State of Connecticut
Office of the Attorney General

Second Addendum to RFP No. 2014-07

Representation of Department of Transportation

May 13, 2014

The Office of the Attorney General has received the following question concerning RFP #2014-07. The question, along with the response of the Office of the Attorney General, is as follows:

Question 1 If a law firm has a conflict or potential conflict regarding a particular assignment, would that preclude the law firm from being assigned to other matters under the contact?

Answer A firm that has a conflict or potential conflict of interest only in regard to a particular assignment would not be precluded from being assigned to other matters in which the firm did not have a conflict.

State of Connecticut
Office of the Attorney General

First Addendum to RFP No. 2014-07

Representation of Department of Transportation

May 13, 2014

The Office of the Attorney General has received the following questions concerning RFP #2014-07. The questions, along with the response of the Office of the Attorney General, are as follows:

Question 1 Can one engaged firm enter more than one contract in a calendar year (with the $100,000 not-to-exceed-amount) for separate sets of defined duties?

Answer Yes, that is possible, although it does not appear particularly likely.

Question 2 The OAG has stated that up to 3 firms may be selected to be available for assignments as needed. If there is only one firm engaged in a calendar year, will the $100,000 not-to-exceed-amount in a calendar year be increased?

Answer We do not anticipate a need to increase the contract value above $100,000 in a given calendar year, but if it became necessary and funds were available, a contract could be amended.

Question 3 If one firm has put in hours for the project which reach the $100,000 not-to-exceed-amount, does the OAG have another firm then take over to complete the work? Are there exceptions to this policy?

Answer If it appears that reasonable billing for an assignment would exceed the maximum authorized amount, and funds are available, a contract could be amended to increase the maximum amount.

Question 4 P3 transactions can at times require hours which could exceed even 3 firms' working hours which would reach the $100,000 not-to-exceed-amount in a calendar year, or a $300,000 level. Under what conditions would the OAG approve an increase in these fees?

Answer Same as answer to Question 3, above.

A T T O R N E Y G E N E R A L

STATE OF CONNECTICUT

Request for Proposals for Services – RFP # 2014-07 (Representation of Department of Transportation)

The State of Connecticut, Office of the Attorney General, is seeking proposals to provide certain legal services involving representation of the Department of Transportation. **PROPOSALS ARE DUE BY May 27, 2014, at 4:30 p.m. local time, as detailed in the RFP**.

This RFP is available online at www.ct.gov/ag, at the Request for Proposal button on the right hand side.

GEORGE C. JEPSEN, Attorney General

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REQUEST FOR PROPOSALS (RFP)
BY
THE STATE OF CONNECTICUT
OFFICE OF THE ATTORNEY GENERAL

Representation of the Department of Transportation
RFP# 2014-07

The State of Connecticut, Office of the Attorney General is seeking proposals to provide certain legal services for the Department of Transportation.

SCOPE OF SERVICES

The Attorney General of Connecticut, pursuant to Conn. Gen. Stat. § 3-125, invites proposals from appropriately qualified firms to provide legal counsel to the State of Connecticut, Department of Transportation.

Legal services to be performed shall include the following:

(a) Participating in the development of Requests for Qualifications ("RFQ"), bid solicitations, Requests for Information ("RFI") and Requests for Proposals ("RFP") and advising the Department of Transportation ("Department") staff on legal issues that may arise relative to the same;

(b) Participating in the evaluation of submissions in response to RFQs, bid solicitations, RFIs, and RFPs and advising Department staff on legal issues regarding the same;

(c) Participating in the development and drafting of all legal instruments associated with Transit Oriented Districts ("TODs") and Public Private Partnerships ("P3s"). Depending on the real property aspects of the matter, this may also include, but may not be limited to various leases and easements, operating agreements, and condominium documents;

(d) Negotiating the TOD and P3 relationships;

(e) As applicable, advising the Department on Project Labor Agreements ("PLAs") and drafting and negotiating the same;

(f) As applicable, advising and directing the Department re the Connecticut Environmental Policy Act ("CEPA"), environmental permitting requirements and compliance, and the allocation of risk under environmental law;

(g) Assessing the sources of funding, capital, securities or other financial resources and the use thereof for compliance with the law and for the protection of the State;

(h) Evaluating TODs and P3 opportunities and options for legal issues and rendering advice thereon;

(i) Advising the Department on risk management strategies and risk allocation;

(j) Evaluating the legal structure of proposers and advising the Department on the same;

(k) Assisting in the development of evaluation and selection criteria for proposers participating in the solicitation of TODs and P3s projects;

(l) Meeting with and advising Department staff on elements that need to be considered in making business decisions regarding TOD and P3 contract provisions;

(m) Rendering legal advice on implementing the selection, award and contract enforcement phases of the process;

(n) Rendering legal advice and direction concerning compliance with the requirements of the Connecticut General Statutes, including §§ 13b-79kk and 4-255 *et seq*.;

(o) Providing other related services, as needed.

Proposals must be received by the Office of the Attorney General by no later than May 27, 2014 4:30 p.m., local time. The Attorney General may invite some firms to attend an interview shortly thereafter.

An evaluation committee will evaluate the proposals in accordance with the selection criteria set forth in this RFP, which explains other terms and requirements. Up to 3 firms may be selected to be available for assignments as needed. Each contract will have a maximum compensation amount not to exceed $100,000.00. The selected firms must enter into a contract with the Office of the Attorney General, substantially in the form of the draft contract set out in Appendix A. The Attorney General encourages minority, women-owned and disadvantaged businesses to apply.

All communication with the Attorney General's Office must be undertaken only as specified in this RFP.

SELECTION CRITERIA

The evaluation committee will evaluate proposers on the basis of their written responses to this RFP, additional written information that may be requested by the Office of the Attorney General and, possibly, oral interviews. The goal of the evaluation will be to select up to three separate firms which provide the best combination of qualifications, relevant positive experience and costs. The evaluation committee will also consider the following non-exclusive factors in making that determination:

- Depth and quality of experience in:

  ►representation of Connecticut agencies in complex real property development transactions;

  ►transit-oriented developments and other public-private partnerships

(hereinafter “public-private transactions”);

►bringing public-private transactions to a successful conclusion;

►evaluating and negotiating a cost-effective conclusion for development pursuits;

► Connecticut state contracting requirements and procedures, including experience in participating in the development of Requests for Proposals (RFPs) and selection criteria, and drafting all necessary legal instruments consistent with Connecticut law;

►developing and negotiating project labor agreements;

► tax credit financing programs;

► advising State clients on risk management strategies and risk allocation; and

► major development projects that involve real estate, public funding, environmental and development contract issues.

- Qualifications and experience of the lead attorneys in functioning as the lead attorney in public-private transactions and other major real property development projects and the availability of such attorney(s) for such representation.

- Breadth and depth of experience of other partners, associates and other professionals available to provide the requested services to the Department of Transportation in corporate, real estate, environmental, intellectual property, and public funding law, including preparing condominium documents for mixed-use developments, and handling Connecticut Transfer Act and tax-exempt financing issues.

- Knowledge of Connecticut common law concerning construction litigation.

- Demonstrated ability to work closely and cooperatively with public clients.

- Results of reference checking.

- Reasonableness of rates proposed, and demonstrated efficiency in providing sound advice and counsel without unnecessary or excessive charges. Among substantially equally qualified proposers, rates and efficiency will weigh heavily in making a selection.

- Equal employment opportunity record as evidenced by the composition of firm personnel and the firm's affirmative action and equal employment opportunity policies and practices.

- Record of compliance with all applicable ethical rules and rules of professional conduct.

- The proposing firms will not be considered to have an irreconcilable conflict of interest because the firm or attorneys associated with the firm have in the past brought or are currently bringing litigation against the State of Connecticut, whether in court, mediation or arbitration, so long as that litigation does not concern the firm's involvement in matters related to and adverse to the Department of Transportation, or related to any of the described litigation or issues. All potential conflicts with the State of Connecticut must be fully disclosed, described and discussed in the proposal.

INSTRUCTIONS TO PROPOSERS

I. Proposal Schedule

Release of RFP:	April 29, 2014
Proposals due:	**May 27, 2014**

From the date the Office of the Attorney General issues this RFP until the date that it awards the Contract to the successful proposers, interested parties should not contact any employee of the State of Connecticut for additional information concerning this RFP, except in writing directed only to Associate Attorney General Joseph Rubin, at Office of the Attorney General, 55 Elm Street, Hartford, CT 06106, or via email at Joseph.Rubin@ct.gov. Interested parties should submit questions no later than May 13, 2014. Answers will be posted by May 20, 2014. Late questions may not receive answers. The Office of the Attorney General will answer questions only in the form of one or more addenda to this RFP, and post them on its website, www.ct.gov/ag, at the Request for Proposal button on the right hand side. Proposers have the responsibility to review that location for any addenda to this RFP.

For technical questions only, concerning issues or problems with access to or downloading of this RFP and associated information from the website, proposers may contact Scott Eliasson by e-mail at scott.eliasson@ct.gov.

II. Sealed Proposals

Proposers must submit an original and four copies of their proposals in a SEALED envelope or carton, clearly marked with RFP #2014-07, the date it is due, and the name and address of the firm. **Proposers may send the proposal by courier or overnight delivery service or deliver it in person to the address below, arriving no later than May 27, 2014, at 4:30 p.m. local time. Because of certain delivery issues, proposals sent by U.S. Postal Service must arrive before 4:30 p.m. on the day prior to the due date.** Proposals will not be publicly opened on the due date. Proposals received after that time may not be accepted. Postmark dates will not be considered as the basis for meeting any submission deadline. All proposals and other communications with the State regarding this RFP must be submitted in writing in sealed envelopes or cartons which clearly

identify this RFP. Any material received that does not conform to this provision will be opened as general mail, which may not ensure the proposer's intent or that the materials arrive timely.

State of Connecticut
Office of the Attorney General
Attn: Associate Attorney General Joseph Rubin
RFP # 2014-07, On-call counsel for DOT
55 Elm Street
Hartford, CT 06106

III. Submission of Proposals

A. To be considered, all submissions must include all of the following:

1. Responses to the questions asked;
2. All information and completed forms attached to this RFP;
3. A statement affirming specifically all of the representations and warranties set forth in Special Terms and Conditions numbers 12 (Independent Price Determinations) and 13 (Offer of Gratuities), below; and
4. The following completed forms:
   Agency Vendor Form (SP-26NB), available at http://www.das.state.ct.us/Purchase/Info/Vendor_Profile_Form_(SP-26NB).pdf; W-9 Form, available at http://www.irs.gov/pub/irs-pdf/fw9.pdf
5. Five paper copies of all required or supporting documents, and five copies of a CD-ROM containing all documents in a format compatible with Microsoft Word, current version, and affording the user the capability of searching its contents; except the signature pages and required or necessary forms not conveniently available in Microsoft Word may be provided in PDF format;
6. Additional required forms as described below must be submitted to or on file with the BizNet system by the deadline for submission of proposals. Paper or electronic copies need not be provided with the submission to the Attorney General's office.

A. INTRODUCTION TO BIZNET

The Connecticut Office of the Attorney General is adhering to the new requirement of the Connecticut Department of Administrative Services ("DAS") that all firms seeking to do business with the State create a business profile, or account, on the DAS Business Network ("BizNet") system. Firms are responsible for updating firm information on a continuous basis as changes occur.

Firms create an account on BizNet by using the following link: https://www.biznet.ct.gov/AccountMaint/Login.aspx. Once your firm creates an account, login and select "CT Procurement" and then select "Company Information" for access. If you experience difficulty establishing or otherwise managing your firm's account, please call DAS

at 860-713-5095.

DAS has implemented the requirement to create a BizNet account in accordance with Public Act 11-229, enacted to make doing business with the State of Connecticut more business friendly. One benefit to using BizNet is that it will eliminate certain redundancies, such as the former requirement to complete and submit forms even though the forms had been recently submitted in response to another Request for Proposals.

In addition to eliminating redundancy, BizNet has automated the completion and submission of the Ethics Affidavits, Non-Discrimination forms and the Commission on Human Rights and Opportunities (CHRO) Workplace Analysis Affirmative Action Report/Employment Information Form. Firms must now upload these forms electronically to their BizNet account and update them on an annual basis, rather than submitting paper copies with each proposal. Firms will have the ability to view, verify and update their information, by logging in to their BizNet account, prior to submitting responses to an RFP.

For information about **how to upload** the Ethics Affidavits and Non-Discrimination forms please access the following page: **http://das.ct.gov/images/1090/Upload%20Instructions.pdf**

B. ETHICS AFFIDAVITS

THE FOLLOWING ETHICS FORMS MUST BE SIGNED, DATED, NOTARIZED, UPLOADED OR UPDATED ON BIZNET. TO OBTAIN THESE FORMS, YOU MUST LOGIN TO BIZNET AND FOLLOW THE INSTRUCTIONS REFERENCED ABOVE.

1. OPM Ethics Form 1 – Gift & Campaign Contribution Certification
2. OPM Ethics Form 5 – Consulting Agreement Affidavit
3. OPM Ethics Form 6 – Affirmation of Receipt of State Ethics Laws Summary

For information about **how to complete** these forms, please access the Office of Policy & Management's website by using the following link: http://www.ct.gov/opm/cwp/view.asp?a=2982&q=386038

C. NON-DISCRIMINATION FORMS

CHOOSE ONE (1) OF THE FORMS LISTED BELOW THAT APPLIES TO YOUR BUSINESS. COMPLETE AND UPLOAD OR UPDATE THE FORM ON BIZNET ANNUALLY. TO OBTAIN A COPY OF THESE FORMS, YOU MUST LOGIN TO BIZNET AND FOLLOW THE INSTRUCTIONS REFERENCED ABOVE.

1. Form A–Representation by Individual (Regardless of Value)
2. Form B–Representation by Entity (Valued at $50,000 or less)

3. Form C–Affidavit by Entity (RECOMMENDED) (Valued at $50,00 or more)
4. Form D–New Resolution by Entity
5. Form E–Prior Resolution by Entity

For information about **how to complete** these forms, including which form your firm should complete, please access the Office of Policy & Management's website by using the following link: http://www.ct.gov/opm/cwp/view.asp?a=2982&q=390928&opmNav_GID=1806

D. COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES (CHRO) WORKPLACE ANALYSIS AFFIRMATIVE ACTION REPORT/EMPLOYMENT INFORMATION FORM.

For information about **how to complete** these forms you may contact Richard Campbell at Richard.campbell@ct.gov for assistance.

THE CHRO WORKPLACE ANALYSIS AFFIRMATIVE ACTION REPORT/EMPLOYMENT INFORMATION MUST BE COMPLETED IN BIZNET AND UPDATED AS NECESSARY. YOU MUST LOGIN TO BIZNET AND FOLLOW THE INSTRUCTIONS REFERENCED ABOVE.

B. Concise answers are encouraged. Responses should be prepared on 8 ½ x 11 inch paper using at least 12 point type with standard margins.

C. The submission of proposals shall constitute, without any further act required of the proposers or the Attorney General, acceptance of the requirements, administrative stipulations and all of the terms and conditions of this RFP. Proposals must reflect compliance with such requirements. Failure of the proposal to so comply may result in the Attorney General's rejection of the proposal. The Attorney General will reject any proposal that deviates materially from the specifications, terms or conditions of this RFP. Proposers submitting proposals with any minor or immaterial deviations must identify and fully justify such deviations in order for the Attorney General to consider their proposal.

D. No additions or changes to any proposal will be allowed after the proposal due date, unless the Attorney General specifically requests such modification. The Attorney General may, at his option, seek proposer retraction and/or clarification of any discrepancy or contradiction found during the review of proposals.

E. **Information Required in the Proposal**

1. Name and brief resume for the primary individual(s) who will work with the Department of Transportation, and explain his or her experience, relevant background and anticipated duties.

2. Name and brief resumes of such other individuals who will provide services and explain their experience, relevant background and

anticipated duties.

3. Explain the firm's qualifications in light of the stated Selection Criteria detailed above.

4. Disclose any past or present assignments, relationships or other employment that your firm or any employee of your firm has or has had that may create a conflict of interest or the appearance of a conflict of interest in serving as counsel for the State in this matter.

5. If you find any term or provision of the proposed draft contract in Appendix A unacceptable, identify the term, explain why it is unacceptable, and state whether failure to modify this term would result in your firm's failure to execute a contract in this matter.

6. Discuss any pending complaints or investigations, or any made or concluded within the past five years, to or by any regulatory body or court regarding the conduct of your firm or its predecessors, or any of its present or former members, employees and associates.

7. Include a detailed and specific fee proposal. You must include a fee proposal with specific hourly rates for each category of person who will work on the assignment (excluding clerical staff, whose time may not be billed).

8. Provide names and contact information of three client references for whom you have performed services reasonably comparable to those sought in this RFP.

9. Provide the name of your malpractice insurance carrier, the maximum amount of your coverage, and the deductible amount.

F. Conformity and Completeness of Proposals

To be considered acceptable, proposals must be complete and conform to all material RFP instructions and conditions. The Attorney General's Office, in its sole discretion, may reject in whole or in part any proposal if in its judgment the best interests of the State will be served.

G. Stability of Proposed Fees

Any fee proposals must be valid for the entire duration of the Contract. The duration of the contract will be three (3) years with the ability to extend by amendment.

IV. Amendment or Cancellation of this RFP

The Attorney General's Office reserves the right to cancel, amend, modify or otherwise change this RFP at any time if it deems it to be in the best interest of the State to do so.

V. Presentation of Supporting Evidence

Proposers must be prepared to provide evidence of experience, performance, ability, financial resources or other items as the Attorney General's Office deems to be necessary or appropriate concerning the performance capabilities represented in their proposals.

VI. Misrepresentation or Default

The Attorney General's Office may reject the proposal and void any award resulting from this RFP to a firm which makes any material misrepresentation in its proposal or other submittal in connection with this RFP.

VII. Errors

The Attorney General's Office reserves the right to correct clerical or administrative errors that may be made during the evaluation of proposals or during the negotiation of the contract and to change the Contract award accordingly. In addition, the Attorney General's Office reserves the right to re-evaluate proposals and the award of the Contract in light of information either not previously known or otherwise not properly having been taken into account prior to Contract award. In any case, this may include, in extreme circumstances, revoking the awarding of the Contract already made to a firm and subsequently awarding the Contract to another firm. Such action on the part of the Attorney General's Office shall not constitute a breach of contract on the part of the Attorney General's Office since the Contract with the initial firm would be deemed void and of no effect as if no contract ever existed between the Attorney General's Office and such firm.

The Attorney General's Office may waive minor irregularities found in proposals or allow the proposer to correct them, depending on which is in the best interest of the state. “Minor irregularities" means typographical errors, informalities that are matters of form rather than substance and evident from the proposal itself, and insignificant mistakes that can be waived or corrected without prejudice to other proposers, as determined in the discretion of the Attorney General.

VIII. Ownership of Proposals

All proposals shall become the sole property of the State and will not be returned.

IX. Validation of Proposals

The proposal must be signed by an authorized official and shall be a binding commitment which the Attorney General's Office may incorporate, in whole or in part, by reference or otherwise, into the Contract. The proposal must also include evidence that the person submitting the proposal has the requisite power and authority to submit and deliver the proposal and subsequently to enter into, execute and deliver and perform on behalf of the firm the Contract.

X. Execution of Contract and Related Requirements

(a) This RFP is not a contract and, alone, shall not be interpreted as such.

Rather, this RFP only serves as the instrument through which proposals are solicited. Once the evaluation of the proposals is complete and a firm is selected, the selected proposal and this RFP may then serve as the basis for the Contract that will be negotiated and executed between the Attorney General's Office and the selected firm. If the Attorney General's Office and the initial selected firm fail to reach agreement on all issues relative to the Contract within a time determined solely by the Attorney General, then the Attorney General's Office may commence and conclude contract negotiations with other proposers. The Attorney General's Office may decide at any time to start this RFP process again.

(b) Conn. Gen. Stat. § 4-252 requires that this RFP include a notice of the certification requirements described in this statute. Accordingly, pursuant to this statute, firms are notified as follows:

(1) The terms “gift,” “quasi-public agency,” “state agency,” “large state contract,” “principals and key personnel” and “participated substantially” as used in this section 10(b) shall have the meanings set forth in this statute.

(2) No state agency or quasi-public agency shall execute a large state contract unless the state agency or quasi-public agency obtains the written certifications described in this section 10(b). Each such certification shall be sworn as true to the best knowledge and belief of the person signing the certification, subject to the penalties of false statement.

(3) The official of the person, firm or corporation awarded the contract, who is authorized to execute the contract, shall certify on such forms as the State shall provide:

(A) That no gifts were made between the date that the state agency or quasi-public agency began planning the project, services, procurement, lease or licensing arrangement covered by the contract and the date of execution of the contract, by (i) such person, firm, corporation, (ii) any principals and key personnel of the person, firm or corporation, who participated substantially in preparing the bid or proposal or the negotiation of the contract, or (iii) any agent of such person, firm, corporation or principals and key personnel, who participated substantially in preparing the bid or proposal or the negotiation of the contract, to (I) any public official or state employee of the state agency or quasi-public agency soliciting bids or proposals for the contract, who participated substantially in the preparation of the bid solicitation or request for proposals for the contract or the negotiation or award of the contract, or (II) any public official or state employee of any other state agency, who has supervisory or appointing authority over such state agency or quasi-public agency;

(B) That no such principals and key personnel of the person, firm or corporation, or agent of such person, firm or corporation or principals and key personnel, knows of any action by the person, firm or corporation to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the person, firm or

corporation to provide a gift to any such public official or state employee; and

(C) That the person, firm or corporation made the bid or proposal without fraud or collusion with any person.

(4) Any bidder or proposer that does not make the certifications required under section 10(b)(3) shall be disqualified and the state agency or quasi-public agency shall award the contract to the next highest ranked proposer or the next lowest responsible qualified bidder or seek new bids or proposals.

(c) Section 4a-81 of the Connecticut General Statutes requires that this RFP include a notice of the consulting affidavit requirements described in the statute. Accordingly, pursuant to the statute, vendors are notified as follows:

(1) No state agency shall execute a contract for the purchase of goods or services, which contract has a total value to the state of fifty thousand dollars or more in any calendar or fiscal year, unless the state agency obtains the written affidavit described in subsection (2) of this section.

(2) The chief official of the vendor awarded a contract described in section 10(c)(1) or the individual awarded such contract who is authorized to execute such contract, shall attest in an affidavit as to whether any consulting agreement has been entered into in connection with such contract. Such affidavit shall be required if any duties of the consultant included communications concerning business of such state agency, whether or not direct contact with a state agency, state or public official or state employee was expected or made. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (i) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (ii) contacting, whether in writing or orally, any executive, judicial, or administrative office of the state, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction or requests for information or (iii) any other similar activity related to such contract. “Consulting agreement” does not include any agreements entered into with a consultant who is registered under the provisions of Chapter 10 of the Connecticut General Statutes concerning the State’s Codes of Ethics, as of the date such affidavit is submitted.

(3) Such affidavit shall be sworn as true to the best knowledge and belief of the person signing the certification on the affidavit and shall be subject to the penalties of false statement.

(4) Such affidavit shall include the name of the consultant, the consultant's firm, the basic terms of the consulting agreement, a brief description of the services provided, and an indication as to whether the consultant is a former state employee or public official. If the consultant is a former state employee or public official, such affidavit shall indicate his or her former agency and the date

such employment terminated.

(5) The Office of Policy and Management has provided OPM Ethics Form 5 to satisfy the requirements of this statute. Accordingly, the firm must deliver this Form 5, attached as Appendix E, together with its proposal and then deliver an updated Form 5 dated the date that the firm executes the Contract. Such affidavit shall be amended whenever the vendor awarded the contract enters into any new consulting agreement during the term of the contract.

(6) If a vendor refuses to submit the affidavit required under section 10(c)(2), then the state agency shall not award the Contract to such vendor and shall award the contract to the next highest ranked vendor or the next lowest responsible qualified bidder or seek new bids or proposals.

(7) This section 10(c) is set forth here only for purposes of providing notice of the requirements of the Act. Accordingly, it is neither intended nor should it be interpreted nor relied upon to be a complete and full reiteration of the Act's contents. Any interpretation or understanding of the Act's requirements or content by any party must come only from reading the full text of the Act itself.

(d) Pursuant to Governor M. Jodi Rell's Executive Order No. 1, paragraph 8, and Governor M. Jodi Rell's Executive Order No. 7C, paragraph 10(a), contractors executing state contracts with a value to the State of $50,000 or more in a calendar or fiscal year shall execute a **Gift and Campaign Contribution Certification (OPM Ethics Form 1)** contemporaneously with the contract certifying that between the planning and start date and the execution date, neither the contract signatory nor any principals nor key personnel of the contractor who participated directly , extensively and substantially in the preparation of the proposal or in the negotiation of the contract gave a contribution to candidates for statewide public office or the General Assembly. The firm must execute the Contract and this Form 1 through the BizNet system as explained in Section III, above, and update the form at least annually.

Contractors are then required to submit a contract certification **(**annually to update previously submitted certification forms for state contracts. Contractors must use the Gift and Campaign (OPM Ethics Form 1) for this purpose, attached as Appendix B.

(e) Pursuant to Connecticut General Statutes §§ 4a-60(a)(1) and 4a-60a(a)(1) §§ 4a-60a(a) and 4a-60a(a), every contractor is required to provide the State with documentation in the form of a company or corporate policy adopted by resolution of the board of directors, shareholders, managers, members or other governing body of such contractor to support the contractor's nondiscrimination agreements and warranties which are included in such contractor's contract pursuant to said statutes. The applicable certification form must be completed and submitted through the BizNet system, as explained in Section III, above, and updated at least annually.

XI. Oral Agreement or Arrangements

Any alleged oral agreements or arrangements made by firms with any State

agency or employee will be disregarded in any State proposal evaluation or associated award.

XII. Independent Price Determinations

In the proposals, firms must warrant, represent, and certify that the following requirements have been met in connection with this RFP:

a) The fees and costs proposed have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such process with any other organization or with any competitor.
b) Unless otherwise required by law, the costs quoted have not been knowingly disclosed by the firm prior to the deadline for submission of proposals directly or indirectly to any other organization or to any competitor; and
c) No attempt has been made, or will be made, by the firm to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

XIII. Offer of Gratuities

The firm must represent that no elected or appointed official or employee of the State of Connecticut has, or will, benefit financially or materially from the Contract. The Contract may be terminated by the Attorney General's Office if it is determined that gratuities of any kind were either offered to, or received by, any of state officials or employees from the firm, the law firm's agent(s), representatives(s) or employees(s). Such action on the part of the Attorney General's Office shall not constitute a breach of contract on the part of the Attorney General's Office.

XIV. Subletting or Assigning of Contract

The Contract or any portion thereof, or the work provided for therein, or the right, title, or interest of the firm therein or thereto may not be sublet, sold, transferred, assigned or otherwise disposed of to any person or entity without the prior written consent of the Attorney General's Office. No person or entity, other than the firm to which the Contract was awarded, is permitted to perform work without the prior written approval of the Attorney General's Office.

XV. Freedom of Information

The Office of the Attorney General is a public agency and its records, including responses to this RFP, are public records. *See* Conn. Gen. Stat. §§ 1-200, *et seq*., and especially § 1-210(b)(4) and § 1-210(b)(5)(B). Due regard will be given for the protection of proprietary or confidential information contained in all proposals received. However, all materials associated with this RFP are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all applicable rules, regulations and administrative decisions. If a firm is interested in preserving the confidentiality of any part of its proposal, it will not be sufficient merely to state generally in the proposal that the proposal is proprietary or confidential in nature and not, therefore, subject to release to third parties. Instead, those particular sentences, paragraphs, pages or sections

that a firm believes to be exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with § 1-210(b) of the FOIA must accompany the proposal. The rationale and explanation must be stated in terms of the reasons the materials are legally exempt from release pursuant to the FOIA. Firms should not request that their entire proposal, nor the majority of the proposal, be confidential. Any submitted proposal, once execution of a contract is complete and any completed contract will be considered public information. The Attorney General's Office has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The contractor has the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the Attorney General's Office have any liability for the disclosure of any documents or information in its possession which the Attorney General's Office believes are required to be disclosed pursuant to the FOIA or other requirements of law.

XVI. Conformance with Federal, State and Other Requirements

In the Contract, the firm will represent and warrant that, at all pertinent and relevant times to the Contract, it has been, is and will continue to be in full compliance with all Federal, State, municipal or other governmental department, commission, board, bureau, agency or instrumentality, codes, statutes, acts, ordinances, judgments, decrees, injunctions and regulations.

XVII. Executive Orders

The Contract shall be subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, the provisions of Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973 and the provisions of Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999. The contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms, in accordance with its terms and conditions.

XVIII. Americans with Disabilities Act

The firm shall comply with the Americans with Disabilities Act and any other applicable federal laws and regulations.

XIX. Affirmative Action and Contract Compliance Reporting

Firms are advised that in addition to evaluating their qualifications, experience, capabilities, competitiveness of cost and conformance to this RFP specification, weight may also be given to firms which demonstrate a commitment to affirmative action by full compliance with the Commission on Human Rights and Opportunities regulations.

XX. Campaign Contribution and Solicitation Ban

With regard to a State contract, as defined in Conn. Gen. Stat. § 9-612(g), having a value in a calendar year of $50,000 or more or a combination or series of such agreements or contracts having a value of $100,000 or more, the authorized signatory to the proposal in response to this RFP expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising prospective state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

APPENDIX A
TO REQUEST FOR PROPOSALS

PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE STATE OF CONNECTICUT,
ACTING BY ITS ATTORNEY GENERAL,
A N D
(Law Firm)

This Agreement is made by and between the STATE OF CONNECTICUT, acting by its ATTORNEY GENERAL, George C. Jepsen, duly authorized pursuant to Section 3-125 of the Connecticut General Statutes, with an office at 55 Elm Street, Hartford, CT 06106 and (Law Firm), acting by (name), with its principal place of business at (address).

In consideration of these premises and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

SECTION 1: <u>SCOPE OF SERVICES</u>

1.1 The services to be performed by the CONTRACTOR shall consist of the following, collectively referred to as "Services":

(a) Participating in the development of Requests for Qualifications ("RFQ"), bid solicitations, Requests for Information ("RFI") and Requests for Proposals ("RFP") and advising the Department of Transportation ("Department") staff on legal issues that may arise relative to the same;

(b) Participating in the evaluation of submissions in response to RFQs, bid solicitations, RFIs, and RFPs and advising Department staff on legal issues regarding the same;

(c) Participating in the development and drafting of all legal instruments associated with Transit Oriented Developments ("TODs") and Public Private Partnerships ("P3s"). Depending on the real property aspects of the matter, this may also include, but may not be limited to various leases and easements, operating agreements, and condominium documents;

(d) Negotiating the TOD and P3 relationships;

(e) As applicable, advising the Department on Project Labor Agreements ("PLAs") and drafting and negotiating the same;

(f) As applicable, advising and directing the Department re the Connecticut Environmental Policy Act ("CEPA"), environmental permitting requirements and compliance, and the allocation of risk under environmental law;

(g) Assessing the sources of funding, capital, securities or other financial resources and the use thereof for compliance with the law and for the protection of the State;

(h) Evaluating TODs and P3 opportunities and options for legal issues and rendering advice thereon;

(i) Advising the Department on risk management strategies and risk allocation;

(j) Evaluating the legal structure of proposers and advising the Department on the same;

(k) Assisting in the development of evaluation and selection criteria for proposers participating in the solicitation of TODs and P3s projects;

(l) Meeting with and advising Department staff on elements that need to be considered in making business decisions regarding TOD and P3 contract provisions;

(m) Rendering legal advice on implementing the selection, award and contract enforcement phases of the process;

(n) Rendering legal advice and direction concerning compliance with the requirements of the Connecticut General Statutes, including §§ 13b-79kk and 4-255 *et seq*.;

(o) Hiring and consulting with expert witnesses, consultants, mediators and investigators as may be reasonably and necessarily required and as approved by the ATTORNEY GENERAL subject to the following requirements and limitations:

(1) Terms of subcontracts over $5000.00 must be approved in writing and in advance by the ATTORNEY GENERAL. In requesting approval, CONTRACTOR must include the following information:

(a) Why it is necessary to hire a subcontractor.
(b) How the proposed subcontractor was selected.
(c) Proposed rates and reimbursements for the subcontractor.
(d) Comparison of these rates to those of other qualified subcontractors.

(2) Subcontracts or agreements must include terms which are substantially similar to the billing terms in the Compensation and Reimbursement Section of this Agreement.

(3) CONTRACTOR's bills for subcontracted work must include full detailed itemizations of all fees and expenses for the subcontracted work, with appropriate supporting documentation.

(p) Conducting research;

(q) Meeting with Department representatives, proposers and their representatives, and other state and local representatives as may be requested by the Department;

(r) Preparing, writing and providing to the Attorney General, or his or her designee, and the Department, all documents and instruments, and doing the same in

electronic, magnetic, paper and any other form, which is requested, necessary or appropriate to carry out said Services;

(s) Providing all necessary paralegal and clerical support;

(t) Providing such other services as may be needed during the course of and related to this scope of services;

(u) Performing all tasks under this Agreement in coordination with the Department and the Office of the Attorney General.

(v) Negotiating and/or engaging in mediation, with the approval of the ATTORNEY GENERAL, with any and/or all parties necessary to carry out the Services.

(w) Making all court and agency appearances and filings and representing the State in all related actions, pending or threatened, suits, claims, investigations, legal, administrative, mediation or arbitration proceedings, whether at law or in equity, in any forum (collectively, "Actions") as determined to be necessary and/or appropriate in consultation with the ATTORNEY GENERAL and/or his designee.

SECTION 2: AGREEMENT ADMINISTRATION

2.1 The person in charge of administering this Agreement on behalf of the ATTORNEY GENERAL is (name), Assistant Attorney General and his successors in office, whose contact information is as follows:

Office of the Attorney General
_____
Hartford, CT (zip code)
Telephone: (860) 808-(#)
Fax: (860) 808-(#)
email: (address) @po.state.ct.us

2.2 The person in charge of administering this Agreement on behalf of the Department of Transportation shall be:

Denise Rodosevich
Agency Legal Director
2800 Berlin Turnpike
Newington, CT 06131
Telephone: 860-594-3044
Email: denise.rodosevich@ct.gov

2.3 The person in charge of administering this Agreement on behalf of the CONTRACTOR is:_____, whose contact information is as follows:

_____

_____
Telephone: _____
Fax: _____
e-mail: _____

2.4 The professional staff members of CONTRACTOR primarily responsible for the performance of this Agreement are _____. The CONTRACTOR may not change these individuals without the prior written consent of the ATTORNEY GENERAL.

2.5 Within seven days after receiving a request by the ATTORNEY GENERAL, the CONTRACTOR shall remove from assignment to this Agreement any specified professional or other staff and, at the ATTORNEY GENERAL'S request, shall augment the remaining staff with such other staff as is acceptable to the ATTORNEY GENERAL.

SECTION 3: <u>COMPENSATION AND REIMBURSEMENT</u>

3.1 The ATTORNEY GENERAL agrees to compensate the CONTRACTOR for Services solely in accordance with the following hourly rate schedule:

(a) _____ _____

(b) _____ _____

(c) _____ _____

(d) _____ _____

The above hourly rates shall be charged only for actual time spent rendering such Services; the CONTRACTOR shall not "round off' time. The time spent rendering Services shall be billed to the tenth of an hour within any single workday. The ATTORNEY GENERAL shall not be charged for any other time expended by the CONTRACTOR during travel, overnight stays, or the like associated with the performance of the Services.

3.2 Compensation will be paid only after the submission of itemized documentation, in a form acceptable to the ATTORNEY GENERAL, the Assistant Attorney General and the Department of Transportation. Billings are to be on a monthly basis. The billings must contain, at a minimum, a detailed description of the work performed, the date of performance, the actual time spent performing the work, the name and position of the person(s) rendering the Service and the rate charged for that Service. The monthly bill must also be accompanied by a summary of time and charges billed for each attorney and paralegal itemized on the invoice. Upon the request of the ATTORNEY GENERAL, CONTRACTOR must submit a summary memorandum describing how the Service rendered furthered resolution of the matter and the current status of the matter. The ATTORNEY GENERAL or his designee may, prior to authorizing payment under this Section, require the CONTRACTOR to submit such additional accounting and information as he deems to be necessary or appropriate.

The CONTRACTOR shall not be compensated for any time spent preparing any billing documentation, including but not limited to such documentation and accompanying memoranda required by this Section and the Status Reports and Records Section of this Agreement. All bills must be sent to **Office of the Attorney General-Business Office, 55 Elm Street-4th Floor Annex, Hartford, Connecticut 06106-1774.**

3.3 Within twenty days of receipt of an assignment under this Agreement, the CONTRACTOR shall submit to the ATTORNEY GENERAL and the Department of Transportation for approval a detailed projected plan and budget containing, but not limited to, a brief statement of the case or matter, a description of the nature and scope of the various phases of the Services expected to be performed, an estimate of the cost of the work broken down into the various phases of the Services, with a total cost not to exceed the maximum amount of this Agreement and an estimate of the time required to successfully complete the Services. Prior to effecting, undertaking or initiating a material change in the Services, or upon having reason to believe that the Services or any portion of the Services cannot be completed within the amount budgeted for the Services or that portion of the Services, the CONTRACTOR shall submit to the ATTORNEY GENERAL and the Department of Transportation for approval a revised projected plan and budget that reflects the changes to the existing projected plan and budget. If the revised projected plan and budget contains a projected cost exceeding the maximum compensation set out in this Section, the CONTRACTOR shall consult with the ATTORNEY GENERAL or his designee, for the purpose of (1) revising the Services; (2) revising the maximum compensation amount; (3) revising the billing rates; (4) some combination thereof; or (5) other action permitted under this Agreement or any agreed-upon amendment. The ATTORNEY GENERAL and Department of Transportation, in their sole discretion, may require revisions, supplements and modifications of the projected plan and budget from time to time. The CONTRACTOR will not be compensated for the preparation, amendment, or modification of the projected plan and budget.

3.4 The ATTORNEY GENERAL agrees to reimburse the CONTRACTOR for actual, necessary and reasonable out-of-pocket disbursements and expenses, including filing fees, court costs, computerized research (at cost), commercial messenger and delivery services (at cost), expert witnesses, consultants, mediators, investigative services, long distance telephone calls, and transcript or deposition costs. The ATTORNEY GENERAL shall not reimburse the CONTRACTOR for any overhead related expenses, including, but not limited to, duplicating, secretarial, facsimile (other than long-distance telephone line charges), clerical staff, library staff, proofreading staff, meals and in-state transportation costs or expenses unless they are otherwise approved by the ATTORNEY GENERAL and _the Department of Transportation. The CONTRACTOR shall be reimbursed for reasonable expenses for transportation, parking and reasonable lodging and meals associated with interstate travel, specifically excluding first class airfare, as approved in advance by the ATTORNEY GENERAL or his designee. Reimbursable interstate travel shall not include travel to meet with staff of the Department of Transportation or the ATTORNEY GENERAL, and all such meetings shall be conducted in Hartford, Connecticut or Newington, Connecticut unless otherwise specified by the Department of Transportation or the ATTORNEY GENERAL.

3.5 The CONTRACTOR shall not be compensated for time spent on background or elementary legal research or any legal training without the prior written consent of the ATTORNEY GENERAL. For the purposes of this

Agreement, elementary legal research includes, but is not limited to, any matter which is addressed in Connecticut Lawyers Basic Practice Manual (1986) and Connecticut Lawyers Basic Practice Manual (1989). Charges for legal research must be accompanied by a detailed description setting forth the purpose of the research and summarizing its nature. Any written material produced as a result of such research shall be available to the ATTORNEY GENERAL or his designee at on or before the third business day following the date of his written request. The ATTORNEY GENERAL shall have the final decision in all disputes between the parties to this Agreement under this subsection.

3.6 The CONTRACTOR shall not be compensated for time spent in consultation with any attorney or other employee of the ATTORNEY GENERAL or the Department of Transportation concerning the administration of this Agreement and/or issues relating to billing. Unless otherwise authorized by the ATTORNEY GENERAL, compensation for communication between or among attorneys and/or staff within the CONTRACTOR'S firm is limited to the time and billing rate of the most senior attorney or staff member participating in the communication. These charges must be accompanied by a detailed description setting forth the purpose of the communication and summarizing its details. The ATTORNEY GENERAL and the Department of Transportation shall make the final determination, in their sole discretion, as to the adequacy of such description.

3.7 Absent the consent of the ATTORNEY GENERAL or his designee, the CONTRACTOR shall not be compensated for the attendance or participation of more than one attorney representing the State of Connecticut at or during any meeting, conference or proceeding, in person or otherwise, in any forum, in connection with performing the Services. Where more than one attorney has attended or participated in any such meeting, conference or proceeding without the consent of the ATTORNEY GENERAL or his designee, the CONTRACTOR shall be compensated only for the time of the most senior attorney in attendance or participating.

3.8 The CONTRACTOR shall not be compensated for the performance of paralegal or clerical type duties performed by an attorney. Paralegal duties or clerical duties include, by way of example and not limitation, routine proofreading of pleadings and other correspondence, preparation of trial or closing binders or notebooks, photocopying and coordinating the schedules of others.

3.9 The ATTORNEY GENERAL shall approve for payment all undisputed fees and costs, as soon as the documentation can properly be processed in accordance with usual State practice.

3.10 Maximum payments under this Agreement shall not exceed$100,000.00.

3.11 The ATTORNEY GENERAL shall have the right, without the need of prior notice to the CONTRACTOR, to assign the performance of some aspect of the Services to an Associate or Assistant Attorney General where the ATTORNEY GENERAL, in his sole discretion, finds that such an assignment would best serve the interests of the State of Connecticut. This assignment shall not be deemed to be a breach of contract by the ATTORNEY GENERAL.

3.12 Compensation and reimbursement provided under this Section constitutes full and complete payment for all costs and expenses incurred or assumed by the CONTRACTOR in performing this Agreement. No other costs, expenses or overhead items shall be reimbursed by the ATTORNEY GENERAL without the prior written approval of the ATTORNEY GENERAL or his designee.

SECTION 4: <u>TERMINATION</u>

4.1 Notwithstanding any provisions in this Agreement, the ATTORNEY GENERAL, through a duly authorized employee, may terminate the Agreement whenever the ATTORNEY GENERAL makes a written determination that such termination is in the best interests of the State. The ATTORNEY GENERAL shall notify the CONTRACTOR in writing of termination pursuant to this Section, which notice shall specify the effective date of termination and the extent to which the CONTRACTOR must complete performance of the Services prior to such date.

4.2 Upon receipt of a written notice of termination from the ATTORNEY GENERAL, the CONTRACTOR shall cease operations as directed by the ATTORNEY GENERAL in the notice, and take all actions that are necessary or appropriate, or that the ATTORNEY GENERAL may reasonably direct, for the protection and preservation of the Records, as that term is defined in the Indemnification Section of this Agreement. Except for any work which the ATTORNEY GENERAL directs the CONTRACTOR to perform in the notice prior to the effective date of termination, and except as otherwise provided in the notice, the CONTRACTOR shall terminate or conclude all existing subcontracts.

4.3 In the case of any termination, the ATTORNEY GENERAL shall, within forty-five (45) days of final billing after the effective date of termination, pay the CONTRACTOR for its performance rendered and accepted by the ATTORNEY GENERAL, in addition to all actual and reasonable costs incurred after notice of termination in completing those portions of the Services which the CONTRACTOR was required to complete by the notice. However, the CONTRACTOR is not entitled to receive and the ATTORNEY GENERAL is not obligated to tender to the CONTRACTOR any payments for anticipated or lost profits.

4.4 Upon termination of the Agreement, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive termination. All representations, warranties, agreements and rights of the parties under the Agreement shall survive such termination to the extent not otherwise limited in the Agreement and without each one of them having to be specifically mentioned in the Agreement.

4.5 Termination of the Agreement pursuant to this Section shall not be deemed to be a breach of contract by the ATTORNEY GENERAL.

4.6 Upon receipt of written notification from the ATTORNEY GENERAL of termination, the CONTRACTOR shall immediately cease to perform the Services unless otherwise directed by the ATTORNEY GENERAL or to the extent necessary to prevent the State from failing to make timely filings or otherwise failing to comply with court orders or the law. The Records are deemed to be the property of

the State. The CONTRACTOR shall assemble and deliver to the ATTORNEY GENERAL all Records in electronic, magnetic, paper or any other form, that may be in his possession or custody, and shall transmit the same to the ATTORNEY GENERAL or his designee as soon as possible in a non-proprietary format no later than the fifteenth day following the receipt of the above written notice, together with a detailed hourly description of the Services performed and expenses reasonably incurred.

4.7 The CONTRACTOR, on sixty (60) days' prior written notice to the ATTORNEY GENERAL, may terminate this Agreement.

4.8 On the effective date of CONTRACTOR's termination, the CONTRACTOR shall immediately cease to perform the Services except to the extent necessary to prevent the State from failing to make timely filings or otherwise failing to comply with court orders or the law. The Records are deemed to be the property of the State. The CONTRACTOR shall assemble and deliver to the ATTORNEY GENERAL all Records in electronic, magnetic, paper or any other form, that may be in its possession or custody, and shall deliver the same to the ATTORNEY GENERAL or his designee as soon as possible in a non-proprietary format, such as, but not limited to, ASCII or TXT, but no later than the fifteenth day following the transmittal of the written notice, together with a description of the cost of the Services performed and expenses reasonably incurred.

4.9 If CONTRACTOR terminates this Agreement, CONTRACTOR shall not be entitled to any compensation for Services that are rendered or payment for expenses that are incurred subsequent to the date of termination.

SECTION 5: <u>TIME OF PERFORMANCE</u>

5.1 The CONTRACTOR shall perform the Services at such times and in such sequence as may be reasonably directed by the ATTORNEY GENERAL and the Department of Transportation. Work under this Contract will commence when an assignment is issued to Counsel.

5.2 This Agreement will run from its effective date and will terminate three years thereafter unless this Agreement is amended. No new assignments will be made on or after the expiration date, but all assignments made prior to the expiration date will be allowed to continue to completion with all the terms and conditions of this Agreement remaining in full force and effect.

SECTION 6: <u>SETOFF</u>

6.1 In addition to all other remedies that the ATTORNEY GENERAL may have, the ATTORNEY GENERAL, in his sole discretion, may setoff (1) any costs or expenses that the State incurs resulting from the CONTRACTOR's unexcused non-performance under the Agreement and under any other agreement or arrangement that the CONTRACTOR has with the State and (2) any other amounts that are due or may become due from the State to the CONTRACTOR, against amounts otherwise due or that may become due to the CONTRACTOR under the Agreement, or under any other agreement or arrangement that the CONTRACTOR has with the State. The State's right

of setoff shall not be deemed to be the State's exclusive remedy for the CONTRACTOR's breach of the Agreement, all of which shall survive any setoffs by the State.

SECTION 7: <u>CROSS DEFAULT</u>

7.1 If the CONTRACTOR breaches, defaults or in any way fails to perform satisfactorily under the Agreement, then the ATTORNEY GENERAL may, in his sole discretion, without more and without any action whatsoever required of the ATTORNEY GENERAL, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements ("Other Agreements") that the CONTRACTOR has with the ATTORNEY GENERAL. Accordingly, the ATTORNEY GENERAL may then exercise at his sole option any and all of its rights or remedies provided for in the Agreement or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of the ATTORNEY GENERAL, as if the CONTRACTOR had suffered a breach, default or failure to perform under the Other Agreements.

7.2 If the CONTRACTOR breaches, defaults or in any way fails to perform satisfactorily under any or all Other Agreements with the ATTORNEY GENERAL or the State, then the ATTORNEY GENERAL may, in his sole discretion, without more and without any action whatsoever required of the ATTORNEY GENERAL, treat any such event as a breach, default or failure to perform under the Agreement. Accordingly, the ATTORNEY GENERAL may then exercise at his sole option any and all of its rights or remedies provided for in the Other Agreements or the Agreement, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of the ATTORNEY GENERAL or the State, as if the CONTRACTOR had suffered a breach, default or failure to perform under the Agreement.

SECTION 8: <u>REPRESENTATIONS AND WARRANTIES</u>

8.1 The CONTRACTOR represents and warrants to the ATTORNEY GENERAL for itself and for the CONTRACTOR Agents, as defined in the Indemnification Section of this Agreement, as applicable, that:

(a) the contractor is duly and validly existing under the laws of its state of organization and is authorized to conduct business in the State of Connecticut in the manner contemplated by the Agreement. Further, it has taken all necessary action to authorize the execution, delivery and performance of the proposal and the Agreement and has the power and authority to execute, deliver and perform its obligations under the Agreement;

(b) it will comply with all applicable State and Federal laws and municipal ordinances in satisfying its obligations under and pursuant to the Agreement, including, but not limited to Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics;

(c) the execution, delivery and performance of the Agreement will not violate, be in conflict with, result in a breach of or constitute (with or

without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

(d) it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;

(e) Contractor and Contractor's Agents have not, within the three years preceding the Agreement, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(f) Contractor and Contractor's Agents are not presently indicted or, to the best of their knowledge, under investigation for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;

(g) Contractor and Contractor's Agents have not within the three years preceding the Agreement had one or more contracts with any governmental entity terminated for cause;

(h) to the best of its knowledge, there are no Claims, as defined in the Indemnification Section of this Agreement, involving the CONTRACTOR that might reasonably be expected to materially adversely affect its businesses, operations, assets, properties, financial stability, business prospects or ability to perform fully under the Agreement;

(i) it shall disclose, to the best of its knowledge, to the ATTORNEY GENERAL in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to perform fully under the Agreement, no later than ten (10) days after becoming aware or after they should have become aware of any such Claims;

(j) its participation in the request for proposal process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;

(k) the proposal was not made in connection or concert with any other person, entity or proposer submitting a proposal and is in all respects fair and without collusion or fraud;

(l) it has paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;

(m) it owes no past due unemployment compensation contributions;

(n) it is not delinquent in the payment of any taxes owed to the State of Connecticut.

(o) it shall not copy or divulge to any third party any information or any data in any form obtained or produced in connection with the performance of its duties and responsibilities pursuant to this Agreement other than in connection with the performance of those duties and responsibilities. The CONTRACTOR shall keep all confidential or privileged the Records in secured areas and shall take reasonable precautions to protect the Records from the dangers of fire, theft, flood, natural disasters and other physical threats, as well as unauthorized access.

(p) During the course of this Agreement, the CONTRACTOR shall not represent any other client if such representation will materially affect its duties or obligations to the State of Connecticut or the ATTORNEY GENERAL or create an appearance of impropriety.

(q) The COUNSEL will not knowingly enter into or retain any business relationships or enterprise in which an employee of the office of the Attorney General holds an interest, other than a nominal interest in a publicly held corporation, without the prior written consent of the ATTORNEY GENERAL.

SECTION 9: <u>STATUS REPORTS AND RECORDS</u>

9.1 Upon written or oral request by the ATTORNEY GENERAL or his designee, the CONTRACTOR will promptly report on the status of the Services performed, including, but not limited to, problems, strategy, analysis and the like.

9.2 The above-described reports shall be provided in writing or orally, as directed by the person requiring a work status report.

9.3 The CONTRACTOR, upon the request of the ATTORNEY GENERAL or his designee, shall give to the ATTORNEY GENERAL or his designee all original documentation, or, in the sole discretion of the ATTORNEY GENERAL or his designee, copies thereof, filed in the course of, or arising out of, the CONTRACTOR'S performance of the Services. The CONTRACTOR shall otherwise maintain all original documentation, or copies thereof in the manner specified in the Representation and Warranties Section of this Agreement, for a period of six (6) years after the termination of this Agreement.

SECTION 10: <u>INSURANCE</u>

10.1 Before commencing performance of the Services, the CONTRACTOR shall obtain and maintain at its own cost and expense for the duration of the Agreement, the

following insurance:

(a) Commercial General Liability: $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the work covered by this Agreement or the general aggregate limit shall be twice the occurrence limit.

(b) Automobile Liability: $1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the COUNSEL does not own an automobile, but one is used in the performance of the Services, then only hired and non-owned coverage is required. If a vehicle is not used in the performance of the Services, then automobile coverage is not required.

(c) Workers' Compensation and Employers Liability: coverage in compliance with applicable workers compensation laws. Coverage shall include Employer's Liability with minimum limits of $100,000 each accident, $500,000 Disease - Policy limit, $100,000 each employee.

(d) Professional Liability: The CONTRACTOR shall secure and maintain, at no cost or expense to the State, a professional liability insurance policy in a form acceptable to the ATTORNEY GENERAL in the minimum amount of _____dollars ($_____) with a deductible not to exceed _____ ($_____). This policy shall insure the CONTRACTOR against damages and costs resulting from negligent acts, errors, and omissions in the work performed by the CONTRACTOR on and after the effective date of, and under the terms of, this Agreement. The CONTRACTOR may, at its election, obtain a policy containing a maximum ($_____) deductible clause, but if so, the CONTRACTOR shall be liable, as stated above herein, to the extent of the deductible amount.

10.2 No later than thirty (30) days after the effective date of this Agreement, the CONTRACTOR shall furnish to the ATTORNEY GENERAL on a form or forms acceptable to the ATTORNEY GENERAL, a Certificate of Insurance, including amendment(s), fully executed by an insurance company or companies satisfactory to the ATTORNEY GENERAL for the insurance policy or policies required in the Status Reports and Records Section of this Agreement, which policy or policies shall be in accordance with the terms of the Certificate of Insurance.

SECTION 11: <u>INDEMNIFICATION</u>

11.1 The CONTRACTOR shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns

from and against any and all (1) Claims arising, directly or indirectly, in connection with the Agreement, including the acts of commission or omission (collectively, the "Acts") of the CONTRACTOR or CONTRACTOR Agents, as defined below; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Agreement. The CONTRACTOR shall use contractor reasonably acceptable to the State in carrying out its obligations under this Section. The CONTRACTOR's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions or articles furnished or used in the performance of the Agreement.

11.2 The CONTRACTOR shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the CONTRACTOR or any CONTRACTOR Agents. The State shall give the CONTRACTOR reasonable notice of any such Claims.

11.3 The CONTRACTOR's duties under this Section shall remain fully in effect and binding in accordance with the terms and conditions of the Agreement, without being lessened or compromised in any way, even where the CONTRACTOR is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

11.4 The rights provided in this Section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.

11.5 This section shall survive the Termination, Cancellation or Expiration of the Agreement, and shall not be limited by reason of any insurance coverage.

11.6 The term "Claims" means all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.

11.7 The term "CONTRACTOR Agents" means the CONTRACTOR's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the CONTRACTOR is in privity of oral or written contract and the CONTRACTOR intends for such other person or entity to perform under the Agreement in any capacity.

11.8 The term "Records" means all working papers and such other information and materials as may have been accumulated by the CONTRACTOR or CONTRACTOR Agents in performing the Agreement, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.

11.9 The CONTRACTOR shall not use, raise, or plead the defense of sovereign or governmental immunity in the adjustment or settlement of any Claims

against the CONTRACTOR arising out of the work performed under this Agreement, or as a defense in any Claims, unless specifically authorized to do so in writing by the ATTORNEY GENERAL or his designee.

SECTION 12: CHANGES TO THIS AGREEMENT

12.1 Any and all amendments, changes, extensions, revisions or discharges of this Agreement, in whole or in part, on one or more occasions, must be in writing and executed by all the parties to this Agreement in order to be enforceable.

SECTION 13: REQUIRED PERSONNEL/OFFICE

13.1 On or before the effective date of this Agreement, the CONTRACTOR shall have secured, and shall maintain during the term of this Agreement, all at its sole cost and expense (i) such appropriately skilled and competent personnel and supporting staff in adequate numbers; and (ii) such equipment as are reasonably necessary or appropriate to fully perform the Services to the satisfaction of the ATTORNEY GENERAL.

13.2 The personnel shall not be employees of or have any contractual relationship with the Office of the Attorney General.

13.3 All the Services shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in the Services shall be fully qualified and shall be authorized or permitted under law to perform the applicable Services.

SECTION 14: NONDISCRIMINATION

14.1 (a) For purposes of this Section, the following terms are defined as follows:

i. "Commission" means the Commission on Human Rights and Opportunities;
ii. "Contract" and "contract" include any extension or modification of the Contract or contract;
iii. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
iv. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.
v. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and

obligations;

vi. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

vii. "marital status" means being single, married as recognized by the State of Connecticut, widowed, separated or divorced;

viii. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

ix. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

x. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the

Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g)(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

(h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

SECTION 15: <u>CERTAIN STATE ETHICS REQUIREMENTS</u>

15.1 For all State contracts as defined in Conn. Gen. Stat. § 9-612(g) having a value in a calendar year of $50,000 or more or a combination or series of such agreements or contracts having a value of $100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission’s notice advising state contractors of state campaign contributions and solicitation prohibitions, and will inform its principals of the contents of the notice.

15.2 Pursuant to Governor M. Jodi Rell’s Executive Order No. 1, paragraph 8, and Governor M. Jodi Rell’s Executive Order No. 7C, paragraph 10(a), the CONTRACTOR must submit a contract certification annually to update previously submitted certification forms for state contracts. Contractors must use the Gift and Campaign Contribution Certification (OPM Ethics Form 1) for this purpose, attached as Appendix B. The first of these OPM Ethics Form 1 certifications is due on the first annual anniversary date of the execution of this Agreement and then every succeeding

annual anniversary date during the time that this Agreement is in effect, including the first anniversary date following the termination or expiration of this Agreement or conclusion of the Services. This provision shall survive the termination or expiration of the Agreement in order for the CONTRACTOR to satisfy its obligation to submit the last certification.

SECTION 16: APPLICABLE EXECUTIVE ORDERS OF THE GOVERNOR

16.1 The CONTRACTOR shall comply, to the extent applicable, with the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace and Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms. These Executive Orders are incorporated into and are made a part of this Agreement as if they had been fully set forth in it. At the CONTRACTOR'S request, the ATTORNEY GENERAL shall provide a copy of these orders to the CONTRACTOR.

SECTION 17: CONFIDENTIALITY

17.1 All of the reports, information, data, and other papers and materials, in whatever form, prepared or assembled by the CONTRACTOR under this Agreement are confidential, and the CONTRACTOR shall not make them available to any individual or organization, other than in connection with the performance of those duties and responsibilities, without the prior written approval of the ATTORNEY GENERAL or his designee.

17.2 The ATTORNEY GENERAL will afford due regard to any request of the CONTRACTOR for the protection of proprietary or confidential information which the ATTORNEY GENERAL receives from the CONTRACTOR. However, all materials associated with the Agreement are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the CONTRACTOR may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the CONTRACTOR believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the CONTRACTOR that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Agreement, especially including the Records, conflicts or is in any way inconsistent with this Section, this Section controls and shall apply and the conflicting provision or part shall not be given effect. The ATTORNEY GENERAL shall not have any obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The CONTRACTOR shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the ATTORNEY

GENERAL or the State have any liability for the disclosure of any documents or information in its possession which the ATTORNEY GENERAL believes are required to be disclosed pursuant to the FOIA or other requirements of law.

SECTION 18: MISCELLANEOUS

18.1 The sole and exclusive means for the presentation of any Claim, as defined in the Indemnification Section of this Agreement, against the State arising from this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State). The CONTRACTOR shall not initiate any legal proceedings in any State or Federal Court in addition to, or in lieu of, said Chapter 53 proceedings.

18.2 The Agreement shall be deemed to have been made in the City of Hartford, State of Connecticut. Both Parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that Chapter 53 of the Connecticut General Statutes does not apply and to the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims, as defined in the Indemnification Section of this Agreement, in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

18.3 The parties each bind themselves, their partners, successors, assigns, and legal representatives with respect to all covenants of this Agreement.

18.4 This Agreement incorporates all the understandings of the parties and supersedes any and all agreements reached by the parties prior to the effective date of this Agreement, whether oral or written.

18.5 If any provision of this Agreement, or application to any party or circumstances, is held invalid by any court of competent jurisdiction, the balance of the provisions of this Agreement, or their application to any party or circumstances, shall not be affected, but only if the balance of the provisions of this Agreement would then continue to conform to the requirements of applicable laws.

18.6 The ATTORNEY GENERAL and the CONTRACTOR shall not be excused from their obligation to perform in accordance with the Agreement except in the case of force majeure events and as otherwise provided for in the Agreement. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance. “Force majeure events” means events that materially affect the time schedule within which to perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the CONTRACTOR,

failure of or inadequate permanent power, unavoidable casualties, fire not caused by the CONTRACTOR, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.

18.7 The CONTRACTOR shall not refer to services provided to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without the ATTORNEY GENERAL's prior written approval.

18.8 The CONTRACTOR shall notify the ATTORNEY GENERAL in writing no later than ten (10) days from the effective date of any change in (1) its certificate of incorporation or other organizational document, or (2) a controlling interest in the ownership of the CONTRACTOR. No such change shall relieve the CONTRACTOR of any responsibility for the accuracy and completeness of the performance. The CONTRACTOR shall deliver such documents to the ATTORNEY GENERAL in accordance with the terms of the ATTORNEY GENERAL's written request. The ATTORNEY GENERAL may also require, and the CONTRACTOR shall deliver, a financial statement showing that solvency of the CONTRACTOR is maintained.

18.9 The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Agreement and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Agreement, in order to give full effect to the Agreement and to carry out the intent of the Agreement.

18.10 The CONTRACTOR shall maintain accurate Records and shall make all of the Records available at all reasonable hours for audit and inspection by the State. This includes, but is not limited to accurate records and accounts of all expenditures under this Agreement as well as satisfactory evidence of payment to assure proper accounting. Such records and accounts shall be kept in the manner specified in the Representations and Warranties Section, and made available for six years after the termination of this Agreement and shall be made available and furnished upon request to the ATTORNEY GENERAL or his designee on or before the tenth business day following the date of the written request. The CONTRACTOR will cooperate fully with any and all audit or review of billing by the ATTORNEY GENERAL or any other agency, person, or entity acting on behalf of the ATTORNEY GENERAL or the STATE, and shall, upon request, provide billing in a format which will facilitate audit or review.

18.11 The CONTRACTOR shall continue to perform its obligations under the Agreement while any dispute concerning the Agreement is being resolved.

18.12 The CONTRACTOR shall be responsible for the entire performance under the Agreement. The CONTRACTOR shall be the sole point of contact concerning the management of the Agreement, including performance and payment issues. The CONTRACTOR is solely and completely responsible for adherence by the CONTRACTOR Agents to all applicable provisions of the Agreement.

18.13 The waiver of a term or condition by the ATTORNEY GENERAL or his designee shall not (i) entitle the CONTRACTOR to any future waivers of the same or different terms or conditions; (ii) impose any duties, obligations or

responsibilities on the ATTORNEY GENERAL or any Department not already in the Agreement, as amended, modified or superseded; or (iii) subject the ATTORNEY GENERAL or the State of Connecticut or any department or agency thereof to any Claims.

18.14 If a disagreement arises between the parties to this Agreement as to whether or not the CONTRACTOR has or may in the foreseeable future have a conflict of interest or there exists or may exist in the foreseeable future an appearance of impropriety, the ATTORNEY GENERAL'S determination shall be final and dispositive of the issue. Where the ATTORNEY GENERAL determines that the CONTRACTOR'S representation of any client constitutes a conflict of interest, or creates an appearance of impropriety, the CONTRACTOR shall, within five days of the posting of notice by the ATTORNEY GENERAL or his designee to the CONTRACTOR, withdraw from the representation of the client, unless such a withdrawal is barred by law or order of a court of competent jurisdiction or the ATTORNEY GENERAL waives such conflict. Nothing in this subsection shall be construed as restricting or otherwise limiting CONTRACTOR'S rights under the Termination and Cancellation Section of this Agreement.

18.15 Unless the ATTORNEY GENERAL designates otherwise in writing, all Records generated or collected by the CONTRACTOR, the CONTRACTOR'S agent or any subcontractor, in the scope of their work under this Agreement are the exclusive property of the State of Connecticut and no one else shall have any right, including but not limited to, intellectual property, copyright and trademark rights, in those Records.

18.16 The CONTRACTOR acknowledges that the ATTORNEY GENERAL has relied upon all of CONTRACTOR'S representations in its proposal, submitted in response to the ATTORNEY GENERAL'S Request for Proposals concerning this matter and all subsequent information supplied to the ATTORNEY GENERAL in writing thereafter, as the basis for entering into this Agreement with the CONTRACTOR. Any material misrepresentation, omission, mistake or error in those submittals shall be deemed to be a breach of this Agreement, which the ATTORNEY GENERAL may, in his sole discretion, waive or afford the CONTRACTOR the opportunity to cure in accordance with the written notice of such breach sent to the CONTRACTOR.

18.17 References in the masculine gender shall also be construed to apply to the feminine and neuter genders, as the content requires.

18.18 The parties acknowledge and agree that nothing in the ATTORNEY GENERAL's request for proposals or the Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Agreement. To the extent that this Section conflicts with any other section, this Section shall govern.

18.19 Any notice required or permitted to be given under this Agreement shall be deemed to be given when hand delivered or one (1) business day after pickup by any express delivery service, in either case addressed to the persons identified in the Agreement Administration Section of this Agreement, or in each

case to such other person and/or address as either party may from time to time designate by giving notice in writing to the other party. Telephone and facsimile numbers are for informational purposes only. Effective notice will be deemed given only as provided above. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Agreement (for the purpose of this Section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested, or, placed with a recognized, express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

18.20 If to the ATTORNEY GENERAL:

State of Connecticut Office of the Attorney General
_____
Hartford, CT _____
Attention: _____, Assistant Attorney General

If to the CONTRACTOR:

_____
_____
_____
_____
Attention: _____

18.21 The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope of content of any of its provisions.

18.22 Time is of the essence in this Agreement.

18.23 This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed five (5) counterparts of this Agreement.

_____ By: _____
Date

STATE OF CONNECTICUT

_____ By: _____

Date

George C. Jepsen
Attorney General