



STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
**DIVISION of TRAVEL and TOURISM DEVELOPMENT**  
172 Pembroke Road Concord, New Hampshire 03301

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**NEW HAMPSHIRE DIVISION OF TRAVEL AND TOURISM  
BROCHURE DISTRIBUTION  
REQUEST FOR PROPOSALS**

Issue Date: October 26, 2016

Title: New Hampshire Brochure Distribution

Issuing Agency: State of New Hampshire  
Department of Resources and Economic Development  
**Division of Travel & Tourism Development**  
172 Pembroke Road  
Concord, NH 03301

Period of Contract: January 1, 2017 through December 31, 2018  
(with an option to extend through December 31, 2020)

Proposal Deadline: Wednesday, November 16, 2016  
*\*Proposal must be received at DRED not later than 3:00 p.m.*

All inquiries for information should be directed to:

Jennifer Townsend, Customer Service Supervisor  
Email: [Jennifer.Townsend@Dred.NH.Gov](mailto:Jennifer.Townsend@Dred.NH.Gov)

If proposals are mailed, send directly to issuing agency shown above. If proposals are hand-delivered, deliver to receptionist at DRED Office, 172 Pembroke Road, Concord.

Please label: **“PROPOSAL – NH BROCHURE DISTRIBUTION”**

**REQUESTS FOR PROPOSALS**  
**Brochure Distribution**

**1. PURPOSE**

The purpose and intent of this Request for Proposals (RFP) is to enter into a contract for a period of two years (January 1, 2017 - December 31, 2018) with an option to renew through December 31, 2020, upon the agreement of both parties and the Governor and Executive Council.

The qualified firm(s) will serve as the NH Department of Resources and Economic Development (DRED), Division of Travel and Tourism Development's (DTTD) tourism literature distribution representative(s). Selected vendor(s) will deliver approved brochures to the state-owned Safety Rest Areas (SRA)/Welcome and Information Centers (WIC) identified in Attachment A (map). Deliveries will be throughout the year (seasonal facilities vary). Additional deliveries will be made before major holiday or as requested by DTTD.

The Bureau of Visitor Services (BVS), within DTTD, is responsible for the management and daily operation of twelve SRA/WIC facilities owned by the New Hampshire Department of Transportation (DOT). The SRA/WIC facilities provide modern restroom facilities, travel information, and vending machines.

<b>WIC</b>	<b>Foot Count</b>	<b>Brochure Distribution</b>
Canterbury	271,316	138,794
Colebrook	40,426	21,814
Hooksett North	*	272,859
Hooksett South	*	140,361
Lebanon	137,629	53,151
Littleton	87,499	51,863
North Conway	73,899	71,758
Salem	349,098	150,278
Sanbornton	397,466	65,821
Seabrook	1,003,760	382,164
Springfield	359,113	83,230
Sutton	329,599	72,336

\*Approximately 1 million visitors per center

BVS receives literature distribution applications from those interested in displaying tourism related literature at the twelve facilities. Applications and literature samples are reviewed/approved in accordance with criteria outlined in Attachment B.

**2. DEFINITIONS**

- 2.1. "Offeror" refers to any individual, corporation, partnership or agency that responds in writing, to this RFP.
- 2.2. "Selected Vendor" refers to the Offeror under this Request for Proposals (RFP) with which the Department of Resources and Economic Development (DRED) negotiates a contract. The terms in this RFP referring to "Selected Vendor" represent contract terms that will be a part of the final contract.
- 2.3. The "Contract" is the resulting contract entered into between DRED and the successful Offeror.

- 2.4. "Brochure Distribution" refers to the services covered under the terms of this agreement, including administrative services, warehousing, fulfillment and shipping, and distribution services of approved literature to the SRAs.
- 2.5. "Program Participant" refers to the business(es) or organization(s) that participate in the brochure program and are required to use a contractor for distribution.

### **3. SCOPE OF WORK**

Proposals must be based on a 12-month period of time and address each item listed below.

- Maintain separate accounts for each Program Participant; accounts must include billing, approval letters, contracts, shipping verifications, etc. Records may be audited by DTTD at any time to ensure the Contractors are in compliance;
- Provide accessible storage for brochures and promotional literature. Premises must be clean, dry, secure and available for inspection by DTTD at any time during regular business hours. Premises must have sufficient loading and unloading capabilities. Contractors will include evidence of current general liability insurance for contents at replacement value;
- Supply and install uniform literature racks upon request. Contractors are not be permitted to feature branded materials;
- Provide weekly summary reports in the approved format by the sixth of each month, as well as additional reports as requested;
- Transfer relevant data to DTTD's dashboard;
- Provide ongoing counsel relative to productivity, process, or efficiencies;
- Provide a monthly distribution schedule and notify DTTD of changes/shortfalls;
- Notify DTTD of any changes to brochure distribution rate structure.

### **4. GENERAL REQUIREMENTS**

#### **4.1. Copies and Distribution of Proposal**

- 4.1.1. In order to be considered for selection, Offeror must submit a complete written response to this RFP by 3:00 PM, on Monday, October 17, 2016. One (1) original, one (1) electronic file and three (3) copies of each written proposal must be submitted to DTTD. No other distribution of the written proposal shall be made by the Offeror.

#### **4.2. Site Visits**

- 4.2.1. Offerors may visit the SRAs listed in Attachment A. Offerors must contact DTTD to schedule a date and time.

#### **4.3. Proposal Inquiries**

- 4.3.1. All inquiries concerning this RFP, including but not limited to requests for clarification, questions shall be submitted by e-mail to:

Contact: [Jennifer.Townsend@dred.nh.gov](mailto:Jennifer.Townsend@dred.nh.gov)  
RFP Reference: NH Brochure Distribution RFP

#### **4.4. Restriction on Contact with State Employees**

- 4.4.1. From the date of release of this RFP until an award is made, all communications with personnel employed by or under contract with the State regarding this RFP is forbidden unless first approved by the point of contact set forth in Section 4.4

## 5. SPECIFIC REQUIREMENTS

### 5.1. Proposal Content

- 5.1.1. A written one-page introductory statement including:
  - Experience in providing services as described in Section 3
  - Expertise of participating individuals performing major duties and functions under the proposed contract including roles, responsibilities and qualifications.
- 5.1.2. Submit brochure distribution rate structure.
- 5.1.3. Offeror shall provide a thorough description of its plans and approach for accomplishing the requirements of *Section 3: Scope of Work*.
- 5.1.4. Complete Contractor Data Sheet (Attachment C)
- 5.1.5. Demonstrate the Offeror's financial capability to provide the work described in Section 3: Scope of Work
- 5.1.6. Financial Statements. Offeror shall provide audited annual financial statements including the balance sheet, income statements, statement of cash flows and statement of shareholders' equity for the last three fiscal years.
- 5.1.7. Prior Litigation. Offeror shall provide information pertaining to all past (within last five (5) years), present, or anticipated lawsuits or litigation that have been brought by or against the Offeror's company, subsidiary company, or parent company. The Offeror shall include all legal actions that were settled before trial and that are not deemed confidential.
- 5.1.8. Explain previous contracted services provided to State, if any

### 5.2. Proposal Procedures

- 5.2.1. Proposals should be as thorough and detailed as possible, so that DTTD may properly evaluate Offeror capabilities to provide the required services. Responses must be structured as outline below. Offerors are required to submit the following items as a complete proposal.
- 5.2.2. Each copy of the proposal must be in a single volume. Proposals must be prepared simply and economically, providing straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. The State is not responsible for the cost of proposals.
- 5.2.3. Proposals shall be signed by an authorized representative of the Offeror.
- 5.2.4. All information requested must be submitted. Failure to submit this information at time of bid by deadline will render your proposal non-compliant and will result in disqualification.
- 5.2.5. The original copy must remain at DTTD, available for public inspection and disclosure, subsequent to awarding of the contract. Information considered confidential or proprietary may be marked as such by the submitting party. However, such determinations are not conclusive on DTTD and DTTD shall be subject to the provisions and requirements of RSA Chapter 91-A (the New Hampshire Right-to-Know law) when determining what documents are subject to public inspection/disclosure pursuant to a right-to-know request.

## 6. EVALUATION AND AWARD CRITERIA

- 6.1. All proposals will be evaluated for responsiveness to the RFP by a Selection Committee comprised of representatives from DRED.
- 6.2. All written proposals will be evaluated and scored on the basis of the following criteria, which will be accorded the relative weight indicated in parentheses:
  - a. Scope of Work: Evaluation of Offeror's response to Section 5.1.3 (40%)
  - b. Experience: Evaluation of Offeror's response to Section 5.1.1 (30%)
  - c. Brochure Distribution Rate Structure (20%)
  - d. References (10%)
  - e. **Total (100%)**
- 6.3. Offeror(s) must meet a minimum threshold of 60 points for consideration. Offeror(s) deemed to be best qualified among the written proposals will be identified on the basis of evaluation factors stated in Section 6.2. The Selection Committee will make a recommendation for selection of Contractor(s) to the Commissioner of DRED.
- 6.4. The Agency reserves the right to make independent investigations in evaluating Proposals, request additional information to clarify elements of a Proposal, waive minor or immaterial deviations from the RFP requirements, if determined to be in the best interest of the State.
- 6.5. The Selected Contractor(s) will be notified in writing. DTTD and the Selected Contractor shall negotiate a contract containing the terms in the RFP/proposal. If DTTD is unable to negotiate a satisfactory contract with a Selected Contractor, DTTD reserves the right to end negotiations and begin negotiations with the next highest scoring offeror.
- 6.6. The proposed Contract(s) must be approved by the Governor and Executive Council. This process takes approximately four to six weeks after the execution of Contract. The Contract approved by the Governor and Executive Council will be effective January 1, 2017 or upon Governor and Executive Council approval, whichever date is earlier.
- 6.7. Proposed Timetable:

Request for Proposals Issued	Wednesday, October 26, 2016
Deadline for Questions	Wednesday, November 2, 2016, 3:00 PM
Responses to Questions	Tuesday, November 8, 2016
Written Proposals Deadline	Wednesday, November 16, 2016, 3:00 PM
Companies Notified	Tuesday, November 22, 2016
Contract Deadline	Monday, December 5, 2016
Contract to Governor and Council	Wednesday, December 21, 2016
Contract Start Date	January 1, 2017 (or upon G&C approval)

Note: DTTD reserves the right to adjust this schedule as it deems necessary, at its sole discretion.

## 7. CONDITIONS

*Any prospective contractor must be willing to adhere to the following conditions and must positively state so in the proposal.*

- 7.1. Ownership of Subsequent Products: Any product, whether acceptable or unacceptable, developed under a contract awarded as a result of this RFP is to be the sole property of the State unless stated otherwise in the contract.
- 7.2. Conformance With Statutes: Any contract awarded as a result of this RFP must be in full conformance with statutory

requirements of the State.

- 7.3. Amending or Canceling: The State reserves the right to amend this RFP, prior to the due date if it is in the best interest of the State, or to correct inaccuracies resulting from clerical errors. Notwithstanding any other provision of this RFP, this RFP does not commit the State to award a Contract. The State reserves the right, at its sole discretion, to reject any and all Proposals, or any portions thereof, at any time; to cancel this RFP; and to solicit new Proposals under a new acquisition process.
- 7.4. Rejection for Misrepresentation: The State reserves the right to reject the proposal of any vendor for misrepresentation.
- 7.5. Contract Format: The successful Contractor(s) will be required to become an approved vendor through the online application (<https://admin.state.nh.us/purchasing/vendorregistration>) and sign or provide the following documentation:
- Service Contract Form – Form P-37 (Attachment D). Certificate of Authority/Vote. This document is only required if the Contractor is a corporation as it certifies by vote of the corporation’s board that the person who signs the contract has been authorized to do so. The Contractor is required to provide this document on corporate letterhead, signed by the Chairman of the Board or similarly authorized person.
  - Certificate of Good Standing. This document is required for all contracts exceeding thirty (30) days. The certificates are issued by the New Hampshire Secretary of State’s Office certifying that the corporation, partnership or trade name has been registered to do business in New Hampshire. Certificates of Good Standing shall be current and are renewable annually by April 1<sup>st</sup>.
  - Certificate of General Liability Insurance. This certificate is required to protect against all claims of bodily injury, death, or property damage in amounts not less than US\$250,000 per claim and US\$2,000,000 per incident, and fire and extended coverage insurance covering all DTTD property in amounts of not less than 80% of the whole replacement value of the property.
- 7.6. Speaking on behalf of the State of New Hampshire/DRED: Contractors are not authorized to represent the State’s position to the public or media and must be authorized to provide information by DRED.
- 7.7. The resulting Contract may be modified only by written amendment, which has been executed and approved by the appropriate parties from the State and Contractor.
- 7.8. The State may terminate this agreement without cause by giving the Contractors sixty (60) days written notice before the effective termination date.
- 7.9. If for any reason, the Contractor fails to make a delivery date, the Contractor shall be assessed Liquidated Damages of \$1,000.00 per week, or portion thereof, until the delivery date is met. If the Contractor foresees an event beyond its reasonable or normal control and properly notifies DRED of such event – in writing – DRED may allow the Contractor to exceed a delivery date with no Liquidated Damages assessed.
- 7.10. By submitting a Proposal, an Offeror agrees that in no event shall the State be either responsible for or held liable for any costs incurred by an Offeror in the preparation of or in connection with the Proposal, or for Work performed prior to the Effective Date of a resulting Contract.

# SAFETY REST AREAS / WELCOME AND INFORMATION CENTERS

## 1. CANTERBURY

I-93 Northbound, (603) 783-4194  
Open: 9am to 9pm, daily, year-round

## 2. COLEBROOK

Route 3, (603)237-5390  
Open: 8am-8pm, daily, May - October  
10am-6pm, Thur - Mon, December 15 - March 20

## 3. HOOKSETT - NORTH

I-93 Northbound, (603) 485-3019  
Open: 6am-10pm, year round

## 4. HOOKSETT - SOUTH

I-93 Southbound, (603) 485-3542  
Open: 6am-10pm, year round

## LEBANON

I-89 Southbound, (603) 448-2409  
Open: 8am - 8pm, daily, May - October  
10am-6pm, Thur - Mon, December 15 - March 20

## 5. LITTLETON

I-93, Exit 44, (603) 444-0125  
Open: 8am-8pm, daily, May - October  
10am-6pm, Thur - Mon, December 15 - March 20

## 6. NORTH CONWAY

Route 16, (603) 356-2769  
Open: 10am-6pm, Thur-Mon, year round

## 7. SALEM

I-93 Northbound, (603) 893-4351  
Open: 24 Hours daily, year-round

## 8. SANBORNTON

I-93 Southbound (603) 286-4650  
Open: 8am-8pm, daily, year round

## 9. SEABROOK

I-95 Northbound, (603) 474-5211  
Open: 24 hours daily, year-round

## 10. SPRINGFIELD

I-89 Northbound, (603) 763-9684  
Open: 9am - 9pm, daily, year-round

## 11. SUTTON

I-89 Southbound, (603) 927-4907  
Open: 9am - 9pm, daily, year-round





**NEW HAMPSHIRE DIVISION OF TRAVEL AND TOURISM DEVELOPMENT  
SAFETY REST AREA BROCHURE PROGRAM  
DISTRIBUTION POLICY GUIDELINES**

The Division of Travel and Tourism Development (DTTD) manages the distribution of publications in the state's Safety Rest Areas (SRAs)/Welcome and Information Centers (WICs). The state's SRAs/WICs are located along New Hampshire's Interstates and primary State Routes (see attached Map for details). Each of the SRAs/WICs has the availability to display publications that promote tourism in New Hampshire.

Printed material must promote New Hampshire's tourism industry and furnish pertinent information including, but not limited to, destinations, attractions, activities, events or points of interest. The information must be deemed beneficial and informative to visitors and only publications that conform to the policy guidelines and are approved by DTTD are permitted to be displayed.

DTTD charges a rack fee to display publications in the SRAs/WICs, and all revenue generated is put towards the betterment of centers and the brochure program. DTTD also requires that publications be delivered via one of DTTD's approved distribution vendors; with the exception of "Special Events" publications (see criteria).

DTTD has the right to reserve the placement of publications as space allows. Approval gives publications the rights to a slot, but not an exact guarantee of placement. DTTD also has the right to revoke approvals during the course of the year if deemed necessary. DTTD also has the right to deny an application if it does not meet the publication requirements listed below.

**Publication Requirements**

1. Publications must promote New Hampshire and furnish accurate, beneficial and pertinent information to the public. These pieces may be destinations, attractions, activities, events, and/or points of interest open to the general public.
2. Publications should be professionally produced and printed on paper of sufficient weight to withstand bending or wilting in the display rack. Recommended paper weight is 60lbs or more.
3. Single slots for publications will be a maximum size of 4"x 9", anything over and up to 8.5" x 11" will be considered a double slot size. Anything above will be considered on a case-by-case basis.
4. Publications must be up-to-date with information for the current season/year. Multi-state publications must represent New Hampshire proportionately and will be determined on a case-by-case basis at the discretion of the Division Director.
5. If an organization has a different publication for winter and summer (i.e. ski areas) and wishes to display each publication during its respective season, DTTD will allow the use of the same slot to display each season's publication. The winter season is November through April and the summer season is May through October. Both publications must be approved by DTTD prior to the distribution and display of the new season's publication. If year-round display of seasonal publications is desired, each publication will need to have its own slot.

## **Hooksett Welcome Centers Special Criteria**

There are 260 single and 32 double slots available on each Northbound and Southbound location. Due to the available space within the facility, no floor racks will be permitted. In addition, 25 slots in the Southbound facility shall be dedicated to economic development and business opportunities. Due to high demand space may not always be available. A waiting list will be offered if necessary, and when space becomes available applicants will be notified.

## **Short-Term Events**

The purpose of having a "Short-Term Events" section of the program is to allow items such as festivals, fairs and dated events the ability to promote the event, however these publications can be distributed year-round if desired through the standard program.

1. The brochure application needs to be completed and sent with documentation to DTTD 60 days prior to the start of the event, to allow for approval and distribution.
2. Short-term publications are approved to be in centers 30 days prior to the event and 15 days after the event, but not to exceed 90 days.
3. Using an approved distribution vendor is preferred, however it is not required.
4. The publications may be shipped directly to the approved centers or hand delivered with the approval letter.

## **Application Process**

1. Participants must complete an application for each publication. The completed application should be returned to DTTD with a copy of the publication (digital or hard copy) and a selected distribution company.

Returning applicants should submit a check for the rack fees made payable to **Treasurer-State of NH.**

New applicants **are not** required to submit payment with the application; an invoice will accompany the approval letter.

If the applicant is a Non-Profit business, a copy of the organization's legal status must be included. Failure to submit required documentation may delay processing/approval.

2. Acceptance of printed materials at any of the centers is on a first-come, first-served basis. The program offers continuous open enrollment. Due to space limitations at some centers, not all requests for display space can be accommodated. A waiting list will be offered if necessary, and when space becomes available applicants will be notified.
3. No materials may be displayed at the SRAs/WICs without approval from DTTD.
4. Once DTTD has received all required items, documentation will be reviewed and approved/denied as quickly as possible.
5. If your publication should change at any time during the current approval, an application with supporting documents must be resubmitted. Rack fee payment will not be required. Distribution of revised publication is pending approval.
6. Publication renewal reminders and applications will be sent out via email, approximately 60 days prior to expiration of current approval. Please note renewal is not guaranteed.
7. Once the renewal email is received, a new application must be completed and submitted to DTTD for review/approval.
8. Please notify DTTD with any changes, including non-renewal, prior to approval expiration.

## **Approvals**

1. Once approved, a confirmation letter will be sent via email to the contact listed on the application, as well as the chosen distributor.
2. Once approved, changes to requested centers are not permitted.
3. If the publication is not approved, applicants will receive a letter of explanation and the check for rack fee payment.

## **Publication Rack Fee Pricing**

Rack fees are charged per publication per location. Fee pricing as follows:

### **All State-Owned Safety Rest Areas/Welcome and Information Centers (excluding Hooksett):**

<b><u>Business Type</u></b>	<b>SINGLE</b>	<b>DOUBLE</b>
For Profit	\$20.00	\$40.00
Business Org 501(c) 6/NH Non-Profit	\$10.00	\$20.00
Non-Profit 501 (c) 3	\$5.00	\$10.00

### **Hooksett North and Hooksett South Safety Rest Area/Welcome & Information Center:**

<b><u>Business Type</u></b>	<b>SINGLE</b>	<b>DOUBLE</b>
All Business Types	\$30.00	\$60.00

## **Rack Fee Payments**

1. Rack fee payments are required at the time of application. Checks must be made out to: Treasurer, State of New Hampshire.
2. Payments are according to the above pricing structures. Supporting documents must be included with application and payment for Business Org 501(c)6, NH Non-Profit, and Non-Profit 501(c)3.
3. There will be no refunds for rack fees paid.

## **Distribution**

1. All program participants are required to use a DTTD Approved Distribution Vendor. Self-distribution is not permitted. Publications must be approved by DTTD prior to distribution.
2. DTTD must be alerted to changes in distribution vendors.
3. Distribution shall not exceed the state approval expiration date.

## **The following publications will not be displayed:**

1. Real estate listings, with the exception of vacation rentals.
2. Publications, that are religious in nature, unless promoting a historical landmark or attractions.
3. Publications that solicit memberships, subscriptions, donations, or request money, will not be approved.
4. Mall and Outlet Publications are acceptable. Individual stores will be accepted on a case by case basis.
5. Coupon books are not permitted.

CONTRACTOR DATA SHEET  
(To be completed by Offeror)

1. Years in Business: Indicate the length of time you have been in business providing this type of service.

\_\_\_\_\_ Years                      \_\_\_\_\_ Months

2. References: Indicate below at least three (3) accounts for whom you have provided publishing service, of which at least two will be related to tourism. Include the date service was furnished, and contacts.

Client	City/State	Date	Contact name/phone

3. Are you a subsidiary firm?     Yes             No

If yes, list the location of our parent affiliation:

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

4. List total number of employees:

\_\_\_\_\_ Full-time                      \_\_\_\_\_ Part-time/other

**Authorized Signature(s)**

This form must be completed and signed by an officer of the company:

Name of Firm: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Date of incorporation: \_\_\_\_\_

If not a corporation, state the type of business organization, names and addresses of owners, address and phone of principle place of business, date business began, and state in which organized.

I certify the accuracy of this information.

Signature: \_\_\_\_\_

Name and title (print or type): \_\_\_\_\_

Date: \_\_\_\_\_

**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Number	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency		1.10 State Agency Telephone Number	
1.11 Contractor Signature		1.12 Name and Title of Contractor Signatory	
1.13 Acknowledgement: State of _____, County of _____  On _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace			
[Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature		1.15 Name and Title of State Agency Signatory	
Date:			
1.16 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>			
By: _____		Director, On: _____	
1.17 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>			
By: _____		On: _____	
1.18 Approval by the Governor and Executive Council <i>(if applicable)</i>			
By: _____		On: _____	

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference (“Services”).

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 (“Effective Date”).

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 (“Equal Employment Opportunity”), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.