



STATE OF NEW HAMPSHIRE
DEPARTMENT OF CULTURAL RESOURCES
 Division of Arts, Division of Historical Resources,
 Division of Libraries, Film and Television Office
 Office of Curatorial Services
American Canadian French Cultural Exchange Commission,
Administratively Attached
Van McLeod, Commissioner



February 13, 2014

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

REQUESTED ACTION

The Department of Cultural Resources, Division of the Arts, requests permission to contract with Rocking Horse Studios (Vendor Code 257316) in the amount of 6,075.00 to for the transfer of audio interviews to digital media, effective upon Governor and Council approval through July 31, 2014.
 100% Other Funds.

Funds are available in the account titled Administration Support as follows:

	<u>FY2014</u>
01-34-34-340010-69990000-054-500528 Trust Fund Expenditures	\$6,075.00

EXPLANATION

Pursuant to RSA 261:97- c Conservation Number Plate Funds shall be used to promote the use and conservation of cultural resources in New Hampshire and to preserve the cultural heritage that belongs to all New Hampshire citizens by providing for the conservation and preservation of significant publicly-owned works of art, artifacts, and documents that contribute to New Hampshire's cultural heritage.

During the June 8-11, 2000 restaging of the NH Folklife program for the Smithsonian Folklife Festival 57 recordings on DAT tapes were compiled of over 60 NH Traditional Artists representing a wide range of traditions. These artistically and culturally significant recordings are to be transferred to archival CD and deposited at the Milnes Special Collections of the Dimond Library at the University of NH for public access.

Quotes were requested from recording studios and audio engineers across New Hampshire to complete this project and received five responses. Although Rocking Horse Studios was not the lowest bid they were selected based on their familiarity working with this type of audio format, their statewide reputation for quality archival work and their high recommendation from traditional artists that have previously worked with this company. The lower bids did not demonstrate their familiarity with this audio format and did not fully account for the materials or time needed to complete the project.

Rocking Horse Studios has received \$573.11 in fiscal year 2014.

Respectfully submitted,

Van McLeod
 Commissioner

20 Park Street, Concord, New Hampshire 03301-6314
 Telephone: 603/271-2540 FAX: 603/271-6826 E-mail: vmcleod@library.state.nh.us
www.state.nh.us/nhculture Help Line TTD Relay 603/225-4033

257316

Subject:

Archival Recordings

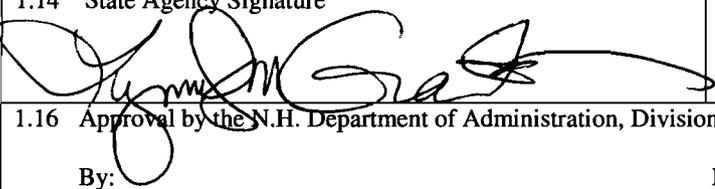
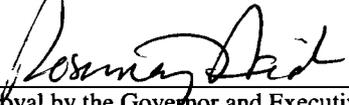
FORM NUMBER P-37 (version 1/09)

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Cultural Resources, Arts Division		1.2 State Agency Address 19 Pillsbury St. Concord NH 03301	
1.3 Contractor Name Rocking Horse Studio		1.4 Contractor Address 1380 Upper City Rd. Pittsfield NH 03301	
1.5 Contractor Phone Number 603/512-5347	1.6 Account Number 6999	1.7 Completion Date July 31, 2014	1.8 Price Limitation \$6,075.00
1.9 Contracting Officer for State Agency Lynn Graton, Acting Director		1.10 State Agency Telephone Number 603/ 271-2789	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Brian E. Coombes, member	
1.13 Acknowledgement: State of <u>N.H.</u> , County of <u>Merrimack</u> On <u>12/11/13</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 Cara M. Marston [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace Cara M. Marston Notary Public m/c/e 6/13/14			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Lynn Graton, Acting 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:  On: 2-20-14			
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.

Contractor Initials BC
Date 12/11/13

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.

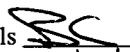
14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

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

Contractor Initials 
Date 12/11/13

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 – Rocking Horse Studios Services

SERVICES:

Consistent with the proposal dated October 4, 2013 Rocking Horse Studio will transfer documentary recordings from the 2000 restaging of the New Hampshire program for the Smithsonian Folklife Festival from DAT tapes to archival CD for deposit at the Milnes Special Collection of the Dimond Library at the University of New Hampshire. These recordings were originally made June 8-11, 2000 and represent a wide range of traditions. The recordings include over 60 New Hampshire traditional artists and are artistically and culturally significant representations of traditional music in New Hampshire. This transfer of the recordings to archival format for general public access supports the responsible stewardship of this culturally significant material.

Rocking Horse Studio will import all of the audio from 2 DAT tapes into the digital audio workstation and export the audio to onto Verbatim Ultralife Gold Archival CD-Rs. These two CD-Rs will be delivered to the NH State Council on the Arts office for determination of contract compliance.

Upon notification of the NH State Council on the Arts, Rocking Horse Studio will import the audio from the remaining 55 DAT tapes (120 minutes each) into the digital audio workstation and export the audio to onto Verbatim Ultralife Gold Archival CD-Rs. The transferred recordings will be delivered no later than July 31, 2014.

Contract cost is all inclusive.

Funds used for this project were generated by Conservation License Plate sales, and are held within the Department of Cultural Resources for cultural conservation projects

Contractor Initials

RC

Date

12/11/13

**EXHIBIT B – Rocking Horse Studios
Payment**

PAYMENT:

Payment will be made in two increments:

- ½ upon approval of contract by Governor and Executive Council.
- ½ upon completion and in consideration of the satisfactory performance of the services as determined by the State, the State shall consider this acceptance of the work.

Contractor Initials RC

Date 12/11/13

**EXHIBIT C – Rocking Horse Studios
Special Provisions**

INSURANCE:

The insurance limits that are contained in section 14.1.1 pertaining to general liability are modified so that the Comprehensive General Liability is \$2,000,000 per incident and \$4,000,000 in aggregate.

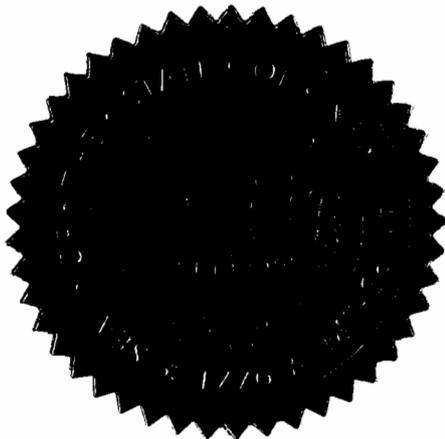
Contractor Initials RC

Date 12/11/13

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 Rocking Horse Studio LLC is a New Hampshire limited liability company formed on April 14, 2005. 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 29th day of January, A.D. 2014

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

William M. Gardner
Secretary of State

FROM: Lynn Martin Graton & Julianne Morse, NH State Council on the Arts – Heritage & Traditional Arts Program
 RE: Proposal for Cultural Conservation Funds Archiving Project – Sounds of Our Heritage: Stories, songs & music

During May, 2013, bids were requested from recording studios and audio engineers across NH for the following scope of work:

- Formatting and import of audio from 57 DAT tapes (120 minutes each) into a digital audio work station (118.75 hours)
- Organize, catalog, and perform basic editing to the audio (42 hours)
- Export audio from digital editing works station and burning audio onto Verbatim Ultralife Gold Archival CD-Rs (16 hours)

Below are the quotes received:

Company	Bid	Scope of work included in bid			
		Format & import of audio from 57 DAT Tapes	Organize, catalog, basic editing of audio	Export audio from work station	Burn audio on archival CD-Rs
Cedar House Sound and Mastering Sutton, NH	\$21,803	Yes	Yes	Yes	Bid did not include material expenses
Rocking Horse Studios Pittsfield, NH	\$6,025	Yes	Yes	Yes	Yes
Drumlin Downe Studios East Kingston, NH	\$4,500	Yes	Bid does not include editing	Yes	Bid did not include material expenses
The Wild Artic Portsmouth, NH	\$3,200	Bid did not demonstrate familiarity with audio format	Yes	Bid did not include time for exporting audio	Bid did not adequately budget for material expenses
NH Tunes Manchester, NH	\$1,425	Yes	Bid does not include editing	Bid did not include time for exporting audio	Bid did not adequately budget for material expenses

Based on the quotes submitted, the New Hampshire State Council on the Arts would like to contract with Rocking Horse Studios to complete the project described above. The decision to contract with this company arises out of the professionalism of their quote, their familiarity with working with this type of audio format, their statewide reputation for quality archival work, and their high recommendation from traditional artists that have worked with this studio before.

Some of the companies who submitted lower bids for this project did not demonstrate familiarity with this audio format, did not fully account for materials, the amount of time needed to complete this project, or did not demonstrate experience or reputation working with live stage recordings of Traditional Artists.

14 March 2014

Cassandra Mason
New Hampshire State Council on the Arts
19 Pillsbury Street - 1st Floor
Concord, NH 03301

Dear Ms Mason:

I, Brian Coombes, am a Member of Rocking Horse Studio LLC and I am authorized to enter into a contract with the State of New Hampshire on its behalf.

Please do not hesitate to contact me should you require any additional information.

Best,



Brian E. Coombes



