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STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
DIVISION of TRAVEL and TOURISM DEVELOPMENT
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

GEORGE M. BALD
Commissioner

603-271-2665
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February 25, 2013

Her Excellency, Governor Margaret Wood Hassen
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

Sole Source

REQUESTED ACTION

Authorize the Department of Resources and Economic Development, Division of Travel and Tourism Development to enter into a **SOLE SOURCE** contract with New Hampshire Stories, Inc., d/b/a New Hampshire Made (VC #162361) of Andover, New Hampshire, in the amount of \$65,000 to market New Hampshire made products and services from July 1, 2013 through June 30, 2015. 100% General Funds.

Funds are available in account Travel - Tourism Dev Fund as follows, pending budget approval for fiscal years 2014 and 2015, with the authority to adjust encumbrances in each of the state fiscal years through the Budget Office if needed and justified:

	<u>FY14</u>	<u>FY15</u>
03-35-35-352010-58740000-069-500567 Promotional Marketing Exp	\$32,500	\$32,500

EXPLANATION

This is a sole source contract because there are no other organizations that exist in New Hampshire to provide these services. New Hampshire Made was formed in 1997 specifically to promote New Hampshire made products and services. New Hampshire Made is not a vendor but rather a public/private partner with the State of New Hampshire.

The mission of New Hampshire Made, a non-profit organization, is to assist New Hampshire companies in selling their locally-made products and services. New Hampshire Made has done an outstanding job of supporting product owners, building the membership, and heightening the awareness and value of New Hampshire made products. They have published a printed product and services directory as well as developed a dynamic website, which allows for online purchases, and a centralized database of New Hampshire producers. They provide training for these small businesses and collaborative marketing

opportunities to help promote 'New Hampshire Made.' The organization currently operates two retail locations in partnership with the New Hampshire Liquor Commission. The Department of Resources and Economic Development participates on the Board of Directors for New Hampshire Stories, Inc., d/b/a New Hampshire Made.

Since FY 08-09 with the infrastructure in place to enable consumers to purchase goods and services, the Board began executing a marketing campaign to encourage people to buy these New Hampshire made products. The Division of Travel and Tourism partners with New Hampshire Made to help support and promote this mission.

In FY 14-15 the objective is to continue building a public education awareness campaign to increase the sales of New Hampshire made and grown products and services and to create recognizable brands for these items. New Hampshire Made was specifically created to support these small businesses and we believe there is a strong interest among New Hampshire residents and visitors to purchase genuine locally crafted items. Now that New Hampshire Made has the delivery system in place through the web, retail stores, e-newsletters, and the publication, The Guide to NH Products and Services, we need to increase the consumer's awareness of the quality and uniqueness of these items.

The Attorney General's office has approved this contract as to form, substance and execution.

Respectfully submitted by,

Concurred by,



Lori Harnois, Director
Div. of Travel & Tourism Development



Philip A. Bryce, Acting Commissioner
Dept. of Resources & Economic Dev.

Subject:

NEW HAMPSHIRE MADE VC# 162361

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 DEPT OF RESOURCES AND ECONOMIC DEVELOPMENT		1.2 State Agency Address 172 PEMBROKE ROAD, CONCORD, NH 03301	
1.3 Contractor Name NH STORIES INC D/B/A NEW HAMPSHIRE MADE		1.4 Contractor Address 539 Calef Highway #104 Epping, NH 03042	
1.5 Contractor Phone Number 1-888-647-8674	1.6 Account Number 03-35-35-352010-5874-069	1.7 Completion Date JUNE 30, 2015	1.8 Price Limitation \$65,000
1.9 Contracting Officer for State Agency PHILIP A. BRYCE, ACTING COMMISSIONER		1.10 State Agency Telephone Number 603-271-2665	
1.11 Contractor Signature <i>Charlene Andersen</i>		1.12 Name and Title of Contractor Signatory Charlene Andersen, Board of Trustees, Chair	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Rockingham</u> On <u>2/22/13</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 <i>Bonnie Jane Winona Mackinnon</i> [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace BONNIE JANE WINONA MackINNON, Justice of the Peace My Commission Expires June 22, 2016			
1.14 State Agency Signature <i>[Signature]</i>		1.15 Name and Title of State Agency Signatory PHILIP A. BRYCE, ACTING COMMISSIONER	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <i>[Signature]</i> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: <i>[Signature]</i> On: <u>3/5/13</u>			
1.18 Approval by the Governor and Executive Council By: On:			

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, 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.

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 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.

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.

Exhibit A

Scope of Services

New Hampshire Stories, Inc. dba NH MADE will continue to be a supporting partner of the Division of Travel and Tourism (DTTD) as it continues to strengthen the state's economy by increasing the awareness of and demand for New Hampshire made products and services. As a partner, reciprocal links will exist between visitnh.gov and nhmade.com and co-branding will occur when possible to enhance DTTD's capabilities to reach as broad an audience as possible to bring visitors to New Hampshire as well as help support New Hampshire's small businesses.

NH MADE and DTTD will partner in the following ways during FY 2014 and FY 2015:

New Hampshire Made Product Premiums: NH Made will provide an assortment of promotional products to DTTD staff as needed for meetings, tour operators, travel writers visitors and press relations throughout the year. DTTD's logo will be used to co-brand items as appropriate.

NH MADE Tourism Itineraries: NH Made and DTTD will develop unique and engaging itineraries featuring NH MADE member businesses who offer behind-the-scenes experiences/tours. These itineraries will be regionally coordinated by NH MADE and featured on visitnh.gov. The purpose of this venture is to entice tourists to visit and explore studios, kitchens, agri-businesses and micro-businesses throughout New Hampshire's seven regions.

Event Participation: NH MADE will continue participation in trade and consumer events, cross-promoting DTTD wherever possible. The Department of Resources & Economic Development will also receive a complimentary table for ten, including recognition as a Table Sponsor, at NH MADE's Annual Celebration Dinner in June.

The New Hampshire Stores on I-95 North and Southbound: NH MADE will distribute, on DTTD's behalf, the New Hampshire Visitor's Guide, State Maps and other appropriate collateral as determined by DTTD. The distribution will be through the two retail stores operated by NH Made, located in Hampton adjacent to the NH State Liquor Outlets on I-95 north and south.

Website and Online Store: DTTD merchandise, promoting the state of New Hampshire, may be featured and sold on the NH Made web site as mutually agreed upon by DTTD and NH Made. Proceeds will be returned to the state and this condition shall be included as part of a written agreement between NH Made and DTTD before commencement of the sales program.

NH MADE Co-branding & Collaborations: To continue building upon the state brand identity, co-branding between NH MADE, NH Department of Agriculture, Markets & Food and DTTD will be accomplished whenever and wherever possible. NH MADE will continue to partner with state-wide organizations to promote the state and all the local products that are made and grown here.

Guide To New Hampshire Products & Services: DTTD will receive a complimentary ad and listing in this annual publication targeting consumers and visitors to the state. More than 75,000 copies will be distributed state-wide and beyond throughout the year via all Welcome Centers, Manchester Airport, select hotels, restaurants, lodgings, tourist attractions, fairs, festivals, farmers' markets, the Eastern States Exposition.

**EXHIBIT B
SCHEDULE OF PAYMENTS**

FY 2014	
July 31, 2013	\$ 8,125
October 1, 2013	\$ 8,125
January 1, 2014	\$ 8,125
April 1, 2014	<u>\$ 8,125</u>
	\$32,500
FY 2015	
July 31, 2014	\$ 8,125
October 1, 2014	\$ 8,125
January 1, 2014	\$ 8,125
April 1, 2012	<u>\$ 8,125</u>
	\$32,500

Payments will be invoiced by New Hampshire Stories, Inc. by the terms noted above. The invoices shall be paid in accordance with state procedures, 30 days after the invoice date.

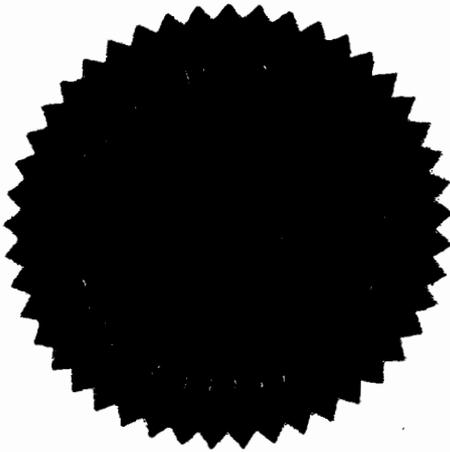
**EXHIBIT C
SPECIAL PROVISIONS**

There are no special provisions in this contract.

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 NH MADE is a New Hampshire trade name registered on March 14, 2004 and that NEW HAMPSHIRE STORIES, INC. presently own(s) this trade name. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 22nd day of April, A.D. 2011

William M. Gardner
Secretary of State



Certificate of Authority

I, Gail McWilliam Jellie, Secretary of New Hampshire Stories, Inc., do hereby certify that:

1. Charlene Andersen is the duly elected Chairperson, as voted on at a regular meeting on January 11, 2012.
2. I further certify that Charlene Andersen, Chair, is authorized to execute any and all documents on behalf of New Hampshire Stories, Inc;
3. This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof;

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of New Hampshire Stories, Inc. this 25th day of February, 2013.

Gail McWilliam Jellie

Printed Name: Gail McWilliam Jellie

State of New Hampshire

County of Merrimack

On this 25 day of Feb, 2013, before me Patricia Heude the

undersigned officer, personally appeared Gail McWilliam Jellie who

acknowledged him/herself to be the Secretary of

New Hampshire Stories, Inc. being authorized so to do, executed the forgoing instrument for the purpose therein contained.

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

Patricia J. Heude
Notary Public

Commission Expiration Date: 12-8-15

