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Over \$1.5 billion to education

GOVERNOR Margaret Wood Hassan
CHAIRMAN Debra M. Douglas
COMMISSIONER Paul J. Holloway
COMMISSIONER Doug Scamman
EXECUTIVE DIRECTOR Charles R. McIntyre

November 17, 2014

Her Excellency, Governor Margaret Wood Hassan
And the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

The New Hampshire Lottery® Commission requests authorization to amend its advertising and marketing contract, with Griffin, York and Krause, Inc. of Manchester, New Hampshire (Vendor No. 155251), by exercising the option to renew the contract for one period of two (2) years, in the amount of \$4,246,790 under the same terms and conditions governing the existing contract approved by Governor and Council on August 22, 2012 (item #71). This contract for Lottery advertising services shall be effective from July 1, 2015 through June 30, 2017. 100% Lottery Funds

Funding will be available as follows, subject to legislative approval of the next biennial budget:

<u>Lottery Administration</u>	<u>FY 2016</u>	<u>FY2017</u>
06-83-830013-10290000-069-500567		
Promotion & Marketing Exp	\$2,123,395	\$2,123,395

EXPLANATION

The New Hampshire Lottery Commission issued a Request for Proposal (RFP) for advertising services on June 8, 2012. Four advertising agencies replied to the RFP. Following review of the proposals and presentations, the evaluation committee recommended to the Commission that Griffin, York and Krause, Inc. be awarded the contract, based on their vast experience to best meet the Lottery's needs and to support staff to handle the Lottery's marketing needs, specific to helping increase lottery sales and net profit. The Governor and Council approved the existing contract on August 22, 2012 (item #71) effective from September 1, 2012 through June 30, 2015.

The Commission is very pleased with the services provided by Griffin, York and Krause, Inc.. Their ability to understand the lottery's media needs, along with their web based media experience, and social media experience and expansion has resulted in a marketing and advertising campaign that continues to be an asset to the Lottery and to Education by driving sales to maximize lottery revenue for public education.



Live Free or Die

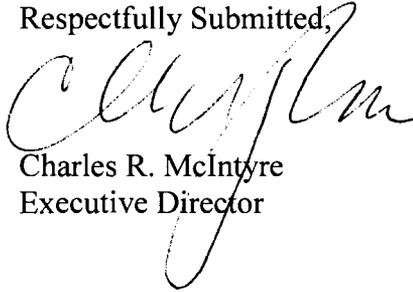
New Hampshire Lottery Commission 14 Integra Drive Concord, New Hampshire 03301
TEL 603.271.3391 FAX 603.271.1160 TDD 1.800.735.2964 www.nhlottery.com

Her Excellency, Governor Margaret Wood Hassan
And the Honorable Council

November 17, 2014
Page two

The Commission respectfully requests the Governor and Executive Council approval of the contract amendment to renew the contract for one period of two (2) years, allowed under the terms of the current contract with Griffin, York and Krause, Inc.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "C. McIntyre", written in a cursive style.

Charles R. McIntyre
Executive Director

CRM:Enc.

AMENDMENT TO ADVERTISING CONTRACT

HEREBY RESOLVED THAT the New Hampshire Lottery Commission, hereinafter referred to as "the Agency" and Griffin, York and Krause, Inc. (vendor #155251) hereinafter referred to as "the Contractor", pursuant to an agreement between the parties that was approved by Governor and Council on August 22, 2012, item #71, hereby agree to amend the same as follows:

- I. To exercise the option to renew the contract for one period of two (2) years, extending the completion date from June 30, 2015 to June 30, 2017.

This amendment of an existing agreement is hereby incorporated by reference to the existing agreement by the parties and must be attached to the said agreement. No other provisions of the existing agreement are otherwise amended.

IN WITNESS WHEREOF, the parties, hereto, have set their hands as of the day and written below.

THE STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE LOTTERY COMMISSION

By: [Signature] Chairman
Debra Douglas, Chairman

And: Griffin, York & Krause

By: [Signature]
Travis York, Director and President

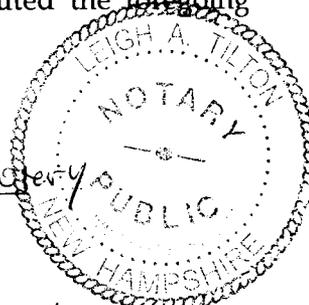
STATE OF NH

County of Merrimack

On this the 13th day of November, 2014, before me, Leigh Tilton, the undersigned officer, personally appeared, Travis York, as The Contractor, who has satisfactorily proven to be the person identified above as in the foregoing contract and as being authorized to do so has executed the foregoing amendment for the purposes therein contained.

In witness whereof, I hereto set my hand and official seal.

[Signature] Leigh Tilton
Notary Public/Justice of the Peace (sign and print name)
My commission expires 5/23/2017



Approved as to form, substance and execution by the Attorney General this 18th day of Nov., 2014.

By: [Signature]

Approved by Governor and Council this ___ day of ___, 2014 item number ___.

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 Griffin York & Krause, Inc. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on July 14, 1975. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have 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 14th day of November, A.D. 2014

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

GRIFFIN YORK & KRAUSE, INC.

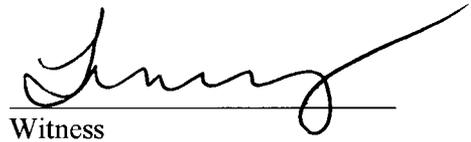
CERTIFICATE OF ASSISTANT SECRETARY

I, C. Daniel Dewey, Assistant Secretary of Griffin York & Krause, Inc., a New Hampshire corporation (the "Corporation"), do hereby certify that:

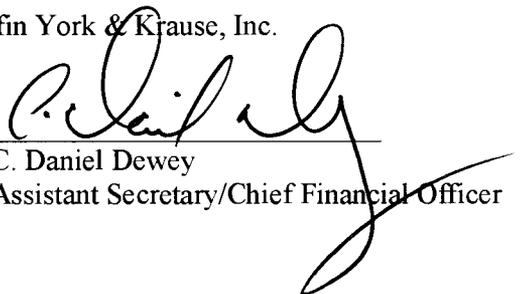
1. I maintain and have custody of and am familiar with the seal and minute books of the Corporation;
2. I am authorized to issue certificates with respect to the contents of such books and to affix such seal to such certificates;
3. That the attached Exhibit A is a true and complete copy of the Consent Resolutions adopted by the Sole Director of the Corporation in lieu of a meeting of Directors dated November 10, 2014 in accordance with the laws of the State of New Hampshire and the By-Laws of the Corporation;
4. That the resolutions contained therein are in full force and effect and unamended, as of the dated hereof; and
5. That the following persons lawfully occupy the offices indicated below:

Travis C. York	Chief Executive Officer, President, Chairman, Assistant Secretary, Sole Shareholder and Sole Director
C. Daniel Dewey	Chief Financial Officer and Administrative Officer and Assistant Secretary
Scott W. Ellison	Secretary and Registered Agent

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of the Corporation this 10 day of November, 2014.



Witness

Griffin York & Krause, Inc.
By: 

C. Daniel Dewey
Assistant Secretary/Chief Financial Officer

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On November 10, 2014, before the undersigned officer, personally appeared C. Daniel Dewey, the person identified in the foregoing certificate, known to me, or satisfactorily proved to be, the Assistant Secretary of the Corporation identified in the foregoing certificate, and acknowledged that she executed the foregoing certificate. In witness whereof, I hereunto set my hand and official seal.



Notary Public

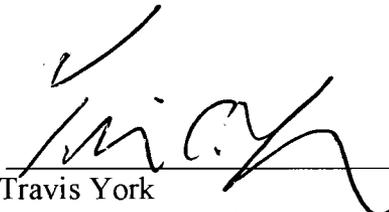
Exhibit A
**CONSENT RESOLUTIONS
OF THE DIRECTORS
OF
GRIFFIN YORK & KRAUSE, INC.**

The undersigned, being the Director of Griffin York & Krause, Inc. (the "Corporation"), does hereby waive all notice of the time, place and purposes of meetings of the Directors of the Corporation and consents, pursuant to Section 293-A: 8.21 of the New Hampshire Business Corporation Act (the "Act"), to the adoption of the following resolution with the same force and effect as if adopted at duly convened meetings of the Directors of the Corporation and hereby directs that this written consent be filed with the minutes of the proceedings of the Directors of the Corporation:

- RESOLVED:** That it is in the best interests of the Corporation to enter into a contract with the New Hampshire Lottery Commission (the "NH Lottery Commission") to provide advertising and promotional services (the "Lottery Commission Contract"); and the Lottery Commission Contract is hereby authorized and approved.
- RESOLVED:** That the Director and President, Travis C. York, be and hereby is authorized, in the name and on behalf of the Corporation, to negotiate the terms of the NH Lottery Commission Contract, other contracts, leases or other agreements, and all amendments and addendum's thereto, with the NH Lottery Commission; and to authorize the Director and President, to deliver and perform the NH Lottery Commission Contact and all such other contracts, leases or other agreements in the name and on behalf of the Corporation.
- RESOLVED:** That all of the acts of the officers of the Corporation heretofore performed for and on behalf of the Corporation in connection with the NH Lottery Commission Contract, other contracts, leases or other agreements and any amendments thereto, with the NH Lottery Commission are hereby ratified, confirmed and adopted as the acts of the Corporation.
- RESOLVED:** That the Assistant Secretary of the Corporation is hereby authorized and directed to deliver to the NH Lottery Commission, or any other State of New Hampshire agency or office, a certificate or certificates attesting to the due adoption of these Consent Resolutions signed by all of the Directors.

RESOLVED: That the Officers of the Corporation are hereby authorized and directed to take any and all actions as they may deem necessary or appropriate to implement the foregoing Consent Resolutions.

Dated: November 10, 2014



Travis York
Director and President

GRIFFIN YORK & KRAUSE, INC.

**UNANIMOUS WRITTEN ACTION OF DIRECTORS
IN LIEU OF MEETING AND WAIVER OF NOTICE**

November 10, 2014

In lieu of a meeting of the directors of the corporation, the undersigned, being the sole Director of Griffin York & Krause, Inc. (the "Corporation") acting pursuant to N.H. RSA 293-A:8:21, and waiving all notice with respect thereto, pursuant to N.H. RSA 293-A:8:23, hereby votes and adopts the following resolutions:

RESOLVED: To elect each of the following individuals to serve in the offices set forth next to his name, to serve in such capacity until he resigns, has his successor duly appointed or is removed by the Corporation's board of directors:

Travis C. York	Chief Executive Officer, President, Chairman, Treasurer, Assistant Secretary, Sole Shareholder and Sole Director
C. Daniel Dewey	Chief Financial and Administrative Officer and Assistant Secretary
Scott W. Ellison	Secretary and Registered Agent

RESOLVED: That the Officers of the Corporation are hereby authorized and directed to take any and all actions as they may deem necessary or appropriate to implement the foregoing Consent Resolution.

Executed this 10th day of November, 2014.



Travis C. York, Director



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/13/2014

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 Wieczorek Insurance 166 Concord St. Manchester NH 03104		CONTACT NAME: Nicki Renaud PHONE (A/C No. Ext): (603) 668-3311 FAX (A/C No.): (603) 668-8413 E-MAIL ADDRESS: nicki@wizinsurance.com	
		INSURER(S) AFFORDING COVERAGE	
		NAIC #	
INSURED Griffin York & Krause, Inc. 121 River Front Drive Manchester NH 03102		INSURER A: The Travelers	
		24198	
		INSURER B: Liberty Mutual	
		11045	
		INSURER C: Excelsior	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** CL14111306458 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			6809D2181411442	1/1/2015	1/1/2016	EACH OCCURRENCE \$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 2,000,000
							GENERAL AGGREGATE \$ 4,000,000
							PRODUCTS - COMP/OP AGG \$ 4,000,000
							\$
B	AUTOMOBILE LIABILITY			BA8036911	1/1/2015	1/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO ALL OWNED AUTOS	<input checked="" type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							Medical payments \$ 5,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR		CUP9D4747871442	1/1/2015	1/1/2016	EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$ 2,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			3(a) NH WC9813315	1/1/2015	1/1/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	N/A				E.L. EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 500,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Certificate of Insurance is subject to policy terms, conditions and limitations.

CERTIFICATE HOLDER Tri-State Lotto Commission 14 Integra Drive Concord, NH 03301	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE R Wieczorek/NICKI
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Over \$1 billion to education

GOVERNOR John H. Lynch
CHAIRMAN Debra M. Douglas
COMMISSIONER Paul J. Holloway
COMMISSIONER Doug Scamman
EXECUTIVE DIRECTOR Charles R. McIntyre

August 2, 2012

His Excellency, Governor John H. Lynch
And the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the New Hampshire Lottery Commission® to enter into a contract with Griffin, York and Krause, Inc. of Manchester, New Hampshire (Vendor No. 155251), for the purpose of advertising and promotion the state lottery games in the amount of \$6,017,702 from September 1, 2012 to June 30, 2015 with an option to renew for one period of two (2) additional years, with written consent of both parties and at the current fee structure, subject to approved funding. The FY13 funding is \$1,770,912. The FY14 of \$2,123,395 and FY15 of \$2,123,395 will be subject to legislative approval in the budget.

Funding is available as follows:

<u>Lottery Administration</u>	<u>Fiscal Year</u>	<u>Amount</u>
06-83-83-830013-10290001-500567	2013	\$1,770,912
06-83-83-830013-10290001-500567	2014	\$2,123,395
06-83-83-830013-10290001-500567	2015	\$2,123,395

EXPLANATION

The New Hampshire Lottery Commission issued a Request for Proposal (RFP) for advertising services on June 8, 2012. This was a rebid from an earlier RFP process. Legal notices announcing the availability of the RFP were posted on June 10, 2012, June 13, 2012 and June 15, 2012 in the *Concord Monitor* and *Union Leader*. The RFP was also available through the Lottery's website and the Purchase & Property website until July 13, 2012. Electronic notification regarding the availability of the RFP was also sent to 50 advertising/marketing agencies in New Hampshire. Written responses to the RFP were due on Friday, July 13, 2012 by 2:00 p.m. A total of four advertising agencies replied to the Request for Proposal.



A three person evaluation committee, consisting of one Lottery Commissioner, the Executive Director and the Lottery's Product Marketing Manager, reviewed the four submitted written proposals. The committee determined that two of the four agencies exhibited the requisite depth of experience needed to cover all aspects of the lottery's advertising and marketing needs. The lottery invited Griffin, York and Krause, Inc. of Manchester, NH and M5 Marketing Communications, Inc. of Manchester, NH to make oral presentations before the Lottery Commission and management staff on August 1, 2012.

Both agencies made quality presentations. The hour long presentation included the lottery's request to see the best consumer related advertising campaign done by the agency. The agency was to tell us about the client and the product as well as explain the direction the agency took for promotion of that product. This included all the creative that supported the product and the channels used to advertise it. Both presentations wrapped up with end results for the campaign.

Following both presentations, the evaluation committee discussed the merits of both presentations, reviewed the cost proposals and then unanimously agreed that Griffin, York and Krause offered the best depth of experience regarding the direction the lottery is going and support staff to handle the lottery's marketing needs, specific to helping increase lottery sales and net profit.

Following the Commission vote to proceed with contract negotiations and intent to award the contract, lottery staff and representatives of Griffin, York and Krause negotiated a retainer fee of 9%.

The annual cost difference between the two agencies was approximately \$31,740 per year. Because advertising and marketing creative services are not commodities that can be assigned a specific value cost, the agencies were considered on more than simply cost. The annual cost as well as the technical criteria of the written proposals and the oral presentations evaluations resulted in Griffin, York and Krause, Inc. being superior over M5 Marketing Communications, Inc. Griffin, York and Krause excelled in the following areas:

- Agency Staff and their experience
- Client List specific to retail
- Strength of agency presentation
- Understanding the lottery's media needs
- Web based Media Experience
- Social Media Experience and expansion

All of these collective areas will result in a marketing and advertising campaign that the lottery believes will drive sales and ultimately return higher profits to education. Due to the critical

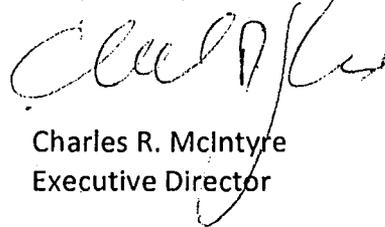
His Excellency, Governor John H. Lynch
and the Honorable Council

August 2, 2012
Page three

contribution of lottery dollars to support public education, the Commission strongly believes that the choice of an advertising agency should be based on all of the factors listed previously.

Based on the strength of the written proposal which best demonstrated the future of the lottery's needs that included enhancements to the Replay program, an increased presence via social media and other web and mobile based initiatives that will meet the New Hampshire Lottery's advertising needs as well as the oral presentation that showed understanding as to how to promote a consumer related product across a variety of channels, the Commission respectfully requests the Governor and Executive Council approval of the thirty-four month advertising contract with Griffin, York and Krause, Inc. The contract allows for one two year option to renew, subject to approved funding and Governor and Council approval.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles R. McIntyre". The signature is fluid and cursive, with a large initial "C" and "M".

Charles R. McIntyre
Executive Director

CM: mm
Attachment

Subject:

Advertising Services

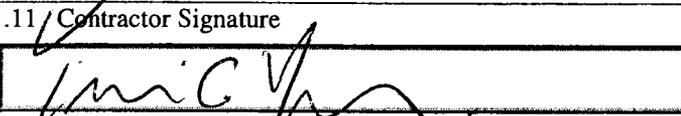
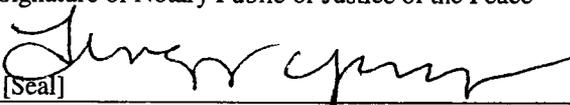
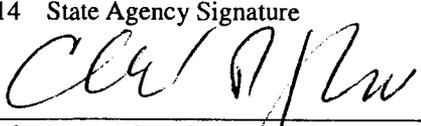
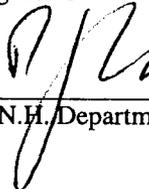
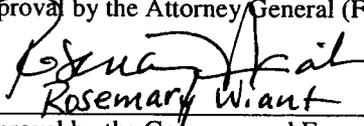
FORM NUMBER P-37 (version 1/09)

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name New Hampshire Lottery Commission		1.2 State Agency Address 14 Integra Drive, Concord, NH 03301	
1.3 Contractor Name Griffin, York & Krause, Inc.		1.4 Contractor Address 121 River Front Drive, Manchester, NH 03102	
1.5 Contractor Phone Number 603-625-5713	1.6 Account Number AU#10290001 AC#500567	1.7 Completion Date June 30, 2015	1.8 Price Limitation \$6,017,702
1.9 Contracting Officer for State Agency Charles R. McIntyre, Executive Director		1.10 State Agency Telephone Number 603-271-3391	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Travis York, Director & President	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Hillsboro</u> On <u>8/6/12</u> , 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]		TINA M. YANUSZEWSKI, Notary Public My Commission Expires August 10, 2016	
1.13.2 Name and Title of Notary or Justice of the Peace Tina Yanuszewski, HR Manager Notary			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Charles R. McIntyre, Executive Director	
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) By:  Rosemary Wiant On: 8-7-12			
1.18 Approval by the Governor and Executive Council By: On: 8/22/12 #71			

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, 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/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. 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.

Contractor Initials TCJ
Date 8/6/10

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.

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 include 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

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.

6. 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.