

48



82



May 1, 2023

His Excellency, Governor Christopher T. Sununu  
 and the Honorable Executive Council  
 State House  
 Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Business and Economic Affairs (BEA) to enter into a contract with GYK Antler (VC #155251), Manchester, New Hampshire, in the amount of \$16,133,325.57 for domestic and international advertising and promotional services for the period beginning July 1, 2023 through June 30, 2025, effective upon Governor and Executive Council approval with the option to renew for one additional two-year period upon consent of both parties and subject to Governor and Executive Council approval. **96.1% General Funds, Other Funds 2.5% and 1.4% Federal Funds**

Funding for FY 2024 and FY 2025 is anticipated to be available in the following accounts upon the continued appropriation of funds in the future operating budget with the authority to adjust encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified:

	<u>FY2024</u>	<u>FY2025</u>
03-22-22-221010-20130000 <u>Division of Travel - Tourism</u> 069-500567 Promotional Marketing Exp.	\$2,740,000.00	\$2,740,000.00
03-22-22-221010-20190000 <u>Travel – Tourism Dev Fund</u> 069-500567 Promotional Marketing Exp.	\$5,000,000.00	\$5,000,000.00
03-22-22-220510-14530000 <u>Office of Workforce Opportunity</u> 069-500567 Promotional Marketing Exp.	\$20,000.00	\$20,000.00
02-27-27-270010-80410000 <u>Dept. of Employment Security</u> 020-500247 Advertising	\$200,000.00	\$200,000.00

His Excellency, Governor Christopher T. Sununu  
and the Honorable Executive Council

May 1, 2023  
Page 2 of 3

02-18-18-70380000-40380 1 <u>Specialty Crop Block Grant #21SCBPNH1001</u> 072-500576 Grants to Other State Agencies	\$97,193.56	
02-18-18-185010-70380000 <u>Specialty Crop Block Grant #AM22SCBPNH1136</u> 072-500576 Grants to Other State Agencies		\$86,132.01
02-18-18-185010-28100000 <u>Div Agricultural Development</u> 069-500567 Promotional & Marketing	\$15,000.00	\$15,000.00
Totals:	\$8,072,193.56	\$8,061,132.01

### EXPLANATION

The Department of Business and Economic Affairs (BEA) is charged with the promotion of New Hampshire as a travel destination and enhancing the economic vitality of the State. In FY22, BEA influenced 744,000 trips to New Hampshire, generating \$648 million in visitor spending and \$55 million in generated taxes, with a return on investment of \$15.95 for every \$1 spent on paid marketing.

Year-round advertising and promotion is essential to the Division's efforts to increase travel, work for to New Hampshire. Its Agency of Record provides the necessary resources for implementation, optimizing budget, building on experience, leveraging partnerships, and responding to changes within the travel and business environment.

BEA issued an extensive Request for Proposals (RFP) for marketing and advertising agency services on February 28, 2023. Notice was sent to seventy-four advertising agencies and the RFP was posted on visitnh.gov and admin.state.nh.us. Subsequently, eight vendors submitted formal written proposals on March 21, 2023.

A selection committee comprised of private/public tourism marketing professionals (Schedule # 2) reviewed and scored the proposals (Schedule #1), inviting three agencies to present to the committee in-person on

His Excellency, Governor Christopher T. Sununu  
and the Honorable Executive Council

May 1, 2023

Page 3 of 3

April 11, 2023. Each agency was asked to present a spring campaign that was successfully implemented, including strategy, execution and results. GYK Antler was ultimately awarded the contract with BEA. A composite of final scoring is included as Schedule # 3.

GYK Antler is a Manchester-based, full-service marketing agency with a 40-year plus history of brand marketing and deep digital expertise. Its integrated team works synergistically across the following services:

- Strategy & Planning
- Branding & Design
- Content Creation
- Media Planning & Buying
- Video Production
- Social Media & Consumer Engagement
- Web & Mobile Development
- Experiential & Events
- Reporting & Analytics

GYK Antler is of a size and caliber that can effectively absorb the BEA account, having worked with the New Hampshire Lottery Commission for over 30 years, the organization is extremely familiar with the process and protocol of working with state government.

In an effort to increase efficiencies, leverage budget, and continue to grow the New Hampshire brand, this contract includes two additional state agencies, the Department of Employment Security and the Department of Agriculture.

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

Respectfully submitted,



Taylor Caswell  
Commissioner

Department of Business and Economic Affairs  
 Division of Travel and Tourism Development  
 Agency of Record Marketing Services RFP  
 Written Proposal Scoring Criteria

Schedule #1

Proposals will be reviewed, evaluated, and scored by an evaluation committee. Evaluation of proposals will be based on the following criteria for each component. Each criterion will be scored according to the degree of responsiveness present in the proposal being evaluated.

	Max. Points	Score
<b>1. EXPERIENCE AND QUALIFICATIONS OF KEY STAFF &amp; SUBCONTRACTORS</b> Our evaluation will include an assessment of the history of your company, your company and its key staff members' experience as it relates to the requirements within this RFP, evidence of past performance, quality and relevance of past work, references, and related items. RFP Section 5.	30	
<b>2. OVERALL STRATEGY AND APPROACH, METHODOLOGY</b> Our evaluation will include an assessment of the overall approach – strategy and tactics that will address the items of the Scope of Work in RFP Section 3.	40	
<b>3. CREATIVITY/INNOVATION</b> Our evaluation will include an assessment of the quality of proposed strategies and creativity/innovation of the approach.	15	
<b>4. BUDGET APPROACH / COST EFFECTIVENESS</b> Effective and efficient delivery of quality content and services is demonstrated in relation to the fee and value of overall project. The budget is reasonable and appropriate. Approach to fee structure is balanced and structured to maximize investment.	15	
<b>TOTAL POINTS</b>	<b>100</b>	

**Department of Business and Economic Affairs  
Division of Travel and Tourism Development  
Agency of Record Marketing Services RFP  
Proposal Review Committee**

Lori Harnois, Director

Division of Travel & Tourism Development  
100 North Main Street, Suite 100, Concord, NH 03301  
603-271-2665 [Lori.J.Harnois@livefree.nh.gov](mailto:Lori.J.Harnois@livefree.nh.gov)

Lori Harnois has more than 20 years of experience in the field of marketing, promotions and operations. Her primary role as the Director is to promote NH as a domestic and international travel destination in order to increase visitation, travel expenditures, business activity and employment throughout the state. Her background and experience provide her with the knowledge to develop strategies that drive marketing New Hampshire's assets.

Amy Bassett, Deputy Director

Division of Travel & Tourism Development  
100 North Main Street, Suite 100, Concord, NH 03301  
603-271-2665 [Amy.O.Bassett@livefree.nh.gov](mailto:Amy.O.Bassett@livefree.nh.gov)

Amy Bassett is the Deputy Director of the New Hampshire Division of Travel and Tourism. Bassett is an experienced senior management executive with more than two decades of experience in utilizing research to create, manage, and execute marketing and public relations campaigns and events at the state level. The experience that she has gained, enables her to think strategically and utilizes data and resources to market New Hampshire as a year-round destination.

Ben VanCamp, Chief Collaborator & President

The Chamber Collaborative of Greater Portsmouth  
500 Market Street, Portsmouth, NH 03801  
603-610-5516 [ben@portsmouthcollaborative.org](mailto:ben@portsmouthcollaborative.org)

Ben VanCamp became the Chief Collaborator & President at the Chamber Collaborative of Greater Portsmouth in June of 2021 and previously served the Portsmouth business community as the VP of What's Next for the past five years. Prior to life on the seacoast, he worked in a variety of non-profits in the Asheville, North Carolina community where he lived for 13 years. Ben is a graduate of Springfield College where he studied Recreation and Tourism Management. Ben resides in Durham with his wife and two children. He enjoys being outdoors on his mountain bike, skis, or hiking the NH 48 4000 footers.

Jared Maraio, General Manager

Mount Washington Cruises  
211 Lakeside Ave, Weirs Beach, NH 03246  
603-366-5531 [jared@cruisenh.com](mailto:jared@cruisenh.com)

Jared Maraio is the General Manger of the Winnepesaukee Flagship Corporation, operator of the M/S Mount Washington, U.S. Mailboat Sophie C., Winnepesaukee Spirit, and Winnepesaukee Belle. He is the Vice President of the Lakes Region Tourism Association, as well as the Tourism Delegate and Chairman of the Lakes Management Advisory Committee (LMAC). Prior to his current role, he was the Senior Director of Brand Strategy for Global Protection Corp., where he was responsible for the development of award-winning brand and product designs, including a GDUSA Package Design Award.

Charyl Reardon, President

White Mountains Attractions Association  
200 Kancamagus Highway, North Woodstock, NH 03262  
603-745-8720 [Charyl@visitwhitemountains.com](mailto:Charyl@visitwhitemountains.com)

Charyl Reardon is the President of the largest New Hampshire based Destination Marketing Organization, White Mountains Attractions Association (WMAA) in North Woodstock. WMAA serves as an economic driver for the tourism economy of the White Mountains and is the source for travel planning to visitors worldwide. Reardon has over 20 years in the tourism industry, starting her career at WMAA in 1999. She learned from some of the tourism industry's best and has experience in business strategies, sales, marketing, management, and customer service.

Department of Business and Economic Affairs  
 Agency of Record Marketing Services RFP  
 Written Proposals Evaluation

SCHEDULE #3

Written Presentations	Birdsall, Voss & Associates (BVK)	CDMG	Connelly Partners	Darci Creative	Fuse	GYK Antler	Madden Media	Paradise
Lori Harnois	82	66	85	69	70	90	78	75
Amy Bassett	90	70	90	61	77	96	79	70
Ben VanCamp	75	30	80	55	55	85	65	50
Jared Maraio	85	40	90	70	55	95	80	60
Charyl Reardon	76	50	81	70	72	78	79	63
<b>Written Totals</b>	<b>408</b>	<b>256</b>	<b>426</b>	<b>325</b>	<b>329</b>	<b>444</b>	<b>381</b>	<b>318</b>
<b>Bid Amount "Agency Fee"</b>	<b>12%</b>	<b>17.50%</b>	<b>16%</b>	<b>21.94%</b>	<b>18%</b>	<b>16%</b>	<b>24.50%</b>	<b>40%</b>

\*In the RFP proposers were asked to provide a percentage-based fee structure to cover all Agency Fees related to the items listed in the Scope of Work. With the exception for third party contracts/services, media fees, video production, digital media video editing and online advertising unit digital development, photoshoot pre-production and onsite photo sessions, these items will be invoiced at net cost.

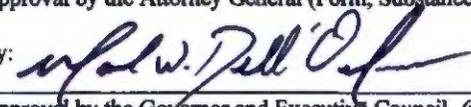
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name State of New Hampshire Department of Business and Economic Affairs		1.2 State Agency Address 100 North Main Street, Suite 100 Concord, NH 03301	
1.3 Contractor Name GYK Antler		1.4 Contractor Address 175 Canal Street Manchester, NH 03101	
1.5 Contractor Phone Number 603-625-5713	1.6 Account Unit and Class various	1.7 Completion Date 6/30/2025	1.8 Price Limitation \$16,133,325.57
1.9 Contracting Officer for State Agency Taylor Caswell, Commissioner		1.10 State Agency Telephone Number 603-271-2665	
1.11 Contractor Signature  Date: 5/3/23		1.12 Name and Title of Contractor Signatory Francis M Ferrara, Jr. Chief Financial Officer	
1.13 State Agency Signature  Date: 5/3/2023		1.14 Name and Title of State Agency Signatory Taylor Caswell, Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 05/10/2023			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

**2. 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 B which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("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.

3.3 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. 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 by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C which is incorporated herein by reference.

5.2 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. 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.

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 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

**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 applicable 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 employment opportunity laws and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. The Contractor 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 this Agreement and all rules, regulations and orders pertaining to 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 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

Contractor Initials                     

Date 5/3/23

**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) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar 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. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

**10. PROPERTY OWNERSHIP/DISCLOSURE.**

10.1 As used in this Agreement, the word "Property" shall mean all data, 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.

10.2 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.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

**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.**

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

Contractor Initials

Date 5/31/03

**14. INSURANCE.**

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

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 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 any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**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. The Contractor shall furnish the Contracting Officer identified in block 1.9, or any 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.** A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CHOICE OF LAW AND FORUM.**

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

**20. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**21. THIRD PARTIES.** This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

**22. 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.

**23. SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

**24. FURTHER ASSURANCES.** The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

**25. 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.

**26. 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 with respect to the subject matter hereof.

Contractor Initials H

Date 5/3/03

**EXHIBIT A  
SPECIAL PROVISIONS**

The term of the contact shall be effective for the period beginning July 1, 2023 and will expire on June 30, 2025. The contract may be renewed for up to an additional term of two (2) years upon terms and conditions as the parties may mutually agree and upon the approval of the Governor and Council.

**EXHIBIT B  
SCOPE OF SERVICES**

Following is the scope of work including strategic planning, creative content, media planning and buying, search, digital, and all production which will be performed by GYK Antler, acting as the agency of record for the New Hampshire Department of Business and Economic Affairs (BEA). BEA includes the Division of Travel and Tourism Development (DTTD), the Division of Economic Development (DED), and the Office of Workforce Opportunity (OWO).

**1. ADMINISTRATION/MANAGEMENT**

- 1.1. Dedicated daily account management team with in-depth attention to organizing, planning, supervising, and reviewing all BEA projects and budgets. Provide adequate staffing to provide BEA with responsive and timely service.
- 1.2. Dedicated creative and project management staff focused specifically on the BEA account.
- 1.3. Participate in planning and budget review meetings with BEA to ensure direction and budget adherence.
- 1.4. Development of specific reports that may include campaign updates/reports, weekly status, budget updates, etc.
- 1.5. Attendance by at least one agency representative at the identified industry conferences: The Governor's Conference on Tourism and/or New Hampshire Travel and Tourism Summit, Education Seminars for Travel Officers (ESTO), New Hampshire Lodging and Restaurant Association (NHLRA).

**2. STRATEGIC PLANNING**

- 2.1. Develop strategic marketing plan based on the Tourism Development Strategy.
- 2.2. Develop marketing strategies for seasonal domestic and international marketing campaigns.
- 2.3. Provide budget management, reporting, strategy, and monitoring.
- 2.4. Develop seasonal campaign briefs with objectives and tactics focused on determined KPIs; identification of target markets; specific strategies that include measurable objectives

Initial 

Date 5/3/23

for each target market; tactics to achieve these objectives, and the integration of all programmatic activities in the marketing plan.

- 2.5. Work closely with other agencies within BEA and vendors contracted by DTTD and align advertising and other communications strategies developed to ensure that all programs are complementing and are on brand with current initiatives.

### 3. RESEARCH, ANALYTICS, AND REPORTING

- 3.1. Work in conjunction with DTTD's research vendor to monitor the effectiveness of the marketing, communications, and advertising efforts.
- 3.2. Utilize available research (Strategic Marketing and Research Insights, New Hampshire Travel Impacts, Tourism Economics, U.S. Travel Association, Discover New England, etc.), prior media plans, campaign reports, and industry trends available on visitnh.gov Industry Members Resources section.
- 3.3. Conduct additional research as needed to set strategic direction, predict trends, seek out new and emerging markets and demographics and monitor the industry's performance and trends for all marketing and media programs. If using external resources to conduct research, provide estimate for any out-of-pocket expenses for DTTD's approval prior to engagement.
- 3.4. Oversee existing analytical programs including but not limited to Arrivalist, Google Analytics, and similar partner companies.

### 4. CREATIVE

- 4.1. Develop creative copy concept, graphic design, and layout from first drafts to completed product as needed for all broadcast or printed materials, advertisements, promotions, digital, and supporting materials for other DTTD initiatives.
- 4.2. Produce print, broadcast, and digital marketing materials as needed.
- 4.3. Prepare all native artwork files or acquire all necessary artwork, photography, and other creative assets that are required for the production of advertisements, marketing, and public relations materials.
- 4.4. Produce all other collateral materials in support of DTTD's campaigns.

### 5. MEDIA PLANNING

- 5.1. Provide media strategy including selection of media channels, tactics and media placement based on primary and secondary research, past media tracking performance,

Initial *tt*  
Date *5/31/23*

follow-through on visitors' actions, return on investment studies, and measure advertising and creative effectiveness in expanding awareness, interest, and visitation.

- 5.2. Utilizing the strategic marketing plans, analyze and recommend specific marketing media (both paid and unpaid across print, digital, broadcast, out-of-home, sponsorships, digital content, experiential and social media).
- 5.3. Monitor placement to ensure effectiveness, accuracy and completion of all paid and unpaid media schedules.
- 5.4. Provide traffic management as needed for all media as part of any campaigns.

6. WEBSITES

- 6.1. Responsible for covering the fees of hosting, maintenance, and updates to all BEA websites. The selected vendor will work collaboratively with the current web vendor within this contract.
- 6.2. Recommend and execute strategies and tactics for effective use of integrated social media (organic and paid), mobile technologies, and other leading-edge technology for reaching the target audiences.
- 6.3. Manage the e-mail database of potential visitors for the distribution of ongoing electronic newsletters.

7. DIGITAL ASSETS AND SOCIAL MEDIA

- 7.1. Create, manage and oversee all aspects of Visit NH's social channels, social media voice and strategy.

8. OTHER

- 8.1. Develop industry opportunities by formally creating an industry cooperative program for all different levels of participation levels. GYK Antler to utilize an external partner specializing in cooperative programs as needed to manage and implement the program with the approval of DTTD.
- 8.2. Demonstrate support and assistance above and beyond the scope of work for day-to-day issues, crises, and varied tourism and tourism office-related requests.
- 8.3. Attend various mutually agreed on industry events.

9. BILLING AND TERMS

- 9.1. The agency fee will be billed at the beginning of each month. Project costs and outside vendor costs incurred on BEA's behalf will be billed in progress. All outside vendor costs (photos, talent, etc.) will be billed at cost, and copies of all vendor invoices will be included.

Initial   H    
Date 5/2/23

- 9.2. GYK Antler will provide BEA with estimates for all outside services related to project development. Upon approval by BEA, the agency will incur outside and in-house production costs on BEA's behalf. Upon signed approval of mechanicals, scripts and/or storyboards, GYK Antler will coordinate and oversee final production of all materials (except in those cases where BEA is managing the printing through Graphic Services).
- 9.3. Talent fees and outside production costs related to broadcast advertisements will be billed at cost.
- 9.4. There may be reuse fees for talent and some creative materials provided by outside vendors, as provided by union contracts. Such fees will be identified as they occur and billed accordingly. All union talent is billed at cost, plus applicable taxes, union pension and welfare charges, booking agency fees, casting-call charges, etc. Where possible, GYK Antler will negotiate buyouts on talent and creative materials so BEA can avoid incurring reuse fees.
- 9.5. Media costs for advertising space and/or time will be billed to BEA at net cost. Omissions, time off the air, interruptions and earned discounts will be credited to BEA.
- 9.6. Charges for media space/time will be billed in progress. BEA will be provided with back-up copies of all media invoices and proof of placement.
- 9.7. All media invoices are due on or before 20 days from receipt of agency invoices.
- 9.8. GYK Antler will bill BEA for postage and shipping charges for forwarding materials to and from vendors and media outlets. Additionally, the agency will bill BEA for out-of-pocket expenses related to servicing the account, including travel expenses, parking, and mileage (at the IRS-approved level) and tolls. BEA will not be billed for copies, fax or phone charges.
- 9.9. All invoices, except as outlined above, are due on or before 30 days from receipt. Invoices that are under dispute or lack sufficient documentation will be paid upon resolution of the dispute and/or when adequate documentation is supplied to BEA.
10. RIGHT TO CANCEL
- 10.1. BEA has the right to alter or cancel any media schedules, services or projects of the agency or its outside vendors at any time. GYK Antler will take necessary steps to implement changes requested by BEA. In turn, BEA agrees to pay any fees incurred for work in progress or materials purchased, or for other liabilities incurred as a result of the required changes or cancellations.

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Date 5/3/23

## 11. APPROVAL OF WORK

11.1. As previously stated, BEA will be provided with estimates for all projects and with media schedules. Signed estimates are considered to be an authorization by BEA for the agency to incur costs on its behalf, and BEA agrees to assume responsibility for those costs, within the requirements of paragraph 4 of the P-37 agreement.

11.2. GYK Antler will review and preliminarily proofread all work created. BEA will be provided with copies of all work for final approval. Client signature or documented verbal or written approval is required for all work. Such approval signifies that BEA has carefully reviewed all the content of materials provided for accuracy of all information.

## 12. COPYRIGHT AND OWNERSHIP

12.1. All materials and research prepared and provided by GYK Antler for BEA will become the property of BEA, upon payment, unless otherwise agreed to in writing by both parties.

12.2. BEA will be responsible for obtaining copyrights or marks on any advertising or concepts it may wish to own.

## 13. STAFFING AND PROJECT MANAGEMENT

13.1. GYK Antler agrees to have the appropriate principals directly responsible for the management of all projects undertaken by it on behalf of BEA. A principal of the firm will also assume responsibility for providing daily oversight to the account service and will be present at all client/agency meetings unless otherwise agreed to by both parties.

13.2. GYK Antler agrees that it will maintain adequate staffing to provide BEA with responsive and timely service.

13.3. GYK Antler will give guidance and support to other BEA contractors to ensure maximum synergy and results. This includes, but is not limited to website developer, guidebook publisher, domestic public relations firm, Canadian public relations firm, and researcher.

13.4. GYK Antler will work and cultivate partnerships with other state agencies or divisions that, through cooperative promotion will enhance the State's presence in niche markets.

13.5. GYK Antler agrees to provide members of its staff who work with BEA training and development opportunities, including but not limited to informal research time and attendance at seminars, workshops or lectures related to travel and tourism. BEA will be invoiced for attendance at training and development opportunities requiring overnight or long-distance travel which are attended by GYK Antler members at BEA's request. All other training will be done at GYK Antler's expense.

Initial HA

Date 5/14/03

13.6. In producing projects for BEA that require the use of outside vendors, GYK Antler agrees to place special emphasis on the use of New Hampshire vendors.

13.7. GYK Antler, if needed, will design, construct, update/modify, store, maintain, ship, and setup the State's trade show booths to each event or subcontract with a capable vendor.

13.8. GYK Antler is not authorized to represent the State's position to the public or media and must be authorized to provide information by BEA.

14. EXAMINATION OF RECORDS

14.1. BEA, upon giving notice to GYK Antler, may examine all records and files related to its account. Arrangements for such examination must be conducted at GYK Antler's office and will be scheduled at a time mutually agreeable to the parties involved.

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Date

5/22/03

**EXHIBIT C**  
**SCHEDULE AND PAYMENT TERMS**

Below are the detailed payment terms of this Agreement:

**1. CONTRACT LIMIT**

- 1.1. Total annual expenditures under this contract are not to exceed \$8,072,193.56 for FY24 and \$8,061,132.01 for FY25 for a total of \$16,133,325.57.

**2. AGENCY FEE**

- 2.1. Tier One Fee Structure: BEA (Division of Travel and Tourism Development and Division of Economic Development)

- 2.1.1. GYK Antler shall be paid an annual retainer equal to 16% of the total annual budget dedicated to BEA. All other agencies or organizations in association with this contract shall pay an annual retainer equal to 17% of the total budget of each individual agency or organization. The annual retainer fees will be paid in monthly installments unless otherwise agreed to in separate statements of work

- 2.2. Tier Two to include but not limited to:

- Other State Agencies: Department of Agriculture Markets and Food, New Hampshire Employment Security
- Travel and Tourism Promotional Partners: Ski NH

- 2.3. The BEA fee, paid monthly, shall cover Exhibit A with the exception of third-party contracts/services, media fees, video production, digital media video editing and online advertising unit digital development, photoshoot pre-production and onsite photo sessions, and administration of cooperative campaigns, as well as large-scale collateral (e.g., Visitor's Guide).

- 2.4. BEA will be furnished with a written estimate for all special projects/beyond scope. This includes all video production, digital media video editing and online advertising unit digital development, photoshoot pre-production and onsite photo sessions, inventory management of online video and photo library, and administration of cooperative campaigns. Estimates will be fixed unless the scope of work changes, at which time GYK Antler will provide BEA with a written change order.

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Date *5/13/23*

- 2.5. This contract may be modified only by written amendment, which has been executed and approved by the appropriate parties from the State and GYK Antler.
- 2.6. GYK Antler will not commence work until written authorization is provided by BEA. This applies to both original estimates and changes orders.
- 2.7. All media costs, materials, production costs, and out-of-pocket expenses for services directly associated with work performed by GYK Antler and approved by a representative of BEA will be billed in progress.

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Date 5/3/23

# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that GYK ANTLER is a New Hampshire Trade Name registered to transact business in New Hampshire on May 08, 2014. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 708614

Certificate Number: 0006220013



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 1st day of May A.D. 2023.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan  
Secretary of State

## CERTIFICATE OF AUTHORITY

I, Travis York hereby certify that:

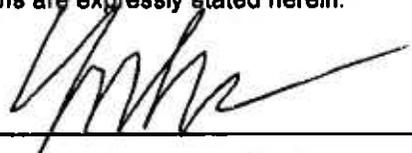
1. I am a duly elected Clerk/Secretary/Officer of GYK Antler, LLC.
2. The following is a true copy of a vote taken at a meeting of the Board of Directors/Shareholders, duly called and held on May 1, 2023 at which a quorum of the Directors/Shareholders were present and voting

**VOTED:** That Francis Ferrara, Jr. is duly authorized on behalf of GYK Antler to enter into contracts or agreements with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

3. I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract/contract amendment to which this certificate is attached. This authority remains valid for thirty (30) days from the date of this Certificate of Authority. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

Dated: \_\_\_\_\_

May 1, 2023



Signature of Elected Officer

Name: TRAVIS C. YORK

Title: CEO



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/1/2023

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: Cheryl Lapointe
	PHONE (A/C, No, Ext): (603) 668-3311 FAX (A/C, No): (603) 668-8413
	E-MAIL ADDRESS: cheryl@wizinsurance.com
	INSURER(S) AFFORDING COVERAGE
	INSURER A: Hanover Insurance
	INSURER B: Beazley Insurance Group
	INSURER C:
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES CERTIFICATE NUMBER: 23-24 Basic 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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			ZBVH474593 02	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ Excluded GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/PROP AGG \$ included Property damage-single limit \$ 1,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Medical payments \$ 5,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			AMVH46869802	1/1/2023	1/1/2024	Medical payments \$ 5,000 EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			UHVH46766902	1/1/2023	1/1/2024	E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			Cov State MA & NH WBV-H468699-02	1/1/2023	1/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
B	Professional Liability			VIA7D3220701	1/1/2023	1/1/2024	Occurrence \$2,000,000 10,000 ded Aggregate \$2,000,000 10,000 ded

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>  State of New Hampshire Dept. of Business and Economic Affairs 100 North Main St. Concord, NH 03301	<b>CANCELLATION</b>  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  Robert Wieczorek/DMD <i>Rg Dijk</i>

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