

Exhibit "A"
2012 DOI RFP – Professional Court Reporter Services

CONSULTING CONTRACT
Professional Court Reporting Services

The Alabama Department of Insurance ("Department") of 201 Monroe Street, Suite 502, Montgomery, Alabama 36104, and

("Contractor") agree as follows:

1. EFFECTIVE DATE, TERM, AND TERMINATION DATE.

1.1 The Effective Date of this Contract is October 1, 2012. Unless sooner terminated as provided in Section 7, the Term of this Contract is two (2) years and the Contract Termination Date is September 30, 2014, subject to Contractor's payment right as provided in Section 7.

2. SERVICES.

2.1 Commencing on the Effective Date and continuing during the Term, Contractor shall provide one or more of the following Services (collectively the "Services") when requested by the Department: certified court reporting services for administrative hearings and depositions; delivery of written and electronic transcripts in a timely manner; videographer services upon request for hearings and depositions; expedited delivery of transcripts as requested; and other related court reporting services.

2.2 Contractor shall provide such other services within the scope of the described services as may be determined by the Department.

2.3 Contractor shall only commence Services upon the specific written direction of the Department.

3. PERFORMANCE OF SERVICES.

3.1 Court reporting services shall be performed upon request of the Department.

3.2 The Department will rely on the Contractor to work as many hours as may be reasonably necessary to fulfill the Contractor's obligations under this Contract.

3.3 All Services are to be performed in accordance with professional ethics and standards of practice and the conflict of interest provision of Section 27-2-13, Code of Alabama 1975.

3.4 If an assignment is not completed and a written transcript not provided within the budgeted time approved by the Department, the Department reserves the right to refuse making payments under this Contract until a satisfactory written transcript is provided by the contractor.

3.5 Contractor will have no authority to act for or on behalf of the Department or the State of Alabama except as expressly provided for in the executed contract; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expenses, or liability of any kind on behalf of the Department or the State of Alabama.

3.6 The Department will not provide support services, such as office space or secretarial services, for the benefit of the Contractor.

4. PAYMENT FOR SERVICES AND EXPENSES.

4.1 The total amount invoiced by Contractor for all Services and Expenses during the operation of this contract shall not exceed \$_____, subject to the availability of State funds. If, during the Term, the amount available for funding of this Contract in any one fiscal year is reduced by legislative action, proration, or other action of State government beyond the control of the Department, the maximum amount payable under this Contract in the fiscal year will be adjusted accordingly.

4.2 The total reimbursement for services shall not exceed \$_____ during the Term of the contract, payable at the rates indicated on the attached pricing form.

4.3 No transportation or other reimbursement will be paid to the Contractor for expenses incurred in attending hearings or depositions conducted within a thirty-mile radius of the Department's offices located at 201 Monroe Street, Montgomery. In the event a hearing or deposition is held outside a thirty-mile radius of the Department's offices located at 201 Monroe Street, Montgomery, the Contractor will be paid transportation and per diem in lieu of reimbursement for actual expenses for intrastate and interstate travel the same as for classified employees of the State of Alabama; said per diem being the rate set in Sections 36-7-20 or 36-7-21, Code of Alabama 1975. The mileage allowance when traveling in privately-owned vehicles shall be the same as that allowed employees under the classified service of the State of Alabama as provided by Section 36-7-22, Code of Alabama 1975. Expenses incurred in commercial travel shall be reimbursed at actual cost. Contractor shall not be reimbursed for travel time or travel expenses not actually incurred in connection with an assignment. The total reimbursement for expenses shall not exceed \$_____ the Term of the contract.

4.4 The total amount expressed in Subsection 4.1 is not an agreement by the Department that tasks or projects which will be assigned to Contractor from time to time during the Term will authorize invoices from the Contractor aggregating such total amount.

4.5 The Department shall not pay any costs for services or expenses not within Subsections 4.2 and 4.3, and shall not prepay for the services or expenses.

4.6 With completion of each transcript as requested, Contractor will furnish an invoice to the Department for services rendered and expenses incurred. Each invoice or billing statement shall itemize costs incurred in connection with the particular matter for which services were rendered at the prices set forth in the pricing form. The contact person for matters relating to invoicing and payment processing for this Contract shall be Tisha Johnson, Department

Accountant. Contractor will submit two (2) copies of an invoice to the Department, Attn: Tisha Johnson. If by hand delivery or courier, invoices shall be delivered to: 201 Monroe Street, Montgomery, AL 36104. If by U.S. Mail, invoices shall be delivered to: P.O. Box 303351, Montgomery, AL 36130-3351.

4.7 Invoices that are received by the Department which are otherwise received in non-conformance with all of the requirements of the contract will be returned to Contractor unpaid or will be held by the Department until proper documentation is submitted.

4.8 The Department contact person for matters relating to invoicing and payment processing for this Contract shall be Tisha Johnson, Department Accountant [(334) 241-4106 or tisha.johnson@insurance.alabama.gov].

4.9 Contractor will promptly refund or credit within thirty (30) calendar days any erroneously paid funds that are not expressly authorized by the Department.

4.10 Upon termination of this Contract for any reason, payments under the Contract shall cease, except Contractor shall be entitled to payments for periods or partial periods that occurred prior to the date of termination and for which the Contractor has not yet been paid up to the limits of the Contract.

5. SUBCONTRACTORS; ASSIGNMENT.

5.1 All Services shall be performed by Contractor's employees. Contractor may not subcontract performance of any Services.

5.2 Contractor's interest in or obligations under this Contract may not be assigned.

6. INDEPENDENT CONTRACTOR.

6.1 Contractor's status under this Contract is strictly that of independent contractor. The Department does not reserve any right to exercise the right of control over the means and method by which Contractor performs the Services.

6.2 Contractor shall account for and remit all taxes relating to its performance under this Contract, including but not limited to, income taxes, employee wage withholding for income tax and FICA taxes, and any other payroll taxes. Contractor is solely responsible for any benefit plans Contractor may provide for its employees.

6.3 At all times during the Term, Contractor shall, at its sole cost and expense, maintain in force the following types of insurance:

6.3.1 Workers' compensation insurance for those employees of Contractor performing Services under this Contract who are subject to the workers' compensation laws.

6.3.2 Vehicle liability insurance covering the employee in employee's operation of, or responsibility for the operation of, the vehicle, for any employee of Contractor using a vehicle (including any rental vehicle) in performance of the Services under this Contract. If requested by the Department, Contractor will have the Department and the State of Alabama shown as additional named insureds on such vehicle liability insurance policy or policies and shall provide evidence of any endorsement to that effect.

7. TERMINATION.

7.1 If not sooner terminated, this Contract terminates effective on the Termination Date.

7.2 The Department and Contractor may mutually agree in writing to terminate this Contract before the Termination Date, upon such terms and conditions as the termination agreement may provide.

7.3 Either the Department or the Contractor may terminate this Contract due to a claimed breach of a material term of the Contract by the other. In such event, the terminating party shall give the other a written notice specifying the nature and circumstances of the claimed breach and shall afford a reasonable period of not less than thirty (30) days within which to cure the breach. If the breach shall not have been cured within the stated cure period, the termination shall be effective as of the termination date specified in or determined from the termination notice.

7.3.1 In the event Contractor exercises this termination right by identifying a claimed material breach on the part of the Department which remains uncured after notice, other than failure of the Department to pay for the Services, Contractor shall complete performance of the Services on any task or project in process at the time of the termination notice unless the Department specifically agrees in writing that Contractor is relieved of the obligation to complete performance.

7.3.2 In the event the Department exercises this termination right by identifying a material breach on the part of the Contractor which remains uncured after notice, the Department may, upon such reasonable terms and in such manner as it deems appropriate, obtain substitute services similar to the Services remaining unperformed due to the breach and termination of this Contract. In such event, Contractor will be liable to the Department for any amounts incurred by the Department which exceed amounts that would have been paid under this Contract but for the breach and termination, plus court costs and attorneys' fees to the extent that Contractor's obligation must be enforced through the court system. The Department may offset such amounts against amounts, if any, due to Contractor but unpaid as of the termination of this Contract.

7.3.3 Without limitation, the Department may deem the existence of a material false representation or statement in, or the omission of material facts from, Contractor's response

to the Request for Proposal that resulted in this Contract, including documents or information submitted with the response, to be a ground in the nature of a material breach justifying termination of this Contract.

7.4 The Department may cancel this Contract by giving Contractor not less than thirty (30) days written notice in advance of the termination date in the event that legislative action or other action of the State government, including, but not limited to, availability of funds for this Contract, makes provision of the Services impossible or unnecessary. In such event, Contractor shall be paid any amounts due for Services performed to the termination date.

7.5 The Department and the State of Alabama have no liability to Contractor for consequential or other damages beyond amounts, if any, due but unpaid for Contractor's performance of the Services, and Contractor waives any right to seek such damages and covenants not to take legal action of any type to assert or recover such damages.

8. CONFIDENTIALITY; RECORDS.

8.1 If the Department requests or indicates that exhibits or transcripts are to be sealed, then Contractor agrees to keep said transcripts, exhibits or other documentation confidential and sealed. A violation of this provision shall be a material violation of this Contract. The confidentiality provisions of this Contract shall remain in full force and effect after the termination of this Contract.

8.2 If it appears that the Contractor has disclosed (or has threatened to disclose) Confidential Information in violation of this Contract, the Department shall be entitled to an injunction to restrain the Contractor from disclosing, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. The Department shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

8.3 Upon termination of this Contract, the Contractor shall deliver all records, notes, data, memorandum, models and equipment of any nature that are in the Contractor's control and that are the Department property or relate to the Department's business.

9. NOTICES.

9.1 All notices required or permitted under this Contract shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

Department: J. Fairley McDonald, III, Chief Counsel
Alabama Department of Insurance
201 Monroe Street, Suite 502
Montgomery, AL 36104

Contractor:

9.2 Such addresses may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

10. ADDITIONAL REQUIREMENTS.

10.1 **Immigration.** The Contractor will comply with the requirements of all state and federal laws regarding employment verification and retention of verification forms for any individuals who will perform any labor or services under the contract.

10.2 **Equal Opportunity.** The Contractor will comply with the Civil Rights Act in giving equal opportunity without regard to race, color, creed, sex or national origin.

10.3 **ADA.** Contractor will comply with the requirements of the Americans with Disabilities Act (ADA).

10.4 **Payment of Taxes and Insurance by Contractor.** Contractor will be responsible for payment of all taxes, including, but not limited to, state, federal, foreign, or local taxes, including income tax, withholding tax, social security tax, pension contributions, and any other form of payroll or other taxes, for all Contractor's employees. At Contractor's sole cost and expense, Contractor will secure and maintain any and all insurance that is required by the contract or is necessary to protect the interests of the State of Alabama and the Department or that Contractor may need or desire for Contractor or Contractor's Employees.

11. INDEMNIFICATION.

11.1 Contractor shall indemnify and hold the Department harmless from all claims, losses, expenses, fees (including attorneys fees and litigation costs), costs and judgments that may be asserted against the Department and that result from the acts or omissions of the Contractor, the Contractor's employees, and the Contractor's agents arising from or relating to Contractor's performance under this Contract. At its election, upon receiving notice of any claim for damages within the scope of this Section, the Department may tender said claim to Contractor to furnish a defense of the Department at Contractor's expense in the jurisdiction where the claim is asserted.

12. NOTICE OF IMMUNITY.

12.1 As a department of State government, the Department is immune from being made a defendant in any court of law or equity by operation of Art. I, § 14, Ala. Const. 1901 (Recomp.), which immunity is not waivable and is not waived by any provision of this Contract.

13. CONTRACT NOT DEBT OF THE STATE.

13.1 This Contract does not create or constitute a debt against or incurred by the State of Alabama for purposes of Art. XI, § 213, Ala. Const. 1901 (Recomp.).

14. BOARD OF ADJUSTMENT.

14.1 In the event of a dispute concerning payment for Services or for damages otherwise claimed to be due to Contractor under or relating to this Contract, Contractor agrees that its remedy shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama as provided in Ala. Code §§ 41-9-60 et seq.

15. ENTIRE AGREEMENT.

15.1 This Contract contains the entire agreement of the parties. Any oral or written statements concerning the subject matter of this Contract which precede execution of this Contract by the parties are merged into the terms of this Contract, which alone expresses the intent of the parties, and the Department and Contractor warrant, each to the other, that they have not relied upon any preceding oral or written statements not set forth in this Contract in deciding to enter into this Contract.

16. AMENDMENT.

16.1 This Contract may be modified or amended by a writing signed by both parties. To the extent the laws of the State of Alabama require that the Department amend this Contract to include additional language or terms, Contractor agrees to execute any such amendment upon the request of the Department.

17. SEVERABILITY.

17.1 If any provision of this Contract shall be held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

18. WAIVER OF CONTRACTUAL RIGHT.

18.1 The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract. The Department does not waive any privileges, rights, defenses, remedies, or immunities available to the Department as an agency of the State of Alabama or otherwise available to the Department. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in

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this Contract or otherwise available to the Department by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities, or be considered a basis for estoppel.

19. APPLICABLE LAW.

19.1 This Contract shall be governed by the laws of the State of Alabama.

20. TIME OF THE ESSENCE.

20.1 Time is of the essence in the performance of this Contract.

DEPARTMENT:

CONTRACTOR:

By: _____
Jim L. Ridling
Commissioner
Alabama Department of Insurance

By: _____

Taxpayer ID Number:

APPROVED AS TO FORM ONLY:

Legal Counsel
Alabama Department of Insurance

APPROVED:

Robert Bentley
Governor, State of Alabama