

February 8, 2013

The Honorable Jeffrey W. Bullock
 Secretary of State
 State of Delaware
 Townsend Building
 401 Federal Street, Suite 3
 Dover, DE 19901

Dear Secretary Bullock:

We are pleased to submit for your acceptance terms of a professional services agreement between the State of Delaware ("Delaware") and Peck, Madigan, Jones & Stewart, Inc. (the "Consultant") (together the "Parties").

1. Consultant agrees to provide government affairs consulting as described in Appendix A to Delaware under terms and conditions described in Appendix B.
2. This agreement is effective for the period January 1, 2013 through the conclusion of the 113th Congress or December 31, 2014, whichever is later. This contract may be extended for up to three additional extensions for a period of one year for each extension by mutual agreement of the parties.
3. In consideration for professional services provided by Consultant, Delaware agrees to pay Consultants fifteen thousand dollars (\$15,000.00) per month (the "Monthly Compensation"), plus out-of-pocket expenses. All invoices are payable within 30 days of receipt.
4. The Parties understand that the workload required to perform the Scope of Services described in Appendix A may vary based upon the nature, complexity, and volume of relevant matters considered by Congress and federal agencies during the term of this Agreement and any extensions. Therefore, the Parties agree that the Consultant may from time to time submit a request in writing to the State to increase the Monthly Compensation to an amount not to exceed twenty thousand dollars (\$20,000.00) per month. Such request shall be submitted in writing to Delaware and shall be effective only if approved in writing by Delaware in advance of any given month or months for which such increased compensation is requested.
5. Consultant shall register and take whatever other actions may be necessary or appropriate under the laws of the federal government and the District of Columbia to fulfill its duties under this agreement.
6. All information provided by Delaware to Consultant is confidential and proprietary to Delaware and shall not be disclosed to any third party by Consultant without the prior written consent of Delaware.
7. Consultant represents that there is no and will be no conflict of interest between its performance under this agreement and its engagement as an independent contractor by others. In the event that Consultant believes that there may be a conflict of interest, Consultant will advise Delaware immediately.

Please signify your acceptance of this agreement by signing both copies and returning one to us.

Sincerely,

Original on File

Peck Madigan, Jones & Stewart, Inc.

1/31/2013
Date

Original on File

State of Delaware

1/31/2013
Date

APPENDIX A

SPECIFIC SCOPE OF SERVICES

Peck, Madigan, Jones & Stewart, Inc. ("Consultant") agrees to provide comprehensive consulting services to the State of Delaware ("Delaware") with respect to the Federal, Executive and Legislative branches, including all issues related to maintaining the primacy of state law on corporate governance and protecting Delaware's interests in the area of financial services. Such services shall include but not be limited to:

- (1) scheduling and representing Delaware in meetings with federal Executive Branch agencies and with the Delaware Congressional delegation and Congressional leadership, committee members, and staff;
- (2) assistance in building coalitions in support of Delaware's positions on corporate governance and financial services matters; and
- (3) providing Delaware with strategic advice likely to result in favorable consideration of Delaware's principles on corporate governance and financial services matters, or with strategic advice -- including advice on communications and coalition-building strategies -- likely to result in the defeat of legislation, rulemaking or policies that Delaware deems harmful to its interests and the enactment of legislation, rulemaking or policies that Delaware deems to be beneficial to its interests.

Consultant also agrees to provide general consulting services to the Delaware on a range of federal issues identified and directed by the Governor's office and Secretary of State's office. Such issues may include federal transportation programs, federal appropriations, Medicaid and other social service financing, and other issues to be identified. Such issues may also include federal policies and programs that benefit local governments, higher education institutions, or other institutions within the State of Delaware.

No portion of any funds provided by Delaware shall be used for any other purpose outside the Scope of Services, including, but not limited to, developing, drafting, advocating or lobbying within the State of Delaware for or against any State, county or municipal laws, regulations, rules or other policies and procedures.

APPENDIX B

STANDARD TERMS AND CONDITIONS

1. Independent Contractor.

- 1.1. It is understood that, in the performance of the services herein provided for Peck, Madigan, Jones & Stewart Inc. ("Consultant") shall be, and is, an independent contractor, and is not an agent or employee of the State of Delaware ("Delaware" or the "State") and shall furnish such services in its own manner and method except as required by this Agreement. Consultant shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.
- 1.2. Consultant acknowledges that it and any subcontractors, agents or employees employed by it shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.
- 1.3. As an independent contractor, Consultant has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

2. Termination.

- 2.1. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:
 - a. Not less than 15 calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with the terminating party prior to termination.
- 2.2. If termination for fault is effected by Delaware, Delaware will pay Consultant that portion of the compensation earned on a pro rata basis through the effective date of suspension, but:
 - a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work;
 - b. Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise; and
 - c. Any payment due to Consultant at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Consultant's default.

- 2.3. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Consultant is given:
 - a. Not less than 15 calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with Delaware prior to termination.
- 2.4. If the Agreement is terminated by Delaware for its convenience, Delaware will pay Consultant that portion of the compensation which has been earned as of the last day of the month that includes the effective date of termination but:
 - a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work; and
 - b. Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise.
- 2.5. The rights and remedies of Delaware and Consultant provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
3. Severability.
 - 3.1. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.
4. Assignment; Subcontracts.
 - 4.1. Any attempt by Consultant to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void.
 - 4.2. Any attempt by Consultant to sub-contract for the services specified in this Agreement without prior written approval of Delaware shall be void.
5. Force Majeure.
 - 5.1. Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.
6. Non-Appropriation of Funds.
 - 6.1. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

- 6.2. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.
7. Complete Agreement.
 - 7.1. The agreement and its appendices shall constitute the entire agreement between Delaware and Consultant with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of the Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of the Agreement.
 - 7.2. If the scope of any provision of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
8. Miscellaneous Provisions.
 - 8.1. In performance of this Agreement, Consultant shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.
 - 8.2. Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
 - 8.3. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
 - 8.4. Consultant acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Consultant recognizes that if it refuses to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, sexual preference or any other protected status, Delaware may declare Consultant in breach of the Agreement, terminate the Agreement, and designate Consultant as non-responsible.
 - 8.5. Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
 - 8.6. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

9. Insurance.

- 9.1. Consultant will maintain in full force and effect those certain insurance policies referenced in its Response to Request for Proposals for Professional Services dated December 13, 2012 and shall provide the State of Delaware with a copy of a Certificate of Insurance.
- 9.2. Consultant shall provide forty-five (45) days written notice of cancellation or material change of any policies reflected in the Certificate of Insurance.
- 9.3. In no event shall the State of Delaware be named as an additional insured on any policy required under the Agreement.

10. Governing Law.

- 10.1. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, except where federal law has precedence. Consultant consents to the exclusive jurisdiction of the state and federal courts of Delaware in all questions and controversies arising out of this Agreement.

11. Indemnification; Limitation of Liability.

- 11.1. Consultant shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of Consultant, its agents or employees, or (B) Consultant's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Consultant shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) Consultant shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

12. Notices.

- 12.1. Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE:
The Hon. Jeffrey W. Bullock
Secretary of State
401 Federal St., Suite 3
Dover, DE 19901

TO CONSULTANT:
Jeffrey J. Peck
Peck Madigan, Jones & Stewart, Inc.
1300 Connecticut Avenue, NW
Suite 600
Washington, DC 20036

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