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STATE OF NEW HAMPSHIRE  
 DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
**DIVISION of PARKS and RECREATION**  
 172 Pembroke Road Concord, New Hampshire 03301  
 Phone: (603) 271-3556 Fax: (603) 271-3553  
 Web: www.nhstateparks.org

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June 6, 2023

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

**REQUESTED ACTION**

1. Pursuant to RSA 227-H:9 and RSA 216-A:3, III, authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation (Department) to enter into a **Retroactive** contract with the Blue Ocean Society (BOS) for Marine Conservation of Portsmouth, NH (BOSMC) to use space located within the North Pavilion at the Seashell Complex at Hampton Beach State Park for the purpose of providing education and interpretive services pertaining to marine life, local and maritime history, and the marine environment, effective upon Governor and Executive Council approval for the period of May 31, 2022 through June 30, 2025.
2. Further authorize the Department to accept annual payments in the amount of \$2,000 for the use of the facility plus 15% commission of gross income from admission and private events collected by the BOS, all as provided for in the Contract.
3. Further authorize the Department to accept a **Retroactive** payment from BOS in the amount of \$2,167.00 for annual rent and \$9,273.55 in commission, totaling \$11,440.55, for the period of June 1, 2022 through June 30, 2023. Funds were deposited in account 03-035-035-351510-37020000-003-402197, State Parks Fund.

Funds are to be deposited in FY2024 and FY2025 in the following account:

03-035-035-351510-37020000-003 - State Parks Fund

FY Contract Period	Class-Account-RG	Class Title	Annual Rent Amount	Commission
July 1, 2023-June 30, 2024	003-402197-28	State Parks Fund	\$2,000	15% of Gross Income
July 1, 2024-June 30, 2025	003-402197-28	State Parks Fund	\$2,000	15% of Gross Income
		<b>Total:</b>	\$4,000	15% of Gross Income

**EXPLANATION**

This request is **Retroactive** because the Department and the BOSMC were in contract negotiations when the previous agreement expired on May 31, 2022. The Department permitted the BOSMC to continue its operations at Hampton Beach State Park and the BOSMC upheld all provisions of the previous agreement in good faith while the parties negotiated a new agreement. The Department is now seeking retroactive approval and to accept annual payments in accordance with the Contract.

The BOSMC will use space in the North Pavilion at the Seashell Complex at Hampton Beach State Park for the purpose of providing education and interpretive services pertaining to marine life, local and maritime history, and the marine environment on a seasonal basis. The admission fees and all programs shall be

approved by the Department as part of the BOSMC's Annual Operating Plan. The BOSMC has been providing this service on behalf of the Department since 2013, approved by the Governor and Executive Council on June 19, 2013, Item #152; and renewed on May 17, 2017, Item #39.

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

Respectfully submitted,

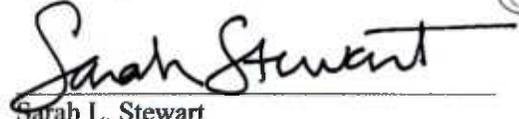


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Brian J. Wilson  
Director

BJW/tl-05232023

Concurred,



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Sarah L. Stewart  
Commissioner

(15M)

**FORM NUMBER P-37 (version 12/11/2019)**

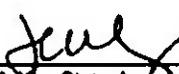
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

<b>1.1 State Agency Name</b> DNCR – Division of Parks and Recreation (DPR)		<b>1.2 State Agency Address</b> 172 Pembroke Road Concord, NH 03301	
<b>1.3 Contractor Name</b> Blue Ocean Society for Marine Conservation		<b>1.4 Contractor Address</b> 143 Picasant Street Portsmouth, NH 03801	
<b>1.5 Contractor Phone Number</b> 603-431-0260	<b>1.6 Account Number</b> 37020000-402197-35P03520-D1025	<b>1.7 Completion Date</b> June 30, 2025	<b>1.8 Price Limitation</b> \$4,000 plus 15% gross commission from admission & event fees, payable to DPR
<b>1.9 Contracting Officer for State Agency</b> Torene Tango-Lowy		<b>1.10 State Agency Telephone Number</b> 603-271-2976	
<b>1.11 Contractor Signature</b>  Date: 5/19/23		<b>1.12 Name and Title of Contractor Signatory</b> Jennifer L. Kennedy, Executive Director	
<b>1.13 State Agency Signature</b>  Date: 6/26/2023		<b>1.14 Name and Title of State Agency Signatory</b> Sarah L. Stewart, Commissioner	
<b>1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)</b> By: _____ Director, On: _____			
<b>1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable)</b> By: Sheri Phillips, AAG On: 6/27/2023			
<b>1.17 Approval by the Governor and Executive Council (if applicable)</b> G&C Item number: _____ G&C Meeting Date: _____			

Contractor Initials JLK  
 Date 5/19/23

**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 as indicated in block 1.17, 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. 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 affected 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. 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 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 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 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. 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 race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. 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 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 cured, 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 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.

8.3. 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.

## 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) 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) 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

## 10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 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.

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 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.

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 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, 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.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. 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.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. 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 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 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 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 ten (10) days prior to the expiration date of each insurance policy. 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 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. **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.

17. **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.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

## EXHIBIT A. SPECIAL PROVISIONS

**A.1. Use of State-Owned Premises.** The Blue Ocean Society of Marine Conservation ("BOS") shall be granted exclusive use of space available for occupancy located within the North Pavilion at the Seashell Complex at Hampton Beach State Park (the "Park"), in the manner and conditions as stated herein. The space is a net square footage of 430 s.f., which includes a 48 s.f. bathroom, a 4 s.f. storage closet, and 24 lineal feet of frontage on the east side of Ocean Boulevard ("Premises"), see Attachment A: Floor Plan.

The BOS shall be granted use of five parking spaces, designated by the State, at South Beach from 8 a.m. to 8 p.m. All other BOS employees, volunteers, subcontractors, guests, and visitors may use the State's general parking area with payment of the State's customary parking fees and fines.

All facilities, structures, and areas granted for use and operation by the BOS is in "as is" condition, and the State shall not be required or compelled to improve, repair, rehabilitate, or maintain such facilities, structures, and areas prior to or during the BOS's occupation of same. See Section entitled "Improvements and Installations" below, for allowable improvements to the Premises.

For purposes of this Contract, "exclusive use" shall mean that the State shall not expressly permit or grant use of the facilities and areas exclusive to the BOS to any other party during the term of this Contract. "Exclusive use" granted herein is a privilege to use said facilities and areas; and does not represent a real property interest in the land or facilities for which the State shall reserve all rights and privileges.

The BOS acknowledges that it is the general policy of the State that State Park lands are open to the public unless posted as closed or restricted by the State.

**A.2. Conditions for Use of Premises.** BOS's activities at the Park and on the Premises shall be conducted in a prudent, good and safe manner, pursuant to its Annual Operating Plan approved by the State, outlined in Exhibit B. Use of the Premises shall be kept in good condition at the expense of the BOS, including but not limited to matters of environmental and hazardous materials compliance, and housekeeping and sanitation, allowing for normal wear and tear as determined by the State. The BOS shall promptly report any and all damage to the Premises occasioned by storm, accident, or other such events within 24 hours.

BOS shall, at its sole expense, maintain the Premises as is necessary for its operational and programmatic needs. The State shall maintain the grounds of the Park. The State shall not be required or compelled to maintain grounds and areas for the benefit or convenience of the BOS.

BOS shall not alter, modify, nor make any improvements, whether temporary, cosmetic, or permanent, to the Premises without prior written approval from the State. See Section entitled "Improvements and Installations" below, for allowable improvements to the Premises.

The State shall not be responsible for BOS's property stored, placed or left on the Premises or the Park at any time.

With prior notification, the State may enter the Premises to conduct repairs and maintenance or inspect the Premises to ensure that the Premises are in good working order and acceptable condition, normal wear and tear excepted. BOS shall, at its sole expense, fulfill all reasonable requests of the State to address any deficiencies found.

In the event of an emergency, the State reserves the right to enter the Premises without prior notification to conduct emergency repairs.

In the event of an emergency, the State reserves the right to close or divert patrons away from the facility when such action, in the view of the designated representatives of the State, is in the best interest of the health and safety of Park patrons. The BOS agrees that it shall have no claim against the State under such event. BOS shall not be relieved of its obligation to pay facility use fees or commission, nor be reimbursed by the State for lost income or revenue in the event of such a closure or diversion.

A.3. Prohibited Activities. No other commercial activities or operations shall occur upon the Premises or at the Park, except as is specifically granted to the BOS herein or by separate Special Use Permit from the State.

The BOS shall not assign this Contract or sublet the Premises, in whole or in part.

A.4. Taxes. The BOS shall be responsible for, and pay for, any taxes and other assessment(s) applicable to the Premises. Specifically, the BOS agrees to hold the State harmless with respect to and agrees to pay in addition to other payments provided herein, the full amount of taxes levied against the Premises subject to this Contract as a consequence of the application of RSA 72:23.1, which provides for taxation of certain State properties used or occupied by persons or entities other than the State. In the event the BOS shares a larger parcel of land with other lessees or other concessionaires, it shall be obligated to pay only its' pro rata share of any such taxes. Failure of the BOS to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said Contract by the State. Should the BOS claim that its real estate and personal property are exempt from taxation by reason of the provision of RSA 72:23, V, the provisions of this section shall not be construed to waive any such claim.

A.5. Utilities. The State shall provide electricity, water (excluding water for the "touch tank" and other such exhibits), radiant floor heat, air conditioning, and sewage service.

Should the BOS need water for its "touch tank" and/or other onsite exhibit tanks, the BOS shall pay the State a reasonable fee, as determined by the State, for the supply of said water.

The BOS shall arrange and pay for its communications, internet, and electronic data services directly, and shall be responsible for the removal and disposal of its trash and recyclables.

Onsite storage of fuels by the BOS shall be prohibited. Any and all other utility, building services and comfort system needs that may arise shall be addressed with the State.

A.6. Improvements and Installations. The BOS may, with the expressed written permission of the State, undertake temporary improvements or installations within the Premises that shall have no adverse or permanent impact to the Premises or original structure.

Permanent and structural improvements shall be prohibited unless the State has given the BOS prior written approval, at the State's sole discretion. The BOS shall provide the State with a written proposal of its request to make permanent and structural changes for its operational and programmatic purposes and convenience. Such projects shall be at BOS's sole expense.

A.6.1. *Schematic drawings and plans*. The BOS shall provide the State with schematic drawings and plans for any proposed improvements and installations within or upon the Premises. The State shall review such drawings and plan and may request alterations to proposed improvements and installations so as to protect the State's real property interests.

A.6.2. *Cost of Projects*. The BOS shall bear the cost of all such improvements and installations using its own equipment, tools, and materials, or subcontracting such work; and shall ensure that such work is done in a good and workmanlike manner and in compliance with all applicable laws, regulations, and building codes.

A.6.3. *Sections 6(F) and 106 Regulatory Reviews*. The State agrees to facilitate the necessary review process under Section 6(f) of the Land and Water Conservation Fund program and Section 106 of the National Historic Preservation Act, if applicable. BOS agrees to hire and finance an archeologist, biologist, and any other consultant, if required for compliance with Sections 6(f) and 106. BOS agrees that no work will begin until all applicable regulatory approvals have been obtained by the State.

Pursuant to the LWCF Act at 54 U.S.C. § 200301 et seq., 36 C.F.R. Part 59, and 2 C.F.R. § 200.316, this chapter contains the requirements for maintaining LWCF assisted sites and facilities in public outdoor recreation use following project completion and to assure that LWCF-assisted areas remain accessible to the general public including non-residents of assisted jurisdictions. These post-completion responsibilities apply to each area or facility for which LWCF assistance is obtained, regardless of the extent of participation of the program in the assisted area or facility and consistent with the contractual agreement between NPS and the State. Responsibility for compliance and enforcement of these requirements rests with the State for both State and locally sponsored projects (36 C.F.R. § 59.1). The responsibilities cited herein are applicable to the area depicted or otherwise described on the LWCF boundary map and/or as described in other project documentation approved by the NPS (36 C.F.R. § 59.1).

A.6.4. *Title to Improvements and Installations*. Any and all improvements and installations fixed within or upon the Premises by the BOS shall remain the property of the BOS for the duration of this Contract. Any and all improvements and installations fixed within or upon the Premises by the BOS shall vest, free and clear and without cost, to the State upon termination of this Contract, unless the State, at its sole discretion, requires such improvements and/or installations be removed by the BOS. Should the State require such improvements and/or installations to be removed by the BOS, the BOS shall, at its expense,

remove such improvements and installations within 30 days of the request or as arranged by mutual agreement, and shall restore the Premises to its original condition prior to the execution of this Contract, reasonable wear and tear excepted. The decision of the Commissioner relative to whether an improvement or installation built or installed by the BOS is deemed fixed or permanent or temporary shall be final and conclusive to this matter.

A.7. Risk of Loss, Damage, or Destruction. All property of every kind within the Premises and the Park shall be at the sole risk of the BOS and the State shall not be liable to the BOS or any other person for any injury, loss, damage, or inconvenience occasioned by any cause whatsoever to said property, including, but not limited to, any loss of income for any function, program or contract that may not take place for whatever reason due to an emergency or unforeseeable situation, or due to interruptions or loss of utilities.

A.7.1. The BOS shall, within 24-hours, report to the State through its field contact listed below or to the State onsite supervisor if the field contact is not readily available; and restore or repair any and all damages or shall reimburse the State for any and all restoration and repair of State-owned real and personal property that is performed by the State, resulting from the BOS's use, or its subcontractors or any and all affiliates, of such property.

A.7.2. In the event that the facilities, or any part thereof during said term, be destroyed or damaged by fire, flood, storm, war, or other casualty so that the same shall be thereby rendered unfit for the purposes of the BOS, the BOS may terminate this Contract at its option. In any event, the State shall not be obligated to rebuild or replace any facility, wholly or substantially destroyed by fire, flood, storm, war or other casualty. The State shall not be liable to the BOS for any loss, damage, or inconvenience occasioned by any cause whatsoever to the BOS's property, revenues, operations, activities or programs.

A.8. Surrender of the Premises. In the event that the Term shall have expired or terminated, the BOS shall peacefully quit and deliver up the Premises to the State in as good order and condition, reasonable wear, tear, and obsolescence and unavoidable casualties excepted, as it was in at the beginning of the term of this Agreement, and shall surrender all improvements, alterations, or additions made by the BOS which cannot be removed without causing damage to the Premises. The BOS shall remove all of its improvements and installations that can be removed without causing damage to the Premises, and all of its personal property, surrendering the Premises to the State in broom clean condition. The surrender of the Premises shall occur no later than the date of expiration or termination of the Agreement, unless by some other date agreed to in writing by the parties.

#### EXHIBIT B – SCOPE OF SERVICES

B.1. Purpose. This Contract grants the BOS the use of certain facilities of the Park, as specifically identified herein, to be used as a marine education center operated by BOS staff, community volunteers, BOS interns and other related BOS staff, for the purpose of providing to

park visitors educational and interpretive services pertaining to marine life, local and maritime history, and actions that can be taken to protect the marine environment.

**B.2. Operations and Programs.** The BOS shall submit for State approval within 30 days after the execution of the Contract, and by April 1st of each following year, an Annual Operating Plan ("AOP"). Generally, the AOP shall outline the services, programs, and activities proposed for the upcoming year, including but not limited to:

B.2.1. Layout for the use of the Premises and any revisions to the layout.

B.2.2. Daily hours of operation, including:

- The marine education center shall operate a minimum of 42 hours per week during the high season of early June through the second week of September.
- The marine education center shall be operated as needed and by appointment during the "off season" months of late September through May.

B.2.3. Fees to be charged, including but not limited to admission, events and functions, special programs and activities. Discounts and complimentary offerings, and donation requests.

B.2.4. Programs, activities and events, business activities, services, and function space use planned.

B.2.5. Any other details pertinent to the use of the Premises and Park prior to each BOS operating year, including but not limited to dates, hours, number of participants, and type of programs, events, and activities so as to coordinate with the State's operations at the Park and to manage use of the Park and its resources.

B.2.6. Retail and other items to be sold onsite.

B.2.7. Proposed signage.

B.2.8. Advertising, marketing and promotional plans and programs.

The State shall review the AOP and shall, within 30 days, either approve the AOP or request revision and resubmission of the AOP for the purpose of allowing the BOS to address specific comments or objections made by the State, to the satisfaction of the State. The revised AOP shall be due to the State within 30 days following the State's request for revision. The State reserves the right to reject any part of a proposed AOP, but shall provide the basis of its decision in writing.

A State-approved AOP shall be a condition of the BOS operations and use within the Premises and upon the Park for the subject year. The BOS may operate under a previously State-approved AOP, during which an updated AOP is being revised and resubmitted by the BOS, and reviewed and approved by the State.

**B.3. Special Use Permits.** Special Use Permits are required to grant the BOS permission to hold special events at or reserve additional facilities or areas of the Park not specifically granted to the BOS herein, or by a State-approved AOP. The BOS shall apply for a Special Use Permit from the State's Events and Facilities Manager in accordance with the applicable administrative rules and park permitting policies, and all customary permitting and associated fees shall apply.

**B.4. Annual Report.** An annual report shall be submitted each year, including a full financial report showing the sources of income and revenue, the number of programs, number of participants and number of visitors. The report shall be due with BOS's commission payment each December 31 and shall include, but is not limited to:

B.4.1. Actual hours of operation;

B.4.2. Actual rate and fee schedules, including complimentary and discounted tallies, and donations received;

B.4.3. Attendance and visitor records categorized by service, program or event;

B.4.4. Actual income and expenses of operations; and a balance sheet;

B.4.5. Actual marketing, advertising, and promotional activities;

B.4.6. Collaborative activities with sponsors, partners, and other parties;

B.4.7. Emergency, accident or incident reports; and

B.4.8. Any notable achievements or the recognition of individuals or sponsors.

The BOS shall maintain books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all revenue and income associated with the Contract. The BOS shall retain all such records for three (3) years after the end of the final year of the Contract.

**B.5. Meetings.** The parties shall meet at least once annually before the start of the BOS's summer season, to discuss mutual operational and programmatic issues. Subsequent meetings shall be held when deemed necessary by the State or the BOS at a place and time to be mutually agreed upon for the purpose of discussing operational issues, official requests to the State, and other pertinent business which may arise.

**B.6. Staff, Volunteers, and Supervision of Minors and Guests.** BOS shall ensure that its staff and volunteers are properly trained, certified and licensed, as is required for its operation and programs; and shall comply with all requirements and best practices for the proper supervision and safety of minors and its guests. **BOS shall be solely responsible and liable for its staff, volunteers, subcontractors, operations, programs, and all other associated activities conducted on the Premises and within the Park.**

**B.7. Signs, Promotions, and Advertising.** All signs, promotions and advertising matters shall be in good taste and acceptable to the State, whose decision will in all cases be final. All advertising shall acknowledge the "State of New Hampshire, NH Division of Parks and

Recreation” as a supporter of the BOS. The State reserves the right to prohibit any such materials or promotions, including but not limited to sidewalk and frontage signage so as to ensure safe flow of pedestrian traffic and the visual aesthetics of the Park.

B.8. Sponsorships. External sponsorships (where a company or organization provides financial support in exchange for recognition) to generate revenue to support BOS programs, events, improvements and installations, etc. shall be permitted under this Contract provided that all such sponsorships are directly related to BOS activities occurring on the Premises and within the Park, including sponsorship by the Hampton Beach Village District and the Hampton Beach Area Commission for the cost of the facility use fees. The Division of Parks and Recreation shall also be included in such recognition.

B.9. Interests, Rights, and Obligations. This Contract shall not transfer to the BOS any claim, interest or right held by the State, and the BOS shall in no way nor at any time interfere, prevent, or obstruct any activity, operation, management, or use of land or rights held by State.

**The BOS shall have no authority to bind, obligate, or restrict the State in any way or at any time for any reason, including but not limited to any and all obligations, conditions, restrictions, regulation, or stipulations of any grant funding, donations, subcontracts, agreements or permits obtained or executed by or that may arise out of the BOS in its performance of the activities granted herein. Third party grants, donations or other contributions or material support shall not constitute a claim or interest within the Premises.**

B.10. State Actions. The BOS hereby acknowledges that the Park is managed by the State for a broad range of public purposes and the BOS hereby agrees to support the State’s management of the Park in good faith and also agrees that the rights and privileges granted herein shall not be used as a basis to oppose the State’s sovereign privileges, management and corresponding actions taken by the State in the interests of the Park and the state park system.

B.11. Expression of Views. The State recognizes that the BOS has the right to express its views and opinions, and that such views and opinions may not necessarily be the views and opinions of the State. Therefore, the State requests as a courtesy that the BOS assert that the views and opinions of the BOS are those of the BOS, and not those of the State.

B.12. Field Contacts. In matters pertaining to field operations, the following persons shall represent their respective agencies:

NH Division of Parks and Recreation  
Meredith Collins, Region Supervisor  
P: 603-227-8715  
E: [Meredith.collins@dncr.nh.gov](mailto:Meredith.collins@dncr.nh.gov)

Blue Ocean Society for Marine Conservation  
Jennifer L. Kennedy, Exec. Director  
P: 603-431-0260  
E: [jen@blueoceansociety.org](mailto:jen@blueoceansociety.org)

**EXHIBIT C – PAYMENT TERMS**

C.1. Facility use fee. The BOS shall pay an annual facility use fee of \$2,000.00, payable to the “Treasurer, State of New Hampshire.” The first payment shall accompany the signed Contract. All subsequent payments shall be made on the anniversary date of Contract execution, without demand. Late payments shall incur a \$100.00 late fee, assessed each month until paid.

C.2. Commission. The BOS may charge reasonable admission fees to its marine education center and reasonable fees for private, scheduled events held at the Park. All fees shall be comparable to industry standards, subject to State approval. The BOS shall pay the State the below prescribed commission, which shall be paid to the State on or before each December 31, without demand. A copy of admission and booking records, and the financial report used to calculate the payment, shall be included with each payment. Late payments shall incur a \$100.00 late fee, assessed once each late payment occurrence.

C.2.1. The BOS shall pay the State 15% of its gross income from all private, scheduled events held onsite at the Park.

C.2.2. The BOS shall pay the State 15% of its gross income from all admission fees collected.

C.2.3. The BOS shall retain all program fees and donations collected.

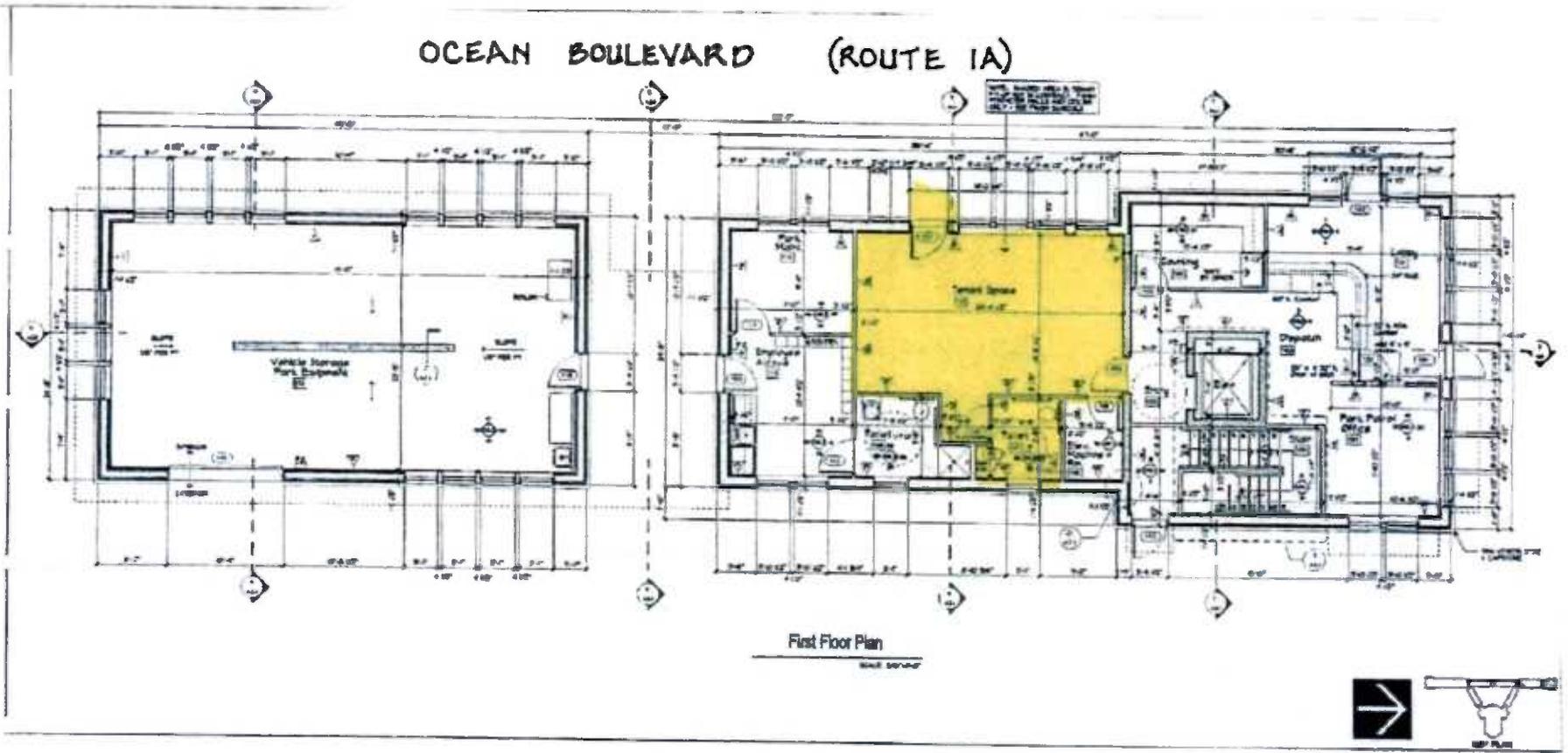
C.2.4. The BOS shall retain all of its gross income earned from all retail sales generated onsite at the Park. Retail sales shall include but not be limited to merchandise, food and drinks that are sold separately at private events scheduled by the BOS, and all other materials items sold onsite.

C.2.5. The BOS shall retain all revenue from its onsite program fees, donations, membership fees, and “adopt-a-marine creature” sales; however, BOS shall report to the State all revenue exempt from commission but earned within and upon the Premises and Park.

**Term of Contract**

The term of this contract and the obligations of the parties hereunder shall become effective upon approval of the Governor and Executive Council through June 30, 2025.

BLUE OCEAN SOCIETY  
ATTACHMENT A, FLOOR PLAN



# 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 BLUE OCEAN SOCIETY FOR MARINE CONSERVATION, INC. is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on February 06, 2002. 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: 398085

Certificate Number: 0006234191



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 19th day of May A.D. 2023.

A handwritten signature in black ink, appearing to read "D. Scanlan", is written over a faint circular outline.

David M. Scanlan  
Secretary of State

Certificate of Authority # 1

(Corporation, Non-Profit Corporation)

**Corporate Resolution**

**I, Charles Raeburn, hereby certify that I am duly elected Chair of the Board of Directors of Blue Ocean Society for Marine Conservation, Inc. I hereby certify the following is a true copy of a vote taken at a meeting of the Board of Directors, duly called and held on**

**January 24, 2023, at which a quorum of the Directors/shareholders were present and voting.**

**VOTED: That Jennifer Kennedy, Executive Director is  
(Name and Title)**

duly authorized to enter into contracts or agreements on behalf of

Blue Ocean Society for Marine Conservation, Inc. with the State of New Hampshire and

any of its agencies or departments and further is authorized to execute any

documents which may in his/her judgment be desirable or necessary to effect the

purpose of this vote.

**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 to which this certificate is attached. This authority **remains valid for thirty (30) days** from the date of this Corporate Resolution. 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:** 5/16/2023

**ATTEST:** 

Charles  
Raeburn  
Chair, Board  
of Directors





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/19/2023

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 have **ADDITIONAL INSURED** provisions or 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 an endorsement(s).

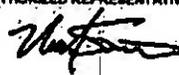
<b>PRODUCER</b> BROWN & BROWN OF MA PO BOX 250 SOUTH HAMPTON, NH 03827-0250	<b>CONTACT NAME:</b> _____	
	<b>PHONE</b> (AC. No. Ext.): (603) 384-7008	<b>FAX</b> (AC. No. Ext.): _____
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURED</b> BLUE OCEAN SOCIETY FOR MARINE CONSERVATION INC 400 LITTLE HARBOR ROAD #1103 PORTSMOUTH, NH 03801	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A :</b> TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA	
	<b>INSURER B :</b>	
	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
<b>INSURER F :</b>		
<b>NAIC #</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **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	ADCL (MSD)	SUBR (WVD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea Occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO  <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED \$ <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
<b>A</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS BELOW	Y/N	N/A	UB-4636P89-8-23	04/29/2023	04/29/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$100000 E.L. DISEASE- EA EMPLOYEE \$100000 E.L. DISEASE - POLICY LIMIT \$500000

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

<b>CERTIFICATE HOLDER</b> NH DNCR - DIV OF PARKS AND RECREATION TORENE TANGO-LOWY 172 PEMBROKE ROAD 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 
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