

Amendment to RFP #901, “Attorney Services for DSS – Division of Child Support”

The Department of Social Services, Division of Child Support hereby amends RFP #901 to modify Attachment B, State’s standard terms and conditions for an hourly contract.

All other sections and provisions of the RFP remain intact as posted.

Any and all questions should be posted to the Point of Contact, Mark Close at mark.close@state.sd.us.

Dated: March 8, 2017

- i. Attorney shall utilize UIFSA, and other reciprocal arrangements with other states, when authorized by DCS, and assist other states in locating noncustodial parents, establishing paternity, or securing support for a child or spouse in another state;
- j. Attorney shall provide legal representation to the DCS, for cases referred by the DCS. Legal representation of the DCS shall not create an attorney/client relationship between the Attorney or Firm and the applicant or recipient of DCS services;
- k. Attorney will establish and enforce requirements for medical health insurance coverage in appropriate cases, including cases involving determination of paternity, as requested by DCS;
- l. Attorney shall perform such other functions as may be consistent in meeting the duties and responsibilities contained within the Agreement, or as requested by DCS;
- m. Attorney agrees to adhere to, implement, and follow all DCS policies, procedures, and directives of either DCS State Office or the Child Support Specialist Supervisor, whether electronic, written, or verbal;
- n. Within thirty (30) days of referral, Attorney shall report to DCS regarding the status of all cases referred, and upon final deposition of action taken, furnish DCS with copies of court orders, judgments, or other pertinent and necessary documents. Within five (5) days of successful service of process, Attorney shall also advise DCS electronically or in writing of the date(s) of successful service of process. Attorney shall also document within the referred file all date(s) of attempted service of process and the reason(s) for any unsuccessful attempt(s). Attorney shall also notify DCS of an exercise of prosecutorial direction not to initiate any legal proceeding requested by DCS, with a brief statement of his/her reasons thereof;
- o. Upon completion of all essential and necessary services, Attorney shall submit a billing statement to include an itemized statement of work performed on each case and for allowed expenses. Attorney will utilize specific forms furnished by DCS in submitting claims, which forms will be completed in accordance with the instructions thereon. A separate claim form will be submitted for each case referred, and no claims will be submitted until all necessary work is completed by Attorney thereon, or as directed by the DCS State Office;
- p. Attorney shall maintain and permit access to all records, case files, and other records requested by DCS, until completion of all audits initiated by DCS or federal auditors, or for a period of three years, whichever occurs later;
- q. Attorney shall obtain approval of DCS of any agreement or compromise settlement concerning the support of a child in paternity cases, pursuant to SDCL 25-8-8, prior to submitting the agreement to the court for approval;
- r. Attorney shall obtain approval of DCS in negotiating compromise settlements, or stipulations, which reduce the amount of arrearages due on court-ordered or statutory support obligations, either in obtaining a judgment, or in satisfaction thereof;
- s. Attorney shall immediately advise DCS of any conflict of interest which may arise by reason of his/her private practice law, or otherwise, with respect to specific individuals or cases being pursued on behalf of DCS;
- t. Attorney shall refund to DCS any amounts paid to him/her which are disallowed by audit procedures;
- u. Attorney shall obtain approval of DCS prior to using any confidential or private data in any legal action, and as defined herein;
- v. Attorney shall comply with all pertinent policy memoranda, directives, and procedures which DCS may furnish from time to time;
- w. Attorney shall meet any and all performance standards as contained in federal regulations or State law, and meet any and all performance standards which may be promulgated by DCS from time to time; and
- x. Attorney shall immediately contact and advise DCS State Office of any conflict of interest or appearance of impropriety situations encountered as a result of prosecuting or handling any DCS referred case(s);
- y. In referred matters involving the establishment of paternity or establishment of support order, or both, Attorney will insure that a final order for support is established, or Attorney effectuates successful service of process for establishment of an order, within 30 days of referral by DCS. Attorney will also insure the case is concluded with the filing of a final order for support, or the case dismissed by court order, within 6 months of successful service of process;

- z. In referred matters involving the enforcement of a child support order, including the enforcement of health insurance requirement, Attorney will insure that appropriate enforcement action is completed within 30 calendar days of the date of referral if service of process is not necessary, or within 60 calendar days of successful service, if service of process is necessary for appropriate enforcement action; and
 - aa. In referred paternity case where either a paternity affidavit or genetic test results of 99% or higher exist, Attorney shall immediately prepare, file, and serve a Motion of Summary Judgment and Notice of Hearing with the appropriate circuit court on forms provided by DCS.
3. This agreement does not involve Protected Health Information (PHI).
 4. The Attorney will not use state equipment, supplies or facilities.
- B. The State agrees to:
1. The Department of Social Services, Division of Child Support (DCS) shall refer civil and criminal cases involving the establishment and enforcement of child support obligations, establishment of paternity, and other related matters to Contract Attorney, requesting the initiation of appropriate procedures to insure the protection of the state's interest, and the interests of the children and custodial parent, said request to be submitted in writing on Form DSS-SE-440;
 2. DCS shall provide Attorney all information necessary to commence, prosecute, and conclude this matter, and shall assist in the investigation and preparation of all cases referred to Attorney for action;
 3. DCS shall provide to Attorney all pertinent information, including records and documents, needed to locate noncustodial parents; to establish paternity; to establish and enforce support obligations; and related matters;
 4. DCS shall pay the entire cost of prosecution, including compensation of Attorney as specifically provided herein;
 5. DCS shall pay the costs of genetic testing; depositions; witness fees; service of process fees; and related litigation costs at rates or fees approved by DCS. These payments will be made upon the submittal of an itemized statement of work by the vendor for the preparation of a direct voucher by the DCS;
 6. DCS shall ensure that all pertinent Federal and State laws or regulations will be readily available to the parties herein; and
 7. DCS expressly reserves the right to recall a referred case from the Attorney at any time. The Attorney will be paid as specified in Section 4 of this agreement.
- C. Mutual Duties and Responsibilities
1. Both the DCS and Attorney shall comply with Title IV-D of the Social Security Act; any implementing regulations; and, any other applicable State and Federal regulations, or requirements;
 2. Title IV-A of the Social Security Act as enacted and amended and other relevant and subsequent Acts of Congress; pertinent portions of the Code of Federal Regulations; and State laws and administrative rules are incorporated in the Agreement by reference and made a part hereof as if fully set forth herein. These enactments, and any amendments or changes to such statutes, regulations, or rules shall be incorporated without formal amendment to the Agreement.
4. BILLING:
- A. Attorney agrees to prepare and submit a bill for services within thirty (30) days of the last day of the month in which services were provided. Attorney agrees to submit a final bill within thirty (30) days of the contract end date to receive payment for completed services. If a final bill cannot be submitted in thirty (30) days, then a written request for extension of time and explanation must be provided to the State. The DSS agrees to make payment for services upon satisfactory completion of services and receipt of a bill in consideration of fulfillment of the terms of this Agreement. Payment will be made at the rate established by the DSS based on the year the service was performed as listed in Section 1 of Exhibit B attached, and except as specified in Section 5. G below. Billing statements must include the total number of hours worked. Payments made to Attorney as specified herein shall be deemed to include all taxes of any description, federal, state, or municipal assessed against the Attorney by reason of this agreement.

- B. In addition to the payments as specified in paragraph A above, DCS shall also reimburse the Attorney only for the following expenses:
1. Telephone toll calls and FAX expenses;
 2. Photocopying of cases and related documents at a rate of ten cents per page;
 3. Expenses of short term training activities which are sponsored by prevailing rates established by the State for lodging, meal, and travel expenses;
 4. DCS shall also pay litigation expenses so long as Attorney submits proof of payments, or receipts, with each request for payment or reimbursement; and
 5. Mileage will be reimbursed at the rates established by the State Board of Finance for cases prosecuted on behalf of DCS which cases arise and are venued outside the county of the Contract Attorney's principal place of business.

The DCS will not pay or reimburse Attorney for any other expenses except as specified above unless Attorney obtains prior written approval from the DCS State Office.

- C. Regardless of the date services were actually performed, the total amount expended under this contract and any prior contracts for billings submitted between START DATE and END DATE, and paid between START DATE2 and END DATE2, shall not exceed \$ _____, which amount includes payment of expenses.
- D. Attorney shall submit a separate itemized statement of work for each case referred by DCS which details the amount of time and services performed on behalf of DCS. The statement of work shall be prepared on forms furnished by DCS, and shall not be submitted until all necessary work is completed, or as directed by DCS State Office.
- E. Attorney shall submit his/her statements of work and request for reimbursement of expenses with attached receipts on forms provided by DCS upon completion of the referred matter, itemized in sufficient detail to identify the case record, the purpose, and the date(s) of the incurred expenses.
- F. The DCS Child Support Specialist Supervisor shall review, approve, and transmit Contract Attorney's claim for payment to the DCS State Office for purpose of review, approval, and payment of all claims.
- G. DCS shall pay Attorney for claims submitted for child and spousal support enforcement and related matters:
1. Time spent by Attorney in travel shall be paid at the rates established by DSS based on time frame the service was provided as listed in Section 2 of Exhibit B attached, except for travel in the county of the Attorney's principal place of business, where no travel time will be paid;
 2. In referred matters, other than paternity establishment, establishment of a support order, and enforcement of a support order. Attorney will be paid for all services performed by Attorney on behalf of DCS at the rates established by DSS based on the time frame the service was provided as listed in Section 1 of Exhibit B attached;
 3. The Attorney will be paid for services performed on behalf of DCS at the rates established by DSS based on the time frame the service was provided as listed in Section 1 of Exhibit B attached:
 - a. In referred matters involving the establishment of paternity or establishment of a support order, or both, as long as a final order for support is established, Attorney effectuates successful service of process for establishment of an order, within thirty (30) days of the referral by DCS;
 - b. So long as the case is concluded with filing a final order for support, or the case dismissed by court order, within six (6) months of successful service of process. In the event these time frames as specified above, then, and in the event, Attorney shall be paid at the rates established by DSS based on the time frame the services were provided as listed in Section 2 of Exhibit B attached.
 4. In referred matters involving the enforcement of a child support order, including enforcement of health insurance requirements, Attorney will be paid at the rates established by DSS based on the time frame the services were provided as listed in Section 1 of Exhibit B attached for all services performed as long as appropriate enforcement action is completed within thirty (30) calendar days of the date of referral if service of process is not necessary, or within sixty (60) calendar days of successful service, if service of process is necessary for appropriate enforcement action. In the event these time frames are not met, and unless Attorney establishes good cause in writing for not meeting these time frames as

specified above, Attorney will be paid at the rates established by DSS based on the time frame the services were provided as listed in Section 2 of Exhibit B attached for all services rendered in the referred matter;

5. In a referred paternity case where either a paternity affidavit or genetic test results 99% or higher exist, Attorney shall immediately prepare, file, and serve a Motion of Summary Judgment and Notice of Hearing with the appropriate circuit court on forms provided by DCS. Failure to do so will result in payment at the rates established by DSS based on the time frame the services were provided as listed in Section 2 of Exhibit B attached for all services rendered in the referred matter.
 6. The DCS will have sole authority and discretion to determine whether good cause exists in determining whether or not to pay the reduced rates of compensation as specified herein. Additionally, DCS will not approve for payment any services which are performed by any other person other than Attorney without first obtaining prior written approval from DCS; and
 7. Upon receipt of a claim for payment, DCS shall promptly review, process, and approve for payment the full amount of Attorney's approved claim.
5. **TECHNICAL ASSISTANCE:**
The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Attorney to assist in the correction of problem areas identified by the State's monitoring activities.
6. **LICENSING AND STANDARD COMPLIANCE:**
The Attorney agrees to comply in full with all licensing and other standards required by Federal, State, County, City, or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Attorney will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Attorney's failure to ensure the safety of all individuals served is assumed entirely by the Attorney.
7. **ASSURANCE REQUIREMENTS:**
The Attorney agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension, Debarment and Suspension (Executive order 12549 and 12689), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013, and American Recovery and Reinvestment Act of 2009 as applicable.
8. **RETENTION AND INSPECTION OF RECORDS:**
The Attorney agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Attorney shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Attorney agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Contract Attorney's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Attorney's established record retention policies.

All payments to the Attorney by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this agreement shall be returned to the State within thirty days after written notification to the Attorney.

9. **WORK PRODUCT:**

Attorney hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Attorney in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Attorney without written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Attorney agrees to return all information received from the State to State's custody upon the end of the term of this agreement, unless otherwise agreed in writing signed by both parties.

10. **TERMINATION:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Attorney breaches any of the terms and conditions hereof, this agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

11. **FUNDING:**

This contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination of any of these reasons is not a default by the State nor does it give rise to a claim against the State.

12. **AMENDMENTS:**

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

13. **CONTROLLING LAW:**

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota without regard to any conflicts of law principals, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue of any lawsuit pertaining to or affecting this Agreement shall be resolved in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

14. **SUPERCESSION:**

All prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

15. **SEVERABILITY:**

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this agreement, which shall remain in full force and effect.

16. IT STANDARDS:

Attorney warrants that the software and hardware developed or purchased for the state will be in compliance with the BIT Standards including but not limited to the standards for security, file naming conventions, executable module names, Job Control Language, systems software, and systems software release levels, temporary work areas, executable program size, forms management, network access, tape management, hosting requirements, administrative controls, and job stream procedures prior to the installation and acceptance of the final project. BIT standards can be found at <http://bit.sd.gov/standards/> .

17. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Attorney, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

18. SUBCONTRACTORS:

The Attorney may not use subcontractors to perform the services described herein without express prior written consent from the State. The State reserves the right to reject any person from the contract presenting insufficient skills or inappropriate behavior.

The Attorney will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Attorney will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. The Attorney is required to assist in the process as needed.

19. HOLD HARMLESS:

The Attorney agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Attorney to be responsible for or defend against claims or damages arising from errors or omissions of the State, its officers, agents or employees or from the errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the Attorney, unless such errors or omissions resulted from the acts or omissions of the Attorney. Nothing in this contract is intended to impair the insurance coverage of Attorney or any subrogation rights of Attorney's insurers.

20. INSURANCE:

Before beginning work under this Agreement, Attorney shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Attorney, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Attorney agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Attorney shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

Attorney shall maintain occurrence-based commercial liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

Attorney shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Worker's Compensation Insurance:

Attorney shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

Attorney agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

Attorney agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Attorney, or the State of South Dakota or its officers, agents or employees to liability. Attorney shall report any such event to the State immediately upon discovery.

21. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Attorney certifies, by signing this agreement, that neither it nor its partners or principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal government or any state or local government department or agency. Attorney further agrees that it will immediately notify the State if during the term of this Contract either it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

22. CONFLICT OF INTEREST:

Attorney agrees to establish safeguards to prohibit employees from using their positions for purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Attorney expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6 and agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A. Any potential conflict of interest must be disclosed in writing.

23. LIMITATIONS UPON LEGAL REPRESENTATION:

Is the Attorney/Firm representing the State of South Dakota? Yes No

If Yes, then it is agreed and acknowledged by the Attorney that in order for the Attorney to represent the State of South Dakota or the interests of DSS in any court of law, they must designate, in writing, which individual attorney or attorneys in their firm will be performing services for DSS pursuant to the terms of this contract. Further, each individual so designated must receive and maintain an appointment as an Assistant Attorney General from the Attorney General of the State for the duration of the contract term or be employed as a State's Attorney. In the event the individual attorney or attorneys either fail to obtain or loses their appointment as an Assistant Attorney General, or ceases to be employed as a State's Attorney, that individual attorney shall NOT be allowed to perform services under the terms of this contract. If no other individual attorney within the business structure of Attorney is designated by Attorney or eligible to perform the services contemplated by this contract, it shall be deemed "cause" for purposes of termination as described more fully in Paragraph 10 herein. Additionally, if any individual attorney performing services under this contract is arrested for or charged with any crime, Attorney agrees to immediately notify the Attorney General and the DSS of such arrest or charge.

24. CONFIDENTIALITY OF INFORMATION:

"State Proprietary Information" shall include all information disclosed to the Attorney by the State. Attorney acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the

disclosure. Attorney shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Attorney is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Attorney shall protect confidentiality of the State’s information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to the Attorney; (ii) was known to Attorney without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State’s officers or employees having authority to disclose such information; (iv) was independently developed by Attorney without the benefit or influence of the State’s information; (v) becomes known to Attorney without restriction from a source not connected to the State of South Dakota. State’s Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Attorney understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68. as applicable federal regulation and agrees to immediately notify the State, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the agreement except as required by applicable law or as necessary to carry out the terms of the agreement or to enforce that party’s rights under this agreement. Attorney acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meeting laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Attorney will be required to undergo investigation.

25. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____ Attorney Signature	_____ Date
_____ State- DSS Division Director Gail Stoltenburg	_____ Date
_____ State – DSS Deputy Secretary Brenda Tidball-Zeltinger	_____ Date
_____ State – DSS Cabinet Secretary Lynne A. Valenti	_____ Date
_____ Litigation and Legal Services Manager for the Governor – Craig Ambach	_____ Date
_____ Attorney General – Marty J. Jackley	_____ Date

State Agency Coding:

CFDA#	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____

Center Req _____
Center User _____
Dollar Total _____

DSS Program Contact Person Carmin Sommer
Phone 605-367-5444 ext
405

DSS Fiscal Contact Person Contract Accountant
Phone 605 773-3586

Attorney Program Contact Person _____
Phone _____
Attorney Email Address _____

Attorney Fiscal Contact Person _____
Phone _____
Attorney Fiscal Email Address _____

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the State agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor’s policy handbook.

Exhibit A

POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota (“State”) to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney’s non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.
2. Any condemnation action in which the contracting attorney represents a condemnee.
3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.
6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to information which would give the non-State client an unfair advantage in the criminal action.
8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.
9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.
10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.
11. Any lobbying activity by the contracting attorney.
12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of \$50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of \$50,000.

E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.

Exhibit B

The Department of Social Services, Division of Child Support establishes the rates of reimbursement to Special Assistant Attorney Generals and States Attorneys for providing prosecution and other services in referred cases as referenced in the respective Consulting Contract or Cooperative Agreement at the hourly rate based on the dates of services are actually performed as specified below:

Section 1.

June 1, 2015 through May 31, 2016	\$82.56 per hour
June 1, 2016 through May 31, 2017	\$85.38 per hour

Section 2.

After May 31, 2005	\$40 per hour
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