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December 19, 2013

The Honorable Jeanette W. McBride  
Clerk of Court, Richland County  
Richland County Judicial Center  
1701 Main Street, Room 205  
Columbia, South Carolina 29201

Re: *New Venue Technologies, Inc. v. Michael B. Spicer*  
C/A No. 2013-CP-40-7253

Dear Ms. McBride:

Please find the original and one copy of the Second Affidavit of Terris S. Riley in Support of Motion for Writ enclosed for filing in the above-referenced matter. We would appreciate your returning the file-stamped copy of the affidavit to us in the enclosed, self-addressed stamped envelope.

By copy of this letter and certificate of service, we are hereby serving counsel of record with a copy of the same.

Sincerely,

A handwritten signature in cursive script that reads 'Tracy Solet'.

Tracy Solet  
Paralegal

TFS  
Encl

cc: M. Elizabeth Crum, Esq.  
Amber B. Carter, Esq.  
John E. Schmidt, III, Esq.  
Melissa J. Copeland, Esq.

**RECEIVED**

DEC 23 2013

**McNair Law Firm, PA**

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Civil Action Number: 2013-CP-40-7253

New Venue Technologies, Inc. )

*Petitioner,* )

vs. )

**SECOND AFFIDAVIT OF**  
**TERRIS S. RILEY IN**  
**SUPPORT OF MOTION**  
**FOR WRIT**

Michael B. Spicer, individually and )  
in his capacity of Chief Procurement )  
Officer and Information Technology )  
Management Officer for the State of )  
South Carolina Information )  
Technology Management Office and )  
Alex Doe, his designee under law )

*Respondents .* )

\_\_\_\_\_ )

Before me, the undersigned Notary Public in and for said County and State, personally appeared Terris S. Riley, known to me and being first duly sworn, deposes and says as follows:

1. I am Terris S. Riley. I am a citizen and resident of Richland County, South Carolina. I am the President of Petitioner in this case, New Venue Technologies, Inc., (NVTI). I am over eighteen years of age.

2. NVTI is a South Carolina corporation and has been and was the holder of a multi-year government contract for certain services involving computer software license management, among other things, from February 15, 2011 until the contract was wrongfully terminated by the State of South Carolina on October 8, 2013. A copy of the Notice of Award of the Contract is attached as Exhibit B to the Contract Controversy, Exhibit 1 to the Complaint and Petition herein.

3. Michael B. Spicer (Spicer) is a government official, namely, Chief Procurement Officer (CPO) and Information Technology Management Officer (ITMO) for the State of

South Carolina Budget and Control Board, whose office is located in Richland County, South Carolina. As Information Technology Management Officer, Spicer is the Chief Procurement Officer of the Budget and Control Board of the State of South Carolina who is charged under S.C. Code Ann. § 11-35-4230 with, among other things, receiving and acting on contract controversies filed in connection with South Carolina State government contracts.

4. I am informed and believe that Spicer claims that his duties as "CPO of the Board" are at issue in this matter, not his duties as ITMO. However, I know of my own personal knowledge that Spicer has actually issued communications and made rulings on contract controversies specifically "For the Information Technology Management Office," under his title "Information Technology Management Officer" and "ITMO" as can be seen from recent examples attached hereto as Exhibit A.

5. Alex Doe (Doe) is the appointed designee, or is the individual to be appointed as designee, of the Chief Procurement Officer under S.C. Code Ann. § 11-35-4230 in connection with the Contract Controversy filed by NVTI.

6. As a consequence of various breaches by the State of the Contract, including but not limited to the wrongful termination of the Contract, NVTI properly and timely filed with Spicer, pursuant to S.C. Code Ann. § 11-35-4230, a Contract Controversy as against the State of South Carolina, on or about November 14, 2013 ("NVTI's Contract Controversy"). NVTI's Contract Controversy is separate from the State's own, unfounded contract controversy case issued as against NVTI. NVTI's Contract Controversy was filed after the State's contract controversy was dismissed. The State's dismissed contract controversy had been asserted, and withdrawn by the State - "The State of South Carolina, through its purchasing agency

Information Technology Management Office," not by the "Budget and Control Board" as was alleged by Spicer at paragraph 19 of his Answer.

7. The Chief Procurement Officer or his designee has exclusive jurisdiction over the claims alleged in NVTI's Contract Controversy pursuant to S.C. Code Ann. § 11-35-4230. Under Section 11-35-4230, Spicer has the ministerial legal duty to promptly designate an impartial designee to carry out all acts required by Section 11-35-4230. Spicer has acknowledged that he is or may be a witness in a controversy between the parties, and he is therefore unable to serve as an impartial hearing officer with respect to the NVTI's Contract Controversy in a manner consistent with Due Process requirements.

8. Despite multiple requests, Spicer has not carried out the ministerial statutory duty to promptly appoint an impartial designee to handle the NVTI's Contract Controversy as hearing officer. Under Section 11-35-4230 Spicer's designee, Doe, is required to perform ministerial duties promptly, including: (1) to make a prompt attempt to settle the contract controversy asserted and filed by NVTI prior to commencement of administrative review; (2) if, after reasonable attempt, settlement is not reached, to conduct a prompt administrative review, in compliance with Due Process, including the setting of a prompt hearing, and (3) and to issue a reasoned decision on the contract controversy within ten days after completion of the administrative review. These acts are ministerial acts required of Spicer or his designee by law.

9. Neither Spicer, nor Doe, has carried out the ministerial statutory duties required by Section 11-35-4230, despite numerous requests by NVTI. Spicer and his designee, Doe, have the legal duties to perform these acts consistent with the law and Due Process.

10. The acts required of Spicer and his designee as alleged herein are ministerial, and are not discretionary.

11. NVTI has a specific legal right for which the discharge of the duty is necessary, as a consequence of its filing of the NVTI Contract Controversy. NVTI lacks any other legal remedy, apart from mandamus, because under law, only the CPO or his designee have jurisdiction over contract controversies.

12. NVTI also continues to suffer irreparable harm from the failure of Spicer and Doe to carry out their legal duties, as follows: the State has proceeded and continued to engage in an extreme course of conduct designed to injure and intimidate NVTI, and to prevent NVTI from exercising its legal rights in the NVTI Contract Controversy, as well as to injure NVTI's business and reputation. This misconduct includes but is not limited to the State's initiation (then dismissal) of an earlier, unfounded contract controversy as against NVTI, which contained numerous false and unsupported accusations, and which was only at length withdrawn by the State; large non-consensual chargebacks of funds from bank accounts of NVTI; the widespread publication by the State of the unfounded (and later dismissed) contract controversy by the State as against NVTI, coupled with an unreasonable delay in publishing the dismissal of said contract controversy; the widespread publication by Spicer and the State of a formal document, stating that Spicer scheduled a hearing to consider the debarment and suspension of NVTI "due to the breach of contract" by NVTI when in fact there was no breach and the State's claim of breach was withdrawn; threats by the State to involve criminal authorities against NVTI; unfounded and spurious accusations of criminal wrongdoing on the part of NVTI by the State; the assertion of unfounded and unproven criminal charges as against NVTI made by the State and its employees and agents, which resulted in NVTI's principal being temporarily unlawfully detained, incarcerated and falsely imprisoned; the institution of

unfounded and baseless debarment and suspension proceedings as against NVTI; and the wrongful termination of NVTI 's contract.

13. I observed that when the State initiated its unfounded (and now withdrawn) contract controversy as against NVTI, on September 30, 2013, Spicer issued a notice of hearing *the very next day*, on October 1, 2013, and set the hearing *to be heard in the same month*, on October 31, 2013. There is no just reason that Spicer could not appoint an impartial hearing officer designee and schedule the hearing on NVTI's claim in a similar timeframe. Such timeframes are commonplace in the context of State Procurement Hearings.

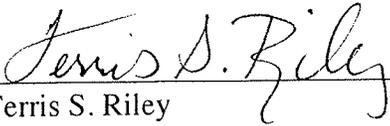
14. The refusal and failure of Spicer and his designee, Doe, to act as required by law in accordance with the law requiring prompt action, and in the context of the State's usual timeframes, demonstrates the need for judicial intervention. Simply put, false, damaging and scandalous accusations and allegations have been asserted as against NVTI by the State, and the State refuses to allow NVTI a proper and timely Due Process hearing in which to clear its name. All the while, irreparable harm to NVTI continues.

15. While there is now a matter pending before the Panel, it is not a review of any written Decision or Determination by Spicer. I am informed and believe that it is an original jurisdiction matter before the Panel challenging the propriety of the aborted filing by other state officials (other than Spicer), as having been made without a good faith basis. I know of my own personal knowledge that it is certainly not a review of a CPO Decision on NVTI's Contract Controversy claim - after all this matter is brought because Spicer refuses to allow that claim to proceed at all.

16. All of the above facts are sworn to or affirmed by me before an officer authorized to administer oaths, and I know all such facts stated to be true of my own

knowledge, except as to those matters I have stated on information and belief, and as to those matters, I believe them to be true

Further, the affiant sayeth not.

  
Terris S. Riley

SWORN TO AND SUBSCRIBED BEFORE ME

this 14<sup>th</sup> day of December, 2013

  
Notary Public for South Carolina

My Commission Expires: My Commission Expires January 18, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

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Technology Management Office and )  
Alex Doe, his designee under law )

*Respondents .* )

**CERTIFICATE OF**  
**SERVICE**

It is hereby certified that on this day, a copy of the forgoing **SECOND AFFIDAVIT OF TERRIS S. RIELY IN SUPPORT OF MOTION FOR WRIT** was duly served upon all counsel of record in this action by depositing the same in the United States Mail, postage prepaid, and addressed as follows:

M. Elizabeth Crum, Esq.  
Amber B. Carter, Esq.  
McNair Law Firm, PA  
P.O. Box 11390  
Columbia, SC 29211

  
\_\_\_\_\_  
Tracy F. Solet  
Paralegal

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**McNair Law Firm, PA**