampshire

**Commentator**, April 1998 - 2004

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

**EMPLOYMENT**

**MEDIA (cont.)**

**KUSC Radio**, Los Angeles, California

**Commentator**, *Marketplace*, September 1997 - 2001

Wrote and recorded sports law/business essays for Public Radio International's nationally syndicated daily business news program

**Monitor Radio**, Boston, Massachusetts

**Commentator**, March 1995 - July 1997

Wrote and recorded sports law/business essays for the Christian Science Monitor's internationally syndicated radio news program.

**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.

**LEGAL (Public Sector)**

**State of New Hampshire, Office of the Attorney General**, Concord, New Hampshire

**Senior Assistant Attorney General**, December 1986 - January 1991

**Assistant Attorney General, August 1983- December 1986**

**Attorney**, September 1981 - August 1983

Member of management team of fifty-attorney law office with emphasis on the hiring and supervision of professional 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.

As Assistant Attorney General 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. 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.

**PUBLICATIONS      *LEGAL / BUSINESS / HUMOR***

1992 - 2004

Author of numerous sports law, sports business and sports humor pieces in a variety of publications including *The New York Times*, *Boston Globe*, *Legal Times* and *Baseball America*.

**BOARD MEMBERSHIP**

**NARAL Pro-Choice New Hampshire Political Action Committee**

January 2011 - present

Work in conjunction with NARAL Pro-Choice New Hampshire to elect pro-choice politicians and provide candidates with technical assistance, political analysis, and well-trained volunteers.

**New Hampshire Workers' Compensation Appeals Board**

December 1991 - January 2003

As attorney member of three-person appellate panel, presided over, and issued written decisions in, workers' compensation appeal hearings formerly within jurisdiction of the New Hampshire Superior Court.

**BAR MEMBERSHIP**

State of New Hampshire (1981)

**ORGANIZATIONS**

Member – Sports Lawyers Association

**REFERENCES**

Available upon request

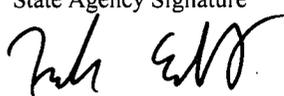
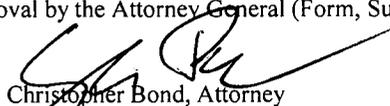
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 101 Pleasant Street, Concord, NH 03301	
1.3 Contractor Name Scott F. Johnson, Esq.		1.4 Contractor Address P.O. Box 549, Warner, NH 03278	
1.5 Contractor Phone Number (603) 224-6368	1.6 Account Number See Exhibit B	1.7 Completion Date June 30, 2023	1.8 Price Limitation \$155,000.00
1.9 Contracting Officer for State Agency Diana E. Fenton, Esq.		1.10 State Agency Telephone Number 271-3189	
1.11 Contractor Signature Scott F. Johnson  Date: 05/25/21		1.12 Name and Title of Contractor Signatory Scott F. Johnson, Esq.	
1.13 State Agency Signature  Date: 6-8-21		1.14 Name and Title of State Agency Signatory Frank Edelblut, Commissioner of Education	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i> By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i> By:  Christopher Bond, Attorney On: 6/9/21			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i> G&C Item number: _____ G&C Meeting Date: _____			

**2. 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 B 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 1.17, 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 1.13 ("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 affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. 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 reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C 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 applicable 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 employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property 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. The Contractor 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 cured, 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. 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.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

**10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

10.1 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.

10.2 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.

10.3 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.

**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.**

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 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 ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**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. The 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. 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.

**17. 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.

**18. CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**19. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

**EXHIBIT A**  
**Special Provisions**

Additional Exhibits D-G

**Federal Certification 2 CFR 200.415**

Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).

**Insurance Waiver**

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. 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 policy:

Concord Group Insurance

## EXHIBIT B

### Scope of Services

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 **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. 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.

*Contract between Scott F. Johnson, Esq. and the New Hampshire Department of Education*

EXHIBIT B – PAGE 2

15. Format Hearing Officer Orders 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.
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.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. 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.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. 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.
23. Ensure timely responses to all inquiries of the parties.
24. 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.
25. 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.
26. 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.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

**EXHIBIT C**

**Method of Payment**

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, 2023. This schedule was developed based on the median and average costs of all hearings and mediations held during a one-year time span.

<b>Mediation/Neutral Conference</b>		<b>Date</b>	
Upon acceptance of case - \$100*			
<ul style="list-style-type: none"> <li>• Full Day (More than 3 hours) - \$250 (example 9-4)</li> <li>• Less than 3 hours - \$150 (example: 9-noon; noon - 3)</li> <li>• Second Day - \$125</li> </ul>			
<b>Prior to Pre-Hearing</b>		<b>Date</b>	
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			
<b>Hearing</b>		<b>Date</b>	
Pre-Hearing - \$150			
Hearing –			
<ul style="list-style-type: none"> <li>• 1<sup>st</sup> Day – More than 3 hours \$275; Less than 3 hours - \$155</li> <li>• 2<sup>nd</sup> Day - More than 3 hours \$275; Less than 3 hours - \$155</li> </ul>			
<b>Post-Hearing</b>		<b>Date</b>	
Prepare decision - \$255			
<ul style="list-style-type: none"> <li>• Hearing Decision</li> <li>• Summary Judgment</li> </ul>			
Report and Recommendation - \$200 (State Board)			
State Board – Findings of Fact/Rulings of Law - \$55 (State Board)			
<b>Miscellaneous</b>	<b>Date</b>	<b>Details</b> (mileage, time, other information necessary)	<b>Payment</b> <b>(Less \$100.00 upon acceptance)</b>
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			
<ul style="list-style-type: none"> <li>• ½ day (four hours or less) - \$150.00</li> <li>• Full day - \$300.00</li> </ul>			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			

EXHIBIT C – PAGE 2

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.*

*\*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.*

Limitation on Price: This contract will not exceed \$155,000.00.

Source of Funding: Funds to support this request are anticipated to be available in the following accounts in FY 2022 and FY 2023, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council Approval, if needed and justified, Governance, VR Field Programs–Federal, and IDEA-Special Education–Elem/Sec:

<u>ACCOUNT NUMBER</u>	<u>FY 22</u>	<u>FY 23</u>
06-56-56-560510-20220000-046-500464 Consultants	\$48,500.00	\$48,500.00
06-56-56-560510-20220000-102-500731 Contracts for Program Services	\$ 1,500.00	\$ 1,500.00
06-56-56-565010-25380000-046-500464 Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562010-25040000-046-500464 Consultants	<u>\$20,000.00</u>	<u>\$20,000.00</u>
	\$77,500.00	\$77,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301

## EXHIBIT D

### Contractor Obligations

Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address **administrative, contractual, or legal remedies** in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Reference: 2 C.F.R. § 200.326 and 2 C.F.R. 200, Appendix II, required contract clauses.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

The Contractor, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

#### **Breach**

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **Fraud and False Statements**

The Contractor understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Contractor represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Contractor and any company that the Contractor represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

#### **Environmental Protection**

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)

The Contractor is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement.

#### **Procurement of Recovered Materials**

In accordance with Section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), State agencies and agencies of a political subdivision of a state that are using appropriated Federal funds for procurement must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Contractor Initials SFJ  
Date 05/25/21

## Exhibit E

### Federal Debarment and Suspension

- a. By signature on this Contract, the Contractor certifies its compliance, and the compliance of its Sub-Contractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
  2. Does not have a proposed debarment pending;
  3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Where the Contractor or its Sub-Contractor is unable to certify to the statement in Section a.1. above, the Contractor or its Sub-Contractor shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Contractor or Sub-Contractor is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Contractor or its Sub-Contractor shall submit a written explanation to the DOE. The certification or explanation shall be considered in connection with the DOE's determination whether to enter into Contract.
- d. The Contractor shall provide immediate written notice to the DOE if, at any time, the Contractor or its Sub-Contractor, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

Contractor Initials SFJ  
Date 05/25/21

## Exhibit F

### Anti-Lobbying

The Contractor agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, execute the following Certification:

The Contractor certifies, by signing and submitting this contract, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfillin.pdf>).
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The DOE shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

Contractor Initials SFJ  
Date 05/25/21

## Exhibit G

### Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

#### Rights to Inventions Made Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the DOE.

Any discovery or invention that arises during the course of the contract shall be reported to the DOE. The Contractor is required to disclose inventions promptly to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

#### Confidentiality

All Written and oral information and materials disclosed or provided by the DOE under this agreement constitutes Confidential Information, regardless of whether such information was provided before or after the date on this agreement or how it was provided.

The Contractor and representatives thereof, acknowledge that by making use of, acquiring or adding to information about matters and data related to this agreement, which are confidential to the DOE and its partners, must remain the exclusive property of the DOE.

Confidential information means all data and information related to the business and operation of the DOE, including but not limited to all school and student data contained in NH Title XV, Education, Chapters 186-200.

Confidential information includes but is not limited to, student and school district data, revenue and cost information, the source code for computer software and hardware products owned in part or in whole by the DOE, financial information, partner information (including the identity of DOE partners), Contractor and supplier information, (including the identity of DOE Contractors and suppliers), and any information that has been marked "confidential" or "proprietary", or with the like designation. During the term of this contract the Contractor agrees to abide by such rules as may be adopted from time to time by the DOE to maintain the security of all confidential information. The Contractor further agrees that it will always regard and preserve as confidential information/data received during the performance of this contract. The Contractor will not use, copy, make notes, or use excerpts of any confidential information, nor will it give, disclose, provide access to, or otherwise make available any confidential information to any person not employed or contracted by the DOE or subcontracted with the Contractor.

#### Ownership of Intellectual Property

The DOE shall retain ownership of all source data and other intellectual property of the DOE provided to the Contractor in order to complete the services of this agreement. As well the DOE will retain copyright ownership for any and all materials, patents and intellectual property produced, including, but not limited to, brochures, resource directories, protocols, guidelines, posters, or reports. The Contractor shall not reproduce any materials for purposes other than use for the terms under the contract without prior written approval from the DOE.

Contractor initials SFJ  
Date 05/25/21



**CONCORD GROUP**  
INSURANCE

Concord General Mutual Insurance Company  
4 Bouton Street | Concord, NH 03301  
p. 800-852-3380  
ConcordGroupInsurance.com

**POLICY CHANGE DECLARATIONS**

Refer billing, policy or coverage questions to:

Named Insured and Address:

Online Access: [REDACTED]

Davis & Towle, Morrill & Everett, Inc.  
PO Box 1260  
Concord, NH 03302  
(603) 224-9551

Scott Johnson  
[REDACTED]

A Valued Customer Since 2016				
Policy Number	Policy Type	Policy Period	Effective Date	Payment Plan
[REDACTED]	Personal Automobile	06/30/2020 TO 06/30/2021 12:01 A.M. Standard Time	08/28/2020	4-Pay

**Policy Changes**  
Automated Transaction - Add/Delete Paperless

**POLICY PREMIUM SUMMARY**

Veh	Veh Year	Make/Model	Vehicle ID #	Garaging Location	Annual Premium
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	2011	SUBARU FORESTER TOURING	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>TOTAL VEHICLE PREMIUM</b>					[REDACTED]
<b>OTHER COVERAGES</b>					[REDACTED]
<b>ANNUAL POLICY PREMIUM</b>					[REDACTED]

**DRIVERS and DRIVER DISCOUNTS**

#	Name	Date of Birth	License #	State Licensed	Good Student	Distant Student	Defensive Driver
1	Scott Johnson	[REDACTED]	[REDACTED]	NH			
	[REDACTED]	[REDACTED]	[REDACTED]	NH			
	[REDACTED]	[REDACTED]	[REDACTED]	NH			
	[REDACTED]	[REDACTED]	[REDACTED]	NH			



**Scott F. Johnson, Esq.**

**Experience**

- 1999 - **Concord Law School at Purdue University Global**  
Present **Professor of Law.** Develop and teach Administrative Law, Administrative Advocacy, ADR & Technology, Civil Procedure, Constitutional Law, Education Law, Health Law, and Special Education courses in an online platform. Create and grade student assessments. Serve on various academic and faculty governance committees including Admissions, Curriculum, and Faculty Council.
- 2006 – **New Hampshire Department of Education, Concord, NH**  
Present **Hearing Officer/Mediator**  
Serve as an administrative law judge in education cases, which includes special education, student discipline, teacher employment and licensing matters, bullying, and educational hardship matters. Duties also include serving as a mediator and using other forms of ADR to help parties resolve matters.
- 2002 - **Franklin Pierce Law Center, Concord, NH**  
2006 **Visiting/Adjunct Professor.** Developed and taught Education Law, Special Education Law, and Administrative Law classes.
- 1997-2004 **Stein, Volinsky & Callaghan, Concord, NH**  
**Attorney.** Represented clients in civil litigation including administrative, trial, and appellate practice along with various alternative dispute venues such as arbitration and mediation. Appeared before numerous administrative agencies, arbitrators, mediators, trial courts, the New Hampshire Supreme Court, and the First Circuit Court of Appeals.

**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, 1992
- Minor in American Studies

## **Bar Admissions**

- Admitted to New Hampshire Bar November, 1997
- Admitted to practice before the New Hampshire Supreme Court, Federal District Court in New Hampshire, First Circuit Court of Appeals, Court of Appeals for Veteran's Claims, and the United States Supreme Court.

## **Volunteer Activities**

- Represent veterans before the Court of Appeals for Veteran's Claims

## **Publications**

- *Freedom of Speech for Public School Employees*, The Center for Computer-Assisted Legal Instruction (2020)
- *Special Education Law*, 6<sup>th</sup> Edition, with Laura Rothstein, Sage Publications (2020)
- *Education Law: A Problem Based Approach*, 4<sup>th</sup> Edition, with Sarah E. Redfield Carolina Academic Press (2019)
- *Student Speech*, The Center for Computer-Assisted Legal Instruction (2019)
- *Rowley Forever More? A Call for Clarity and Change*, Vol 41, Journal of Law & Education 25 (2012).
- *Special Education Law*, 5<sup>th</sup> Edition, with Laura Rothstein, Sage Publications (2012).
- *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).
- *Focus on Equality Shifts to Adequacy as Brown v. Board Turns 50*, Vol. 34 Your School and the Law Issue 34 (2004).
- *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).
- *HB 117: The State's Plan to Fund Educational Adequacy is Too Little Too Late*, Vol 2. Issue 3 New Hampshire Law Bulletin (June 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).

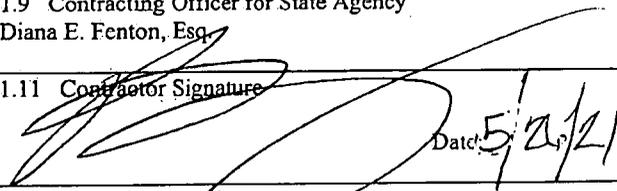
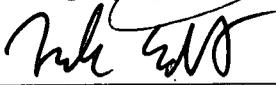
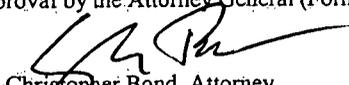
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 101 Pleasant Street, Concord, NH 03301	
1.3 Contractor Name Briana Hyde, Esq.		1.4 Contractor Address 154 Maplewood Avenue, Portsmouth, NH 03801	
1.5 Contractor Phone Number (603)319-1731	1.6 Account Number See Exhibit B	1.7 Completion Date June 30, 2023	1.8 Price Limitation \$155,000.00
1.9 Contracting Officer for State Agency Diana E. Fenton, Esq.		1.10 State Agency Telephone Number 271-3189	
1.11 Contractor Signature  Date: 5/21/21		1.12 Name and Title of Contractor Signatory Briana Hyde, Esq.	
1.13 State Agency Signature  Date: 6-8-21		1.14 Name and Title of State Agency Signatory Frank Edelblut, Commissioner of Education	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  Christopher Bond, Attorney On: 6/4/21			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials   
Date 5/21/21

**2. 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 B 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 1.17, 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 1.13 ("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 affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. 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 reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C 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 applicable 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 employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property 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. The Contractor 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.

*BSA*  
*5/24/21*

**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 cured, 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. 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.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

**10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

10.1 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.

10.2 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.

10.3 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.

**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.**

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor Initials *RSJ*  
Date *5/21/12*

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 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 ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**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. The 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. 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.

**17. 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.

**18. CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**19. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

**EXHIBIT A**

**Special Provisions**

Additional Exhibits D-G

**Federal Certification 2 CFR 200.415**

Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

**Insurance Waiver**

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. 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 policy:

ACORD

*BH*  
*5/26/12*

## EXHIBIT B

### Scope of Services

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 **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. 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.

*BOH*  
*5/20/21*

EXHIBIT B – PAGE 2

15. Format Hearing Officer Orders 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.
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.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. 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.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. 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.
23. Ensure timely responses to all inquiries of the parties.
24. 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.
25. 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.
26. 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.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

  
Handwritten signature and date: [Signature] 5/26/21

**EXHIBIT C**

**Method of Payment**

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, 2023. This schedule was developed based on 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"> <li>• Full Day (More than 3 hours) - \$250 (example 9-4)</li> <li>• Less than 3 hours - \$150 (example: 9-noon; noon - 3)</li> <li>• Second Day - \$125</li> </ul>			
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"> <li>• 1<sup>st</sup> Day - More than 3 hours \$275; Less than 3 hours - \$155</li> <li>• 2<sup>nd</sup> Day - More than 3 hours \$275; Less than 3 hours - \$155</li> </ul>			
Post-Hearing		Date	
Prepare decision - \$255			
<ul style="list-style-type: none"> <li>• Hearing Decision</li> <li>• Summary Judgment</li> </ul>			
Report and Recommendation - \$200 (State Board)			
State Board - Findings of Fact/Rulings of Law - \$55 (State Board)			
Miscellaneous	Date	Details (mileage, time, other information necessary)	Payment (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			Not Applicable
<ul style="list-style-type: none"> <li>• ½ day (four hours or less) - \$150.00</li> <li>• Full day - \$300.00</li> </ul>			
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			

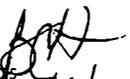
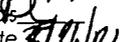
  
 Contractor Initials:   
 Date: 5/26/21

EXHIBIT C – PAGE 2

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.

\*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.

Limitation on Price: This contract will not exceed \$155,000.00.

Source of Funding: Funds to support this request are anticipated to be available in the following accounts in FY 2022 and FY 2023, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council Approval, if needed and justified, Governance, VR Field Programs–Federal, and IDEA-Special Education–Elem/Sec:

<u>ACCOUNT NUMBER</u>	<u>FY 22</u>	<u>FY 23</u>
06-56-56-560510-20220000-046-500464 Consultants	\$48,500.00	\$48,500.00
06-56-56-560510-20220000-102-500731 Contracts for Program Services	\$ 1,500.00	\$ 1,500.00
06-56-56-565010-25380000-046-500464 Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562010-25040000-046-500464 Consultants	<u>\$20,000.00</u>	<u>\$20,000.00</u>
	\$77,500.00	\$77,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301

*[Handwritten Signature]*  
5/26/21

## EXHIBIT D

### Contractor Obligations

Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address **administrative, contractual, or legal remedies** in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Reference: 2 C.F.R. § 200.326 and 2 C.F.R. 200, Appendix II, required contract clauses.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

The Contractor, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

#### **Breach**

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **Fraud and False Statements**

The Contractor understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Contractor represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Contractor and any company that the Contractor represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

#### **Environmental Protection**

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)

The Contractor is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement.

#### **Procurement of Recovered Materials**

In accordance with Section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), State agencies and agencies of a political subdivision of a state that are using appropriated Federal funds for procurement must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Contractor Initials  
Date

  
5/26/21

## Exhibit E

### Federal Debarment and Suspension

- a. By signature on this Contract, the Contractor certifies its compliance, and the compliance of its Sub-Contractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
  2. Does not have a proposed debarment pending;
  3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Where the Contractor or its Sub-Contractor is unable to certify to the statement in Section a.1. above, the Contractor or its Sub-Contractor shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Contractor or Sub-Contractor is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Contractor or its Sub-Contractor shall submit a written explanation to the DOE. The certification or explanation shall be considered in connection with the DOE's determination whether to enter into Contract.
- d. The Contractor shall provide immediate written notice to the DOE if, at any time, the Contractor or its Sub-Contractor, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

Contractor Initials  
Date

  
5/24/11

**Exhibit F**

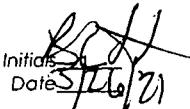
**Anti-Lobbying**

The Contractor agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, execute the following Certification:

The Contractor certifies, by signing and submitting this contract, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfillin.pdf>).
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The DOE shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

Contractor Initials  
Date

  
5/26/21

## Exhibit G

### Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

#### Rights to Inventions Made Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the DOE.

Any discovery or invention that arises during the course of the contract shall be reported to the DOE. The Contractor is required to disclose inventions promptly to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

#### Confidentiality

All Written and oral information and materials disclosed or provided by the DOE under this agreement constitutes Confidential Information, regardless of whether such information was provided before or after the date on this agreement or how it was provided.

The Contractor and representatives thereof, acknowledge that by making use of, acquiring or adding to information about matters and data related to this agreement, which are confidential to the DOE and its partners, must remain the exclusive property of the DOE.

Confidential information means all data and information related to the business and operation of the DOE, including but not limited to all school and student data contained in NH Title XV, Education, Chapters 186-200.

Confidential information includes but is not limited to, student and school district data, revenue and cost information, the source code for computer software and hardware products owned in part or in whole by the DOE, financial information, partner information (including the identity of DOE partners), Contractor and supplier information, (including the identity of DOE Contractors and suppliers), and any information that has been marked "confidential" or "proprietary", or with the like designation. During the term of this contract the Contractor agrees to abide by such rules as may be adopted from time to time by the DOE to maintain the security of all confidential information. The Contractor further agrees that it will always regard and preserve as confidential information/data received during the performance of this contract. The Contractor will not use, copy, make notes, or use excerpts of any confidential information, nor will it give, disclose, provide access to, or otherwise make available any confidential information to any person not employed or contracted by the DOE or subcontracted with the Contractor.

#### Ownership of Intellectual Property

The DOE shall retain ownership of all source data and other intellectual property of the DOE provided to the Contractor in order to complete the services of this agreement. As well the DOE will retain copyright ownership for any and all materials, patents and intellectual property produced, including, but not limited to, brochures, resource directories, protocols, guidelines, posters, or reports. The Contractor shall not reproduce any materials for purposes other than use for the terms under the contract without prior written approval from the DOE.

Contractor Initials  
Date

*ASJ*  
*STW/lu*



# CERTIFICATE OF LIABILITY INSURANCE

OP ID: KH

DATE (MM/DD/YYYY)  
05/04/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER <b>Spence &amp; Mathews Ins Agency</b> PO Box 715 - 4 Sullivan Sq Berwick, ME 03901 Kelly S Higgins	CONTACT NAME: <b>Kelly Higgins</b> PHONE (A/C, No, Ext): <b>207-698-1210</b> E-MAIL ADDRESS:	FAX (A/C, No): <b>207-698-4324</b>
	INSURER(S) AFFORDING COVERAGE	
INSURED <b>Briana Hyde</b> <b>Steven Hyde</b>	INSURER A: <b>Safeco</b>	NAIC # <b>24740</b>
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR W/O	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/PROP AGG \$ \$
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				12/18/2020	12/18/2021	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ <b>500,000</b> BODILY INJURY (Per accident) \$ <b>500,000</b> PROPERTY DAMAGE (Per accident) \$ <b>100,000</b> \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>  <b>NH Department of Education</b> <b>101 Pleasant St.</b> <b>Concord, NH 03301</b>	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**Briana M. Hyde (Coakley)**

**EDUCATION:**

Juris Doctor 5/00  
Massachusetts School of Law, Andover, Massachusetts  
Admitted to practice law in New Hampshire and Massachusetts

Bachelor of Arts/Political Science Major 6/97  
University of New Hampshire, Durham, New Hampshire

**LEGAL EXPERIENCE:**

**Partner** 3/07-present  
**Coakley & Hyde PLLC, Portsmouth, NH**

I am a partner in a law firm that handles all aspects of civil litigation. My focus is in alternative dispute resolution. I represent for profit and nonprofit organizations in the areas of employment law, contract negotiations and business law, as well as provide administrative law guidance. My specialties are in the areas of family law and special education law. I have been recruited to teach continuing education classes in the areas my practice is focused. I, along with my law partner, manage and maintain every aspect of owning and operating a very successful law practice.

**Hearing Officer/Mediator** 7/17-present  
**New Hampshire Department of Education**

I am a contract employee for the New Hampshire Department of Education to oversee and conduct hearings and Alternative Dispute sessions as required by Federal and State statute and administrative law and procedures. I issue written orders and decisions as part of the process in addition to mediating disputes that are brought before the New Hampshire Department of Education. Throughout my duties I maintain compliance with security and confidentiality requirements in telephone and virtual communications as required by Federal and State law.

**Attorney** 3/02-3/07  
**Shaines & McEachern, P.A., Portsmouth, NH**

Employed as a trial attorney for medium sized law firm that handles all aspects of civil law with special emphasis in litigation. Responsible for overseeing all aspects of civil litigation passed on to me by the Senior partner. Areas of practice include representing non-profit organizations, business law, employment law, contracts, tax law, workers' compensation – plaintiff, personal injury, wills and trusts, probate, family law, municipal law, tenant (commercial and residential), administrative law and ERISA litigation.

**PROFESSIONAL EXPERIENCE:**

**Professor of Graduate Studies** 05/11-present  
**Northeastern University**

I am employed by Northeastern University as a faculty lecturer for the College of Professional Studies in Non-Profit Management and Human Resource Management, for the required courses of Legal

Governance Issues in Non-Profit Organizations and Human Resources Management for profit and in Non-Profit Organizations. I am responsible for creating the course schedule, content and presentation of material through a number of sources, i.e. live lecture, Blackboard, Canvas and video to provide students with knowledge and understanding of course material based on my experience and training in the industry.

**Professor of Business**  
**Bay Path College**

11/10-3/11

Employed by Bay Path College as a professor in the business department to teach Business Policy I and Business Policy II. These two capstone courses require that the students apply business knowledge and skill through class discussions, including online discussions, and through Capstone's simulated competition.

**Professor of Law**  
**Massachusetts School of Law, Andover, MA**

1/08-present

I am employed by the Massachusetts School of Law as an adjunct professor to teach law students the specialized area of New Hampshire practice. This class introduces law students interested in practicing law in New Hampshire to the procedural differences of practice in New Hampshire. I am responsible for creating a class schedule, presenting the material, and examining the students' knowledge and understanding of the course material.

#### **COMMUNITY AND PROFESSIONAL AFFILIATIONS:**

New Hampshire Conflict Resolution Association, Board Member (2016-2019)  
Children's Museum of New Hampshire, Board Member (2013-2016)  
Children's Museum of New Hampshire Legal Governance Committee and Chair (2015-2016)  
Collaborative Law Alliance of New Hampshire, Member (2010-present)  
American Inns of Court (2002-2013)  
Rotary Club of Portsmouth, New Hampshire (2001-2008)  
New Hampshire Bar Association (2002-Present)  
National Alliance for the Mentally Ill, Volunteer (2000)  
Sexual Assault Support Services, Crisis Advocate (1993-1994)  
MSL, Student Bar Association, President (1999-2000)  
MSL, Student Bar Association, Director (1998-1999)  
MSL, Student Bar Association, Representative (1997-1998)  
American Trial Lawyers Association (1998-2000)  
ATLA, Student Attorney, Regional Trial Competitions (2<sup>nd</sup> Place 1999 & 2000)  
UNH, Memorial Union Board of Governors (1993-1996)

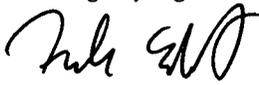
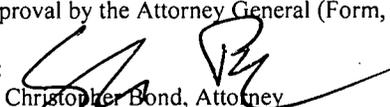
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name NH Department of Education		1.2 State Agency Address 101 Pleasant Street, Concord, NH 03301	
1.3 Contractor Name Carol M. Stamatakis, Esq.		1.4 Contractor Address P.O. Box 807, Newport, NH 03773	
1.5 Contractor Phone Number (603) 863-4920	1.6 Account Number See Exhibit B	1.7 Completion Date June 30, 2023	1.8 Price Limitation \$155,000.00
1.9 Contracting Officer for State Agency Diana E. Fenton, Esq.		1.10 State Agency Telephone Number 271-3189	
1.11 Contractor Signature  <i>Carol Stamatakis</i> Date: May 25, 2021		1.12 Name and Title of Contractor Signatory Carol M. Stamatakis, Esq.	
1.13 State Agency Signature   Date: 6-8-21		1.14 Name and Title of State Agency Signatory Frank Edelblut, Commissioner of Education	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By:  Christopher Bond, Attorney                      On: 6/9/21			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i>  G&C Item number: _____ G&C Meeting Date: _____			

**2. 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 B 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 1.17, 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 1.13 ("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 affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. 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 reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C 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 applicable 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 employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property 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 The Contractor 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 cured, 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. 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.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

**10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

10.1 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.

10.2 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.

10.3 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.

**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.**

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor Initials CS  
Date 5-25-21

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 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 ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

#### 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. The 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. **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.

17. **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.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

**EXHIBIT A**

**Special Provisions**

Additional Exhibits D-G

**Federal Certification 2 CFR 200.415**

Required certifications include: (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows:

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

**Insurance Waiver**

Authorize the Department of Education to waive Section 14, 14.1, and 14.1.1. 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 policy:

Main Street America Protection Insurance Company

## EXHIBIT B

### Scope of Services

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 **Hearing Officer**, upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

1. 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.

*Contract between Carol M. Stamatakis, Esq. and the New Hampshire Department of Education*

**EXHIBIT B – PAGE 2**

15. Format Hearing Officer Orders 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.
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.

In the role of **Alternative Dispute Resolution Officer** (e.g. Mediator or Neutral Officer), upon assignment of a case by the Office of Legislation and Hearings, the contractor shall:

19. Conduct proceedings as mandated by statute and set forth in the Hearing Officers' Guide to Administrative Process.
20. 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.
21. Maintain secure computer and telephone communications. Utilize a state issued email account for Alternative Dispute Resolution purposes.
22. 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.
23. Ensure timely responses to all inquiries of the parties.
24. 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.
25. 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.
26. 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.
27. File weekly case reports with the Office of Legislation and Hearings by no later than noon on Monday of each week.
28. Attend training sessions at the Department of Education in Concord.

**EXHIBIT C**

**Method of Payment**

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, 2023. This schedule was developed based on the median and average costs of all hearings and mediations held during a one-year time span.

<b>Mediation/Neutral Conference</b>		<b>Date</b>	
Upon acceptance of case - \$100*			
<ul style="list-style-type: none"> <li>• Full Day (More than 3 hours) - \$250 (example 9-4)</li> <li>• Less than 3 hours - \$150 (example: 9-noon; noon - 3)</li> <li>• Second Day - \$125</li> </ul>			
<b>Prior to Pre-Hearing</b>		<b>Date</b>	
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			
<b>Hearing</b>		<b>Date</b>	
Pre-Hearing - \$150			
Hearing –			
<ul style="list-style-type: none"> <li>• 1<sup>st</sup> Day – More than 3 hours \$275; Less than 3 hours - \$155</li> <li>• 2<sup>nd</sup> Day - More than 3 hours \$275; Less than 3 hours - \$155</li> </ul>			
<b>Post-Hearing</b>		<b>Date</b>	
Prepare decision - \$255			
<ul style="list-style-type: none"> <li>• Hearing Decision</li> <li>• Summary Judgment</li> </ul>			
Report and Recommendation - \$200 (State Board)			
State Board – Findings of Fact/Rulings of Law - \$55 (State Board)			
<b>Miscellaneous</b>	<b>Date</b>	<b>Details</b> (mileage, time, other information necessary)	<b>Payment</b> (Less \$100.00 upon acceptance)
Preparation of subpoenas (Total for case) \$20			
Mileage - \$0.535/mile**			Not Applicable
Travel time*** - \$30.00/hour, after first 2 hours***			
Training -			
<ul style="list-style-type: none"> <li>• ½ day (four hours or less) - \$150.00</li> <li>• Full day - \$300.00</li> </ul>			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			

EXHIBIT C – PAGE 2

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.

\*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.

Limitation on Price: This contract will not exceed \$155,000.00.

Source of Funding: Funds to support this request are anticipated to be available in the following accounts in FY 2022 and FY 2023, upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between Fiscal Years through the Budget Office without further Governor and Council Approval, if needed and justified, Governance, VR Field Programs–Federal, and IDEA-Special Education–Elem/Sec:

<u>ACCOUNT NUMBER</u>	<u>FY 22</u>	<u>FY 23</u>
06-56-56-560510-20220000-046-500464 Consultants	\$48,500.00	\$48,500.00
06-56-56-560510-20220000-102-500731 Contracts for Program Services	\$ 1,500.00	\$ 1,500.00
06-56-56-565010-25380000-046-500464 Consultants	\$ 7,500.00	\$ 7,500.00
06-56-56-562010-25040000-046-500464 Consultants	<u>\$20,000.00</u>	<u>\$20,000.00</u>
	\$77,500.00	\$77,500.00

Method of Payment:

Payment will be made upon the submittal of an invoice based on the payment schedule above which records activities that have taken place in accordance with the terms of the contract.

Invoices will be submitted to:

Stephen W. F. Berwick  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301

## EXHIBIT D

### Contractor Obligations

Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address **administrative, contractual, or legal remedies** in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Reference: 2 C.F.R. § 200.326 and 2 C.F.R. 200, Appendix II, required contract clauses.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

The Contractor, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

#### **Breach**

A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **Fraud and False Statements**

The Contractor understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Contractor represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Contractor and any company that the Contractor represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

#### **Environmental Protection**

(This clause is applicable if this Contract exceeds \$150,000. It applies to Federal-aid contracts only.)

The Contractor is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement.

#### **Procurement of Recovered Materials**

In accordance with Section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), State agencies and agencies of a political subdivision of a state that are using appropriated Federal funds for procurement must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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Date 5-25-21

## Exhibit E

### Federal Debarment and Suspension

- a. By signature on this Contract, the Contractor certifies its compliance, and the compliance of its Sub-Contractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
  1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
  2. Does not have a proposed debarment pending;
  3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Where the Contractor or its Sub-Contractor is unable to certify to the statement in Section a.1. above, the Contractor or its Sub-Contractor shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Contractor or Sub-Contractor is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Contractor or its Sub-Contractor shall submit a written explanation to the DOE. The certification or explanation shall be considered in connection with the DOE's determination whether to enter into Contract.
- d. The Contractor shall provide immediate written notice to the DOE if, at any time, the Contractor or its Sub-Contractor, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

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Date 5-25-21

## Exhibit F

### Anti-Lobbying

The Contractor agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, execute the following Certification:

The Contractor certifies, by signing and submitting this contract, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the "Disclosure of Lobbying Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfillin.pdf>).
- c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making and entering into this transaction imposed by Section 1352, Title 31 and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- d. The Contractor also agrees, by signing this contract that it shall require that the language of this certification be included in subcontracts with all Sub-Contractor(s) and lower-tier Sub-Contractors which exceed \$100,000 and that all such Sub-Contractors and lower-tier Sub-Contractors shall certify and disclose accordingly.
- e. The DOE shall keep the firm's certification on file as part of its original contract. The Contractor shall keep individual certifications from all Sub-Contractors and lower-tier Sub-Contractors on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.

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## Exhibit G

### Rights to Inventions Made Under a Contract, Copy Rights and Confidentiality

#### Rights to Inventions Made Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the DOE.

Any discovery or invention that arises during the course of the contract shall be reported to the DOE. The Contractor is required to disclose inventions promptly to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

#### Confidentiality

All Written and oral information and materials disclosed or provided by the DOE under this agreement constitutes Confidential Information, regardless of whether such information was provided before or after the date on this agreement or how it was provided.

The Contractor and representatives thereof, acknowledge that by making use of, acquiring or adding to information about matters and data related to this agreement, which are confidential to the DOE and its partners, must remain the exclusive property of the DOE.

Confidential information means all data and information related to the business and operation of the DOE, including but not limited to all school and student data contained in NH Title XV, Education, Chapters 186-200.

Confidential information includes but is not limited to; student and school district data, revenue and cost information, the source code for computer software and hardware products owned in part or in whole by the DOE, financial information, partner information (including the identity of DOE partners), Contractor and supplier information, (including the identity of DOE Contractors and suppliers), and any information that has been marked "confidential" or "proprietary", or with the like designation. During the term of this contract the Contractor agrees to abide by such rules as may be adopted from time to time by the DOE to maintain the security of all confidential information. The Contractor further agrees that it will always regard and preserve as confidential information/data received during the performance of this contract. The Contractor will not use, copy, make notes, or use excerpts of any confidential information, nor will it give, disclose, provide access to, or otherwise make available any confidential information to any person not employed or contracted by the DOE or subcontracted with the Contractor.

#### Ownership of Intellectual Property

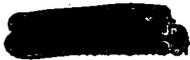
The DOE shall retain ownership of all source data and other intellectual property of the DOE provided to the Contractor in order to complete the services of this agreement. As well the DOE will retain copyright ownership for any and all materials, patents and intellectual property produced, including, but not limited to, brochures, resource directories, protocols, guidelines, posters, or reports. The Contractor shall not reproduce any materials for purposes other than use for the terms under the contract without prior written approval from the DOE.

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**MAIN STREET AMERICA PROTECTION  
INSURANCE COMPANY**

55 West Street  
Keene, NH 03431  
MSAGroup.com



**Policy Period:** 11/23/2020 to 11/23/2021  
**Policyholder Since:** 11/23/2019

**Named Insured:**

**Agency:**

CAROL M. STAMATAKIS

THE INSURANCE CENTER  
PO BOX 788  
NEWPORT, NH 03773  
(603) 863-7465

**Personal Automobile Policy Declarations - Amendment - Effective 12/28/2020**

THE INSURANCE CENTER and Main Street America Protection Insurance Company thank you for your business. Please review any changes made to your policy and contact your agent if you have any questions. If any additional premium is due, a bill will be mailed to you under separate cover.

**Vehicle Change**

Please refer to your insurance policy contract - form PP 0001 (01-05) - and any endorsements noted below for a full explanation of your coverages. Coverage provided only where both Limit of Liability and Premium are shown.

All Drivers and Household Residents	Age	Gender	Marital Status	Relation to Insured	Driver Status
CAROL M. STAMATAKIS				Self	Active

**Vehicles**

	VIN	Garaging Zip Code	Vehicle Use
1	2009 FORD FOCUS		Work 15+ mi
2	2006 HYUNDAI SONATA		Pleasure
3	1991 CHEVROLET GMT-400		Pleasure
4	2010 SUBARU FORESTER		Pleasure
5	2009 KIA SPORTAGE		Work 3-14 mi

<b>Additional Premium for Amendment</b>		<b>12 Months Premium</b>	
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*This is not a bill. Your invoice will follow in a separate mailing if applicable.*

<b>A. Bodily Injury Liability</b> \$250,000 each person/\$500,000 each accident	[REDACTED]				
<b>Property Damage Liability</b> \$100,000 each accident	[REDACTED]				
<b>B. Medical Payments</b> \$5,000 per person	[REDACTED]				
<b>C. Uninsured/Underinsured Motorist Bodily Injury</b> \$250,000 each person/\$500,000 each accident	[REDACTED]				
<b>Uninsured Motorist Property Damage</b> \$25,000		Incl.	Incl.	Incl.	Incl.
<b>Total Liability Premiums</b>	[REDACTED]				

<b>Overview of Policy Coverages, Limits of Liability, Premiums</b>	<b>Vehicle 5</b>	<b>Vehicle</b>	<b>Vehicle</b>	<b>Vehicle</b>
<b>A. Bodily Injury Liability</b> \$250,000 each person/\$500,000 each accident	[REDACTED]			
<b>Property Damage Liability</b> \$100,000 each accident	[REDACTED]			
<b>B. Medical Payments</b> \$5,000 per person	[REDACTED]			
<b>C. Uninsured/Underinsured Motorist Bodily Injury</b> \$250,000 each person/\$500,000 each accident	[REDACTED]			
<b>Uninsured Motorist Property Damage</b> \$25,000		Incl.		
<b>Total Liability Premiums</b>	[REDACTED]			

<b>Overview of Vehicle Specific Coverage:</b>		<b>2009 FORD FOCUS - VIN:</b>	
		<b>Deductible</b>	<b>Premium</b>
		No Cov.	No Cov.
<b>Vehicle 1:</b>			
Collision		[REDACTED]	[REDACTED]
Other than Collision			
Vehicle Discount(s)	(-\$73.00) Anti-Theft, Passive Restraint, Multi-Vehicle		Incl.
Additional Coverage(s)	Transportation Expenses - \$20/\$600		Incl.
	Deductible Waiver Safety Glass		Incl.
Liability Coverages	Listed Above		[REDACTED]
<b>Total Premium for 2009 FORD</b>			[REDACTED]

<b>Overview of Vehicle Specific Coverage:</b>		<b>2006 HYUNDAI SONATA - VIN:</b>	
		<b>Deductible</b>	<b>Premium</b>
		No Cov.	No Cov.
<b>Vehicle 2:</b>			
Collision		[REDACTED]	[REDACTED]
Other than Collision			
Vehicle Discount(s)	(-\$35.00) Passive Restraint, Anti-Lock, Multi-Vehicle		Incl.
Additional Coverage(s)	Transportation Expenses - \$20/\$600		Incl.
	Deductible Waiver Safety Glass		Incl.
Liability Coverages	Listed Above		[REDACTED]
<b>Total Premium for 2006 HYUNDAI</b>			[REDACTED]

Overview of Vehicle Specific Coverage:		1991 CHEVROLET GMT-400 - VIN:	
Vehicle 3:		Deductible	Premium
Collision		No Cov.	No Cov.
Other than Collision		No Cov.	No Cov.
Vehicle Discount(s)	(-\$15.00) Multi-Vehicle		Incl.
Liability Coverages	Listed Above		
<b>Total Premium for 1991 CHEVROLET</b>			

Overview of Vehicle Specific Coverage:		2010 SUBARU FORESTER - VIN:	
Vehicle 4:		Deductible	Premium
Collision		No Cov.	No Cov.
Other than Collision		No Cov.	No Cov.
Vehicle Discount(s)	(-\$32.00) Passive Restraint, Anti-Lock, Daytime Lights, Multi-Vehicle		Incl.
Liability Coverages	Listed Above		
<b>Total Premium for 2010 SUBARU</b>			

Overview of Vehicle Specific Coverage:		2009 KIA SPORTAGE - VIN:	
Vehicle 5:		Deductible	Premium
Collision		No Cov.	No Cov.
Other than Collision		No Cov.	No Cov.
Vehicle Discount(s)	(-\$51.00) Passive Restraint, Anti-Lock, Multi-Vehicle		Incl.
Liability Coverages	Listed Above		
<b>Total Premium for 2009 KIA</b>			

**Additional Premium Discounts:**  
 Accident Free, Good Payer, Paid In Full, Loyalty

Forms and Endorsements	
Personal Auto Policy	
Amendment of Policy Provisions - New Hampshire	
Uninsured Motorists Coverage - New Hampshire MSPA	
Deductible Waiver Safety Glass Coverage	
Coverage For Damage to Your Auto Exclusion Endorsement	
Privacy Notice	

Countersignature \_\_\_\_\_

# Carol M. Stamatakis

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## PROFILE

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Highly skilled agency director and attorney with over 20 years' experience in program administration, resource development, legal guidance, strategic planning, legislative engagement and health policy.

## SKILLS

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- Written and Verbal Communication
- Strategic Planning and Execution
- Relationship and Coalition Building
- Legislative Relations
- Health Care Regulation and Policy
- Grant Writing
- Budget Development and Management
- Legal Research and Writing
- Computer Proficiency
- Personnel Management

## EMPLOYMENT HISTORY

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### 10/2015 - Executive Director

Present **Senior Solutions** – Springfield, VT

- Provides leadership and overall administration of non-profit agency serving as the federally-designated Area Agency on Aging for Southeastern Vermont and provider of elder services.
- Oversees community relations and management of budget, programs and staff.
- Implemented strategic plan, secured significant new grants and increased agency visibility.

### 11/2010 - Executive Director

9/2015 **New Hampshire Council on Developmental Disabilities** – Concord, NH

- Provided leadership, management and strategic direction of federally-funded state agency that improved quality of life and expanded opportunities for people with developmental disabilities.
- Developed and managed state and federal agency budgets, supervised staff and oversaw compliance with applicable laws and reporting requirements.
- Oversaw policy development, community education and strategic planning.

### 5/2004 - Director of Policy and Planning

11/2010 **New Hampshire Council on Developmental Disabilities** – Concord, NH

- Developed and monitored proposed legislation and administrative rules, coordinated testimony and educated policymakers, families, attorneys and the public on disability-related issues.
- Oversaw the development and implementation of strategic five-year plan, financial and programmatic reporting and awarding of community grants.

### 11/1999 - Legal Coordinator, Elderly and Adult Services

5/2004 **New Hampshire Department of Health and Human Services** – Concord, NH

- Provided legal advice and legislative representation to agency administrators.
- Provided guidance to the aging network on policy, program administration and compliance with federal laws including the Older Americans Act, Nursing Home Reform Act, Medicaid and HIPAA.
- Developed and provided trainings for attorneys, the Long-Term Care Ombudsman Program, nursing home and other administrators and consumers on elder rights issues.
- Provided legislative leadership in elder rights and combating abuse, neglect and exploitation.

### 1994 - 99 Staff Attorney

**New Hampshire Department of Health and Human Services** – Keene, NH

- Provided legal advice and representation to the Division for Children, Youth and Families in child abuse & neglect, guardianship and termination of parental rights cases.

## 1985 - 94 **Private Law Practice**

- Engaged in the general practice of law, including probate, real estate, family, land use and governmental law, most recently as a partner in the firm of Elliott, Jasper & Stamatakis in Newport, New Hampshire. Served as guardian *ad litem* in District, Probate and Superior Courts.

## **NATIONAL PRESENTATIONS**

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- "Forging Strategic Alliances with Disability Advocates," Plenary Presentation, National Adult Protective Services Association (NAPSA) 2019 national conference
- "At Home Under the Dome: Working Effectively with Legislators," Workshop, National Adult Protective Services Association (NAPSA) 2018 national conference

## **PROFESSIONAL AND COMMUNITY AFFILIATIONS**

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- **Member of New Hampshire State Legislature, 1989 – 1994.** Served as Chair of the Sullivan County Delegation and member of County Delegation Finance Committee; Ranking Democrat on the House Committee on Resources, Recreation and Development.
- **New Hampshire State and County Bar Association Boards and Committees.** Member of New Hampshire Bar since 1985; Mental and Physical Disabilities Law Section (Chair 2006-2011, Vice-Chair 2012-2014) and Elder Law, Estate Planning and Probate Section (2000-present). Former President, Sullivan County Bar Association. Served on the faculty of several Continuing Legal Education programs and have written for the NH Bar News and NH Bar Journal.
- **Member of Vermont Bar since 2016.**
- **Member, NH Commission on Aging.**
- **Member, NH Advisory Committee to the U.S. Commission on Civil Rights (2009-2015).**
- **Keene Unitarian Universalist Church, Keene, NH.** Served in many leadership positions including Board President and Stewardship Chair.
- **Town and Community Boards.** Currently serve as Town of Lempster Trustee of Trust Funds and Cemetery Trustee (chair); Formerly served on the Lempster Conservation Commission, Community Task Force on Drug and Alcohol Abuse, Orion House, Sullivan County Transit, Kidspace Family Visitation Center, American Institute of Banking (Instructor), and others.

## **PUBLICATIONS**

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- "Beyond Advance Directives: Personal Autonomy and the Right To Refuse Life-Sustaining Medical Treatment," *NH Bar Journal*, Winter 2007 <http://www.nhbar.org/publications/archives/display-journal-issue.asp?id=349>.
- Numerous articles appearing in the *New Hampshire RAP Sheet: The Latest in Disability Research, Advocacy, Policy and Practice*. 2004 - 2015.
- "Assisted Living and Housing for Older Persons: Regulatory Oversight and Resident Rights," (part of a Continuing Legal Education program entitled "Nursing Home Transfer and Discharge Law in New Hampshire,") New Hampshire Bar Association, March 19, 2004.
- "Combating Financial Exploitation of Vulnerable Adults in New Hampshire," (portions of Continuing Legal Education manual), National Business Institute, Inc., 2002.

## **EDUCATION**

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### **Case Western Reserve University School of Law, J.D.**

- Named Distinguished Advocate in the Dean Dunmore Moot Court Competition.
- Selected for and served on National Moot Court Team.
- Served as Assistant Editor of Health Matrix, The Quarterly Journal of Health Services Management and wrote articles on legal-medical issues for said journal.

## **REFERENCES**

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Furnished upon request.