

**AGREEMENT FOR LEGAL SERVICES
BETWEEN THE
STATE OF SOUTH DAKOTA AND
SIEGEL, BARNETT & SCHUTZ, LLP**

The State of South Dakota, hereinafter "State" and Siegel, Barnett & Schutz, LLP, hereinafter "SBS", hereby agree that State will receive legal advice and representation as provided in this Agreement.

Section I. Scope of Work:

SBS agrees to provide legal services and represent all executive branch departments, boards or commissions of the State as requested, by the head of the department, board and commission, and approved by the Litigation and Legal Services Manager for the Governor with notice to the Attorney General in the form attached in Exhibit B.

Section II. Payment Provisions:

It is hereby agreed that, in consideration of SBS's fulfillment of the terms of this Agreement, State shall pay SBS, within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed one hundred fifty dollars (\$150.00) for SBS shareholders and one hundred thirty-five dollars (\$135.00) for non-shareholders.

The total amount expended under this contract shall not exceed \$50,000.00.

Expenses for travel, meals and lodging incurred by SBS on behalf of State shall be reimbursed upon submission of a complete listing of all expenses actually incurred in the performance of this Agreement.

Section III. Independent Contractor:

While performing the services hereunder, SBS is acting as an independent contractor and not as an officer, agent or employee of the State of South Dakota.

Section IV. Hold Harmless and Indemnification:

SBS 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 which may arise as the result of performing services hereunder. This section does not require SBS to be responsible for or defend against claims or damages arising from the errors or omissions of the State, its officers, agents or employees or from



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the errors or omissions of third parties that are not officers, employees or agents of WFSS, unless such errors or omissions resulted from the acts or omissions of SBS. Nothing in this contract is intended to impair the insurance coverage of SBS or any subrogation rights of SBS insurers.

Section V. **Insurance:**

SBS hereby agrees to maintain during the term of this Agreement appropriate and adequate insurance coverage including general liability, automobile liability and professional liability insurance and shall provide State with evidence thereof upon request by State.

Section VI. **Limitations Upon Legal Representation:**

It is agreed and acknowledged by SBS that in order for SBS attorneys to represent the State of South Dakota or the interests of State in any court of law, counsel must receive an appointment as an Assistant Attorney General from the Attorney General of the State. When involved in negotiations leading to possible settlement of a claim, SBS will so inform the claimant or his representative that final approval of settlement is subject to approval as required by law.

Section VII. **Term of the Agreement:**

The term of this Agreement shall commence on July 1, 2008 and shall remain in effect through June 30, 2009.

Section VIII. **Termination:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice.

Section IX. **Default Provision:**

This Agreement 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 law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

Section X. **Amendment:**

The provisions in this Agreement may only be altered, modified or changed by written amendment hereto subject to the same approval requirements as in this Agreement.

Section XI. Agreement Not Assignable:

This Agreement is not assignable by SBS either in whole or in part, without the written consent of the State.

Section XII Payments Include All Taxes:

Payments made to SSB as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against SBS by reason of this Agreement.

Section XIII South Dakota Law Controlling:

It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance.

Section XIV Conflict of Interest:

SBS attorneys performing services under this Agreement agree 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.

Section XV Standard Notice:


Any notice or other communication required under this Agreement shall be in writing. Notices shall be given by and to Dennis D. Rounds, on behalf of the State, and by Jeffrey T. Sveen, on behalf of the legal services provider, 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 notices of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

Section XVI Compliance Provision:

The legal service provider will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

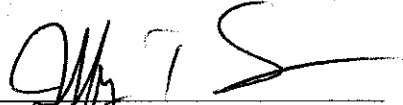
FOR STATE:

SIEGEL, BARNETT & SCHUTZ:



Dennis D. Rounds
Executive Director, PEPL; and
Litigation and Legal Services
Manager For the Governor

Dated: 5/27/08

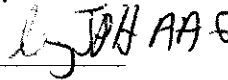


Jeffrey T. Sveen
For the Firm
P. O. Box 490
Aberdeen, SD 57401

Dated: 5/27/8

The foregoing Agreement is hereby approved as to form.

Approved as to Form
Larry Long



Larry Long
Attorney General

Dated: 5/29/08

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

LETTER OF ENGAGEMENT FOR LEGAL SERVICES

DATE: _____

NAME/ADDRESS: _____

RE:

Dear _____:

Thank you for agreeing to represent _____
(Department/Bureau/Board or Commission)
in accordance with the agreed upon SCOPE OF WORK as outlined:

at an hourly rate of \$ _____

If you have any questions regarding this matter, I would appreciate you calling me so that we may discuss.

(Department Secretary, Bureau Commissioner)

Dennis D. Rounds
Executive Director, PEPL Fund; and
Litigation & Legal Services Manager
For the Governor

Cc: Larry Long, Attorney General