

The State of New Hampshire

Department of Environmental Services





July 2, 2013

Her Excellency, Governor Margaret Wood Hassan and the Honorable Council State House Concord, NH 03301

Retroaction Sole Source

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to **RETROACTIVELY** amend a **sole source** contract (PO# 1028411) with Act One Creative, LLC (VC #208192), Concord, NH, for graphic design and strategic marketing services by (1) modifying the scope of services to include additional messaging and marketing to support the Soak up the Rain New Hampshire program, (2) extending the contract completion date from June 30, 2013 to June 30, 2014, and (3) increasing the amount by \$12,000 from \$4,800 to \$16,800 effective upon Governor & Council (G&C) approval. This contract was originally approved by G&C on March 6, 2013, item # 21. 100% Federal Funds.

Funding is available in the account as follows:

03-44-44-442010-7602-102-500734

<u>FY14</u> \$12,000

Dept Environmental Services, Surface Water Quality PPG, Contracts for Program Services

EXPLANATION

This request is **sole source** as utilizing another contractor at this time would require significant resources by DES staff to coordinate and educate a separate contractor, and would add unnecessary delay and expense to the project. The contract amendment is greater than 10% of the original contract amount. The current contractor, Act One Creative, LLC is thoroughly familiar with the Soak up the Rain New Hampshire program. The additional messaging and marketing under this contract amendment is a natural extension of the marketing and branding work for Soak up the Rain New Hampshire program that is being completed by Act One Creative under the original contract. This request is **retroactive** due to scheduling conflicts between Act One Creative and DES in completing the contract amendment paperwork and obtaining signatures in time to make the final G&C meeting in June 2013.

DES Web Site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3899 Fax: (603) 271-2181 TDD Access: Relay NH 1-800-735-2964

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Her Excellency, Governor Margaret Wood Hassan and the Honorable Council

Page 2 of 2

The purpose of this contract amendment is to modify the scope of services, provide a time extension, and increase the contract amount for public outreach and strategic marketing for the Soak up the Rain New Hampshire program. Soak up the Rain New Hampshire is a new DES program aimed at protecting and restoring clean water through voluntary reductions in stormwater pollution. This contract amendment will allow Act One Creative, LLC to provide additional strategic marketing services to support the Soak up the Rain New Hampshire program. In addition to the logo and tagline development in the original contract, this amendment will include the development of creative messaging to educate target audiences about stormwater, the practices contained in the New Hampshire Homeowner's Guide to Stormwater Management: Do-It-Yourself Stormwater Solutions for Your Home, as well as share program successes related to the number of Soak up the Rain installation sites and resultant pollution reductions. This will maximize the opportunity for the Soak up the Rain New Hampshire program's messages to reach public audiences and expand across the state.

The original contract, approved by G&C on March 6, 2013 (Item #21), provided consultation on program marketing and brand identity, program logo and tagline development for the Soak Up the Rain New Hampshire program outreach. The budget increase is necessary to fund the expanded scope of services. The attached Exhibit A contains the revised scope of work. Exhibit B provides a detail of costs for the work.

Total additional costs are budgeted at \$12,000. In the event that Federal funds become no longer available, General funds will not be requested to support this program. The contract amendment has been approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.

Thomas S. Burack, Commissioner
Department of Environmental Services

Agreement for Services with the Act One Creative, LLC

Amendment No. 1

This Agreement (hereinafter called the "Amendment") dated this 2nd day of July, 2013, is by and between the State of New Hampshire, acting by and through its Department of Environmental Services (hereinafter referred to as the "State") and the Act One Creative, LLC, acting by and through its Member, Nancy Brownstein (hereinafter referred to as the "Contractor").

WHEREAS, pursuant to an Agreement (hereinafter called the "Agreement") approved by the Governor and Council on March 6, 2013, the Contractor agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums as specified therein; and

WHEREAS, The Contractor and the State have agreed to amend the Agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties hereto do hereby agree as follows:

- 1. Amendment and Modification of Agreement: The Agreement is hereby amended as follows:
 - (A) The Completion Date as set forth in sub-paragraph 1.7 of the agreement shall be changed from June 30, 2013 to June 30, 2014.
 - (B) The Contract Limitation as set forth in sub-paragraph 1.8 of the contract shall be changed from \$4,800 to \$16,800.
 - (C) The Scope of Services as set forth in Exhibit A will be amended as follows by adding the following tasks:
 - 4. Work with DES Soak up the Rain New Hampshire program staff to determine the critical design and messaging elements of the targeted Soak up the Rain New Hampshire strategic marketing. This will include but not be limited to:
 - Development of messaging based on the Soak up the Rain New Hampshire tagline including stormwater from residential land uses, impacts to water quality, and do-it-yourself practices from the New Hampshire Homeowner's Guide to Stormwater Management: Do-It-Yourself Stormwater Solutions for Your Home and other resources.
 - Design of templates for sizing and design of do-it-yourself practices and calculations for resultant pollution reductions.
 - Design of maps showing locations of Soak up the Rain New Hampshire project sites.
 - Development of the graphic design elements. This will include two choices for the initial design and the ability to mix and match elements of each.
 - 5. Build, test and deploy the messaging templates. This will include but not be limited to:
 - Development of the messages, templates, and maps.
 - Testing of all strategic marketing elements.

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- Test launching of strategic marketing materials, check for bugs and refine details
- 6. Final launch of the completed strategic marketing materials.
- (D) The Contract Price and Method of payment as set forth in Exhibit B shall be changed as follows:

Task Description	Original Payment	Revised Payment	Difference
Upon completion and DES approval of Task 1	\$800	\$800	\$0.00
Upon completion and DES approval of Task 2	\$2,000	\$2,000	\$0.00
Upon completion and DES approval of Task 3	\$2,000	\$2,000	\$0.00
Upon completion and DES approval of Task 4	-	\$6,000	\$6,000
Upon completion and DES approval of Task 5	-	\$4,000	\$4,000
Upon completion and DES approval of Task 6	-	\$2,000	\$2,000
TOTALS	\$4,800	\$16,800	\$12,000

- 2. Effective Date of Amendment: This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.
- 3. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement, and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Agreement for Services with the Act One Creative – Amendment No. 1 Page 2

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.
Act One Geative By Alex Duy Nancy Brownstein, Member
STATE OF NEW HAMPSHIRE COUNTY OF MEY IMACK
On this the 2nd day of July, 2013, before the undersigned officer,
personally appeared Nancy Brownstein, Member who acknowledged herself to be the person
who executed the foregoing instrument for the purpose therein contained.
IN WITNESS WHEREOF, I hereunto set my hand and official seal.
My Commission Expires: JOYCE A. GARMAN NOTARY PUBLIC STATE OF NEW HAMPSHIRE My commission expires Sci. 20, 2015
THE STATE OF NEW HAMPSHIRE Department of Environmental Services
By Thomas S. Burack, Commissioner
Approved by Attorney General this $\frac{1}{2}$ day of $\frac{50}{2}$, $\frac{20}{3}$
OFFICE OF ATTORNEY GENERAL
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CERTIFICATE of AUTHORITY

- I, Nancy Brownstein, Member of Act One Creative, LLC, do hereby certify that:
 - (1) I am the sole member of Act One Creative, LLC;
- (2) I have sole authority to accept DES funds and to enter into a contract with the Department of Environmental Services.
- (3) I have sole authority to execute any documents which may be necessary for this contract.
- (4) This authority has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof.

Nancy Brownstein, Member, Act One Creative, LLC

IN WITNESS WHER	REOF, I have he	reunto set my hand as	the sole Member of Ac	t One
Creative, LLC, this	2 <u>nd</u> day of Day	Month Molenta	Nancy Brownstein (sig	gnature above)
STATE OF NEW HA	MPSHIRE			
County of Merrimack	-			
On this the 2nd Day	day of	TC(1) Month		, before me
	Joyce	nted Name of Notary Publ	<u>ian</u>	
_	ber, personally a f Act One Creat	appeared Nancy Brow rive, LLC being autho	rized so to do, executed	I the foregoing
In witness whereof, I	have set my har	nd and official seal.	JOYCE A. GARMAN NOTARY PUBLIC STATE OF NEW HAMPSH My commission expires Oct. 20,	IIRE
		Jayre	A HÁNMA Signature	of Notary Public
		Joxe	Ge A. Garne Printed Name	an of Notary Public
Commission Expiration (Seal)	on Date:		2	

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State of New Hampshire Bepartment of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Act One Creative, LLC is a New Hampshire limited liability company formed on July 9, 2001. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and paid the fees required by law; and that a certificate of cancellation has not been filed.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 20th day of June, A.D. 2013

William M. Gardner Secretary of State

Attachment A – Budget Estimate Soak up the Rain NH Program Identity and Logo Development

Work with DES Soak up the Rain New Hampshire	\$6,000.00
program staff to determine the critical design and	
messaging elements of the targeted Soak up the Rain New	
Hampshire strategic marketing.	
Build, test and deploy the messaging templates.	\$4,000.00
Final launch of the completed strategic marketing	\$2,000.00
materials.	
TOTAL	\$12,000.00

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OP ID: LG



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/10/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Phone: 603-224-0993 CONTACT Linda

Phone: 603-224-7710 PROPE _ ... 603-224-0993 FAX ... 603-224-7710

	DUCE								Phone: 603-224-0993		^{CT} Linda					
Gallant Insurance Inc 694 Route 3A Fax: 603-224								Fax: 603-224-7710								
Bow, NH 03304 Scott D Miniutti										E-MAIL ADDRE	ss: linda@g	jallant-insu	rance.com			
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The ACORD name and logo are registered marks of ACORD

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The State of New Hampshire



Department of Environmental Services

Thomas S. Burack, Commissioner

Celebrating 25 Years of Protecting New Hampshire's Environment



January 31, 2013

Her Excellency, Governor Margaret Wood Hassan and The Honorable Council State House Concord, NH 03301 APPROVED G & C
DATE 3/4/13
TEM# 21

REQUESTED ACTION

Authorize the Department of Environmental Services Watershed Assistance Section to enter into a personal service contract with Act One Creative, LLC (VC #20\)9192), Concord, NH in the amount of \$4,800.00 for graphic design and strategic marketing services including logo and slogan development for Soak up the Rain New Hampshire, effective upon your approval through June 30, 2013. 100% Federal Funds.

Funding is available in the account as follows:

03-44-44-442010-7602-102-500734

FY 2013 \$4,800

Dept Environmental Services, Surface Water Quality PPG, Contracts for Program Services

EXPLANATION

Stormwater is the single largest cause of water pollution in New Hampshire. While regulatory programs address point sources and large-scale nonpoint sources of pollution, small-scale commercial and residential properties are largely unregulated and have a considerable cumulative impact on the health of our lakes and streams. To reduce the water quality impacts of these properties, DES is developing a new program called Soak up the Rain New Hampshire with the goal of protecting and restoring clean water through voluntary reductions in stormwater pollution using DES' recent publication, New Hampshire Homeowner's Guide to Stormwater Management: Do-It-Yourself Stormwater Solutions for Your Home. As part of the program development, Act One Creative, LLC will help DES target the program audiences by developing a clearly identifiable program logo and specific messaging to encourage New Hampshire residents to Soak up the Rain.

Bids were solicited from design firms known to have produced high quality publications for natural resource agencies and similar audiences. The firms and their bids are as follows:

 Microarts
 \$10,800.00 - \$13,500.00

 brown & company design
 \$6,800.00 - \$7,600.00

 Act One Creative
 \$3,800.00 - \$4,800.00

www.des.nh.gov

Her Excellency, Governor Margaret Wood Hassan and The Honorable Council State House Concord, NH 03301

Page 2

Since all three firms were judged to be capable of producing high quality work, we selected Act One Creative, LLC based on price and ability to meet our production schedule.

Total costs are budgeted at \$4,800.00, based on the attached quote. In the event that Federal funds become no longer available, General funds will not be requested to support this program.

The agreement has been approved by the Office of the Attorney General as to form, execution, and content. We respectfully request your approval.

Thomas S. Burack, Commissioner

Subject:

Soak up the Rain NH Program Development Contract

FORM NUMBER P-37 (version 1/09)

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					
NH Department of Environmental Services	29 Hazen Drive Concord, NH 03301					
1.3 Contractor Name	1.4 Contractor Address					
Act One Creative, LLC	18 Low Avenue, Concord, NH 03301					
1.5 Contractor Phone 1.6 Account Number	1.7 Completion Date 1.8 Price Limitation					
Number 603-226-3311 44210-7602-102-500734	June 30, 2013 \$4,800.00					
1.9 Contracting Officer for State Agency	1.10 State Agency Telephone Number					
Eric Williams, Watershed Assistance Section Supervisor	603-271-2358					
1.11 Contractor Signature	1.12 Name and Title of Contractor Signatory					
Marin Polling	Nancy Brownstein, Member					
1.13 Acknowledgement: State of NH County of Merrimack						
On 13/18/2012, 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						
	knowledged that s/he executed this document in the capacity					
indicated in block 1.12.						
	LE Q GARMAN JOYCE A. GARMAN					
indicated in block 1.12. 1.13.1 Signature of Notary Public or Justice of the Peace	JOYCE A. GARMAN NOTARY PUBLIC STATE OF NEW HAMPSHIRE					
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[Seal] 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	JOYCE A. GARMAN NOTARY PUBLIC STATE OF NEW HAMPSHIRE My commission expires Oct. 20, 2015					
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	JOYCE A. GARMAN NOTARY PUBLIC STATE OF NEW HAMPSHIRE My commission expires Oct. 20, 2015 1.15 Name and Title of State Agency Signatory Thomas S. Burack, Commissioner					
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[Seal] 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 1.16 Approval by the N.H. Department of Administration, Division	JOYCE A. GARMAN NOTARY PUBLIC STATE OF NEW HAMPSHIRE My commission expires Oct. 20, 2015 1.15 Name and Title of State Agency Signatory Thomas S. Burack, Commissioner In of Personnel (if applicable) Director, On:					
[Seal] 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 1.16 Approval by the N.H. Department of Administration, Division By:	JOYCE A. GARMAN NOTARY PUBLIC STATE OF NEW HAMPSHIRE My commission expires Oct. 20, 2015 1.15 Name and Title of State Agency Signatory Thomas S. Burack, Commissioner In of Personnel (if applicable) Director, On:					
[Seal] 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 1.16 Approval by the N.H. Department of Administration, Division By: 1.17 Approval by the Atternet General (Form, Substance and Exercise)	JOYCE A. GARMAN NOTARY PUBLIC STATE OF NEW HAMPSHIRE My commission expires Oct. 20, 2015 1.15 Name and Title of State Agency Signatory Thomas S. Burack, Commissioner of Personnel (if applicable) Director, 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

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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("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/

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

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

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. 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

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.

Page 2 of 4

Contractor Initials

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.I 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 consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written 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 \$250,000 per claim and \$2,000,000 per occurrence; and
- 14.1.2 fire and extended coverage insurance 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 fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Page 3 of 4

Contractor Initials Date 12/18/12

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) 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.
- 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.

Contractor Initials Date 14/8/17

Exhibit A Scope of Services

Act One Creative, LLC shall provide consultation, logo and tagline/slogan development for the DES Soak up the Rain New Hampshire outreach and assistance program to the satisfaction of the Department of Environmental Services, with the following tasks:

- Attend initial consultation meeting with DES Soak up the Rain NH program staff to discuss program intent, audiences, messaging, and logo and tagline development.
 Total consultation time for the entire project period shall not exceed 8 hours.
- Present a minimum of five (5) program identity designs (logos) and taglines to DES staff. Work with DES staff to select design colors, fonts, symbols, and language for final design.
- Present final identity design (logo) and tagline to DES. Upon approval of final design, provide electronic files, in several formats, of the final design for use in print and web.

Exhibit B Contract Price and Method of Payment

All services shall be performed to the satisfaction of DES before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of an associated invoice. Payment shall be made in accordance with the following schedule based upon completion of specific tasks described in Exhibit A:

	Total	\$4,800,00
Upon completion and DES approval of Task 3		\$2,000.00
Upon completion and DES approval of Task 2		\$2,000.00
Upon completion and DES approval of Task 1		\$800.00

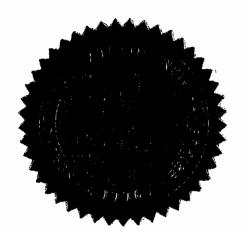
Exhibit C Special Provisions

The requirements of Paragraph 14.1.1 shall be \$1,000,000 for general liability each occurrence and \$2,000,000 aggregate.

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Act One Creative, LLC is a New Hampshire limited liability company formed on July 9, 2001. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and paid the fees required by law; and that a certificate of cancellation has not been filed.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 17th day of December, A.D. 2012

William M. Gardner Secretary of State

CERTIFICATE of AUTHORITY

- I, Nancy Brownstein, Member of Act One Creative, LLC, do hereby certify that:
 - (1) I am the sole member of Act One Creative, LLC;
 - (2) I have sole authority to accept DES funds and to enter into a contract with the Department of Environmental Services.
 - (3) I have sole authority to execute any documents which may be necessary for this contract.
 - (4) This authority has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof.

Nancy Brownstein, Member, Act One Creative, LLC

IN WITNESS WHEREOF, I have hereunto set my hand as the soje Member of Act One
Creative, LLC, this 18 day of December, (1201)
Day Month Year July
Nancy Brownstein (signature above)
STATE OF NEW HAMPSHIRE
County of Merrimack
On this the 18th day of <u>December</u> , 2012, before me
Day Month Year
Joyce A. Garman
Frinted Name of Notary Public
the undersigned member, personally appeared Nancy Brownstein who acknowledged herself to
be the sole Member of Act One Creative, LLC being authorized so to do, executed the foregoing
instrument for the purpose therein contained.
In witness whereof, I have set my hand and official seal.
Oxuce a starmor
JOYCE A. GARMAN Signature of Notary Public NOTARY PUBLIC
STATE OF NEW HAMPSHIRE
My commission expires Oct. 20, 2015 Printed Name of Notary Public
Commission Expiration Date:
(Seal)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/12/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Gallant Insurance Inc 694 Route 3A Bow, NH 03304 Scott D Miniutti Phone: 603-224-0993 Fax: 603-224-7710				Trans.								
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SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

NH Department of Environmental Services Jillian McCarthy 29 Hazen Drive Concord, NH 03301

Brian Hallan

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2009/09)

The ACORD name and logo are registered marks of ACORD

Attachment A – Budget Estimate Soak up the Rain NH Program Identity and Logo Development

Develop branding identity/logo	\$2,800.00
Develop tag line	\$1,200.00
Consultation/facilitation services (up to 8 hours)	\$800.00
TOTAL	\$4,800.00