

44 *dm*



State of New Hampshire

DEPARTMENT OF SAFETY
JAMES H. HAYES BLDG. 33 HAZEN DR. CONCORD, N.H. 03305
603/271-2791

JOHN J. BARTHELMES
COMMISSIONER OF SAFETY

KEVIN P. O'BRIEN
ASSISTANT COMMISSIONER

RICHARD C. BAILEY, JR.
ASSISTANT COMMISSIONER

April 26, 2016

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

Requested Action

Authorize the Department of Safety (DOS), Division of Motor Vehicles, to enter into a contract with WBIN Media Co., Inc. (Vendor #248423-P001), 126 Daniel Street, Suite 200, Portsmouth, NH 03801, in an amount not to exceed \$44,000.00 for the purpose of the creation, production, distribution, and promotion of radio announcements focusing on the importance of "sharing the road" and on upcoming motorcycle rider training courses. Effective upon Governor and Council approval through September 30, 2016. Funding source: 100% Agency Income (MRT Program Media Campaign Grant).

Funding is available in the SFY2016 operating budget as follows.

10-023-023-2330-74490000	Dept. of Safety – Division of Motor Vehicles – Motorcycle Safety Grant	<u>SFY2016</u>
103-502664	Contracts for Operational Services	\$44,000.00

Explanation

The goal of this campaign is to provide quality motorcycle rider training, to promote motorcycle rider safety, and to reach as many people as possible throughout the state of New Hampshire. The State, acting through the Department of Safety, Division of Motor Vehicles, posted a Request for Proposal to the State of NH website from March 9, 2016 through March 15, 2016. The purpose of the RFP was to procure pricing, demographics, and an advertising package for the Motorcycle Rider Training Program Media Campaign. Two bids were received and scoring was based on the best overall advertising package offered for the price, along with demographics and total coverage area. The scoring was completed by a three person team that included the Motorcycle Rider Education program coordinator. The selected vendor was WBIN Media Co., Inc., which had the highest score for its ability to offer the best overall advertising package with the capability to reach the greatest number of listeners in high populous areas during peak times. WBIN will be providing advertising coverage from just south of the White Mountains throughout the central corridor of NH to the Massachusetts border.

Respectfully submitted,

John J. Barthelmes
John J. Barthelmes
Commissioner of Safety

Motorcycle Rider Education Program
Radio Media Campaign
RFP-Safety-2016-02
Scoring Matrix

	WBIN MEDIA Co. Inc.	MANCHESTER RADIO GROUP
Number of spots to run during requested time slots	5	2
Geographic coverage	5	3
Ad production	5	5
Demographics of listeners	5	5
TOTAL	20	15

Score on a 1-5 scale with 5 being best.

Number of spots: Total number of spots during time frame requested, 6am-9pm. Additional, non-paid spots, may be considered.

Geographic coverage: Reaching listeners in as many areas as possible including areas with high population density as well as areas in the north and southwest preferable.

Ad production: Provisions for radio ad production and talent preferable.

Demographics of listeners: A broad spectrum of age, income and gender preferable.

Date: 4/5/2016

Evaluators:

Arthur Garlow, Assistant Director
Lisa Lienhart, Financial Administrator
Larry Crowe, MREP Coordinator

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 Department of Safety		1.2 State Agency Address 23 Hazen Drive, Concord, NH 03305	
1.3 Contractor Name WBIN Media Co., Inc.		1.4 Contractor Address 126 Daniel Street, Portsmouth, NH 03801	
1.5 Contractor Phone Number 603-524-1323	1.6 Account Number 10-023-023-2330-74490000	1.7 Completion Date September 30, 2016	1.8 Price Limitation not to exceed \$44,000.00
1.9 Contracting Officer for State Agency Steven Lavoie		1.10 State Agency Telephone Number 603-227-4051	
1.11 Contractor Signature <i>Mark Graham</i>		1.12 Name and Title of Contractor Signatory <i>Mark Graham, VP/CFO</i>	
1.13 Acknowledgement: State of <i>New Hampshire</i> , County of <i>Rockingham</i> On <i>04 April 2016</i> before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person identified in block 1.12, who 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]		<i>Matt Mayberry</i>	
1.13.2 Name and Title of Notary Public or Justice of the Peace <i>MATT MAYBERRY NOTARY PUBLIC</i>			
1.14 State Agency Signature <i>Steven R. Lavoie</i> Date: <i>4/25/16</i>		1.15 Name and Title of State Agency Signatory Steven R. Lavoie, Dir. of Administration	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <i>[Signature]</i> On: <i>4/22/16</i>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

M6
4/18/16

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.

Exhibit A

Motorcycle Rider Education Program
Radio Media Campaign

Scope of Services

WBIN Media Co., Inc (VC #248423-P001), 126 Daniel Street, Suite 200, Portsmouth, NH 03801 shall provide the State of New Hampshire, Department of Safety, Division of Motor Vehicles, Motorcycle Rider Education Program with promotional radio advertising as follows:

1. Mutually agreed upon radio schedule to commence upon approval of the agreement by the New Hampshire Governor and Executive Council, anticipated to be mid-May 2016, through September 30, 2016, as described in the WBIN Media Co., Inc., 2016 DMV Motorcycle Rider Program Radio Campaign proposal, which is hereby made a part of this agreement.
2. All advertising materials and schedules must be preapproved by the DMV prior to being placed on air.
3. The contact person for the Division of Motor Vehicles is Lawrence Crowe or his designee, telephone 603-227-4051, email lawrence.crowe@dos.nh.gov.
4. The contact person for WBIN Media Co., Inc. is Richard Hopper 603-524-1323.
5. Contractor shall adhere to the following terms and conditions:

Reports and Meetings: In order for the Department of Safety to assess the advertising campaign in accordance with federal guidelines governing the use of "Section 402 Funds for Purchasing Advertising Space", the Contractor agrees to provide the Department of Safety with quarterly reports and an annual report detailing activity, as well as any problems/issues that may occur.

Audit: WBIN Media Co., Inc., agrees to provide the Department of Safety with a copy of its Annual Report which includes the time periods covered by this Agreement.

The State of New Hampshire reserved the right to have its Legislative Budget Assistant review any work papers.

Contract Credit: All publications, public information or publicity released in conjunction with this contract shall state that such is "funded by the New Hampshire Office of Highway Safety" or words to that effect.

Copyrights: The Department of Safety and The Office of Highway Safety, representing the Federal awarding agency and the State of New Hampshire, reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal and State Government purposes: (a) The copyright in any work developed under this Contract under a grant or subgrant; and (b) Any rights to copyright to which the Contractor purchases ownership with grant support.(US Department of Transportation Common Rule, March 11, 1988)

Contractor Initials: MG
Date: 4/8/16

The Contractor shall not be liable for any costs incurred by the Department of Safety as a result of rejected copy or changes after approval by the Department of Safety.

If a dispute arises between the Contractor and the Department of Safety as to whether Advertising Services were provided, detailed documentation from the Contractor will be evidence that the Services were provided.

The Department of Safety and the Contractor represent that with respect to all copy and illustrations supplied by the Department of Safety or the Contractor or their respective employees to the Contractor for the preparation of the advertisement will:

- Be true and correct in every aspect
- Not be, nor contain anything that is defamatory of any person;
- Not be, nor contain anything that is indecent or obscene;
- Not breach, nor contain anything that breaches the copyright, trademark or other intellectual or commercial property rights of any person or which constitutes passing off of the Department of Safety or its goods or services; and
- Not contain nor constitute a statement that is misleading or deceptive or likely to be misleading.

Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions. The contractor certifies, by submission of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or Agency.

Contractor Initials: ML
Date: 7/8/16

Exhibit B

Motorcycle Rider Education Program
Radio Media Campaign

Payment Schedule

The payment schedule for transfer of funds from the State of New Hampshire, Department of Safety to WBIN Media Co., Inc, 126 Daniel Street, Suite 200, Portsmouth, NH is contingent upon the following:

1. Approval of this agreement by the New Hampshire Governor and Executive Council.
2. Division of Motor Vehicles approval of services.
3. Submittal of monthly invoices to the Division of Motor Vehicles within 21 days after the end of the month, including details of which ad(s) were run, dates, times and stations it was aired on. Payments to be made within 30 days.
4. Total agreement not to exceed \$44,000.00

Contractor Initials: ML
Date: 4/8/16

Exhibit C

Motorcycle Rider Education Program
Radio Media Campaign

Special Provisions

There are no special provisions.

Contractor Initials: ML
Date: 7/9/16

WBIN MEDIA CO., INC.

Unanimous Consent of Sole Director

The undersigned, being the sole director of WBIN Media Co., Inc., a corporation organized and existing under the New Hampshire Business Corporation Act (NH RSA 293-A) (the "Corporation"), does hereby consent that the following actions be taken without a meeting pursuant to New Hampshire RSA 293-A:8.21, such actions to be deemed taken effective as of the date below:

RESOLVED: That the Corporation enter into a contractual agreement ("Agreement") with the State of New Hampshire acting through its Department of Safety, Division of Motor Vehicles, Motorcycle Rider Training Program ("DOS" or the "State"), said Agreement relating to the provision by the Corporation of promotional radio advertising to the DOS on a mutually agreed radio schedule for a total amount not to exceed \$44,000.00; and further

RESOLVED: That the Corporation authorizes and directs Mark M. Graham, as its Vice President and Chief Financial Officer, to execute and deliver the Agreement and all related agreements, certificates, and other documents necessary and/or advisable to effectuate the Agreement; and further

MMG.
4/8/16.

RESOLVED: That the Corporation hereby ratifies and confirms in all respects any and all actions heretofore or hereafter taken by such officer of the Corporation within the scope of the foregoing resolutions as the deeds and acts of the Corporation.

Signed to be effective as of the 8th day of April, 2016.



William H. Binnie, Sole Director

K:\DBrown\Carlisle Capital Corp10164\0022 WBIN Media Co., Inc\Consent for DOS radio advertising

WAB
4/8/16

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 WBIN Media Co., Inc. is a New Hampshire limited liability company formed on May 3, 2012. 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 12th day of April, A.D. 2016

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

