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

October 2, 2012

603-271-2341
FAX: 603-271-6784
www.nheconomy.com

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

REQUESTED ACTION

1. Authorize the Department of Resources and Economic Development (DRED), Division of Economic Development to enter into a **SOLE SOURCE** contract with the Granite State District Export Council (DEC) (VC #221380), West Lebanon, NH in the amount of \$198,418 to provide financial administration, oversight and reporting services in compliance with the State Trade and Export Promotion (STEP) II grant awarded by the US Small Business Administration upon Governor and Executive Council approval through September 29, 2013. 100% Federal Funds
2. Further authorize the Department to make a disbursement in the amount of \$118,578 to DEC for their initial management of the Cross Sector Grant program and the Paris International Air Show activities for New Hampshire's Aerospace Sector in accordance with the terms of the contract.

Funding is available in account titled, State Trade and Export Promotion (STEP) Grant, as follows and pending budget approval for Fiscal Year 2014 with authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified:

		<u>FY 2013</u>	<u>FY 2104</u>
03-35-35-350510-33360000-102-500731	Contracts for Program Services	\$178,418	\$20,000

EXPLANATION

DRED was recently awarded a \$293,692 grant through the US Small Business Administration's State Trade and Export Promotion (STEP) grant program, which is a component of the Small Business Jobs Act of 2010, Section 1207. This award is the second phase of this grant program. One of the purposes of the grant is to provide initiatives to New Hampshire businesses that focus on foreign markets having the highest growth potential and industries having the greatest and most immediate ability to compete successfully in the world marketplace. This contract with the DEC will assist DRED by providing financial administration, oversight and reporting services on the STEP II grant initiatives, i.e. the Cross Sector Grant program and the Paris International Air Show. The DEC has a proven record of leadership expertise in the international trade market which DRED feels is necessary to ensure compliance with the grant award. Additionally, the DEC effectively and successfully carried out the same scope of work for STEP I grant initiatives and for this reason **sole source** approval of this contract is respectfully requested.

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

Respectfully submitted,

Christopher S. Way
Interim Director

Concurred, TM

George M. Bald
Commissioner



Subject: Administration of State Trade Export Promotion (STEP) Grant 2 FORM NUMBER P-37 (version 1/09)

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

GENERAL PROVISIONS

1. IDENTIFICATION.

Form with fields for State Agency Name, Contractor Name, Completion Date, Price Limitation, Signatures, and Acknowledgements. Includes handwritten entries like 'Department of Resources and Economic Development', 'Granite State District Export Council, Inc.', '9/30/2013', 'Up to \$214,818', 'Tina Kasim', 'John Sutton', 'Vermont', 'Orange', 'Tanya L Bean', and 'George M. Bald'.

* See emails

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

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials
Date 10/9/12

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

- 9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.
- 9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.
- 9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

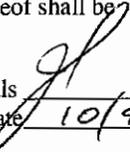
11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

- 14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:
 - 14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and
 - 14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.
- 14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.
- 14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials 
Date 10/9/12

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

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

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

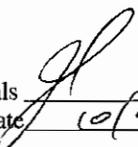
20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials 
Date 10/9/12

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT
DIVISION OF ECONOMIC DEVELOPMENT**

Administration of State Trade and Export Promotion (STEP) II Grant

EXHIBIT A

Scope of Services – This Contract, by and between the Granite State District Export Council, hereinafter called “the DEC,” and the State of New Hampshire, Department of Resources and Economic Development, hereinafter called “the State,” is for DEC to provide financial administration, oversight and reporting services in compliance with the State Trade and Export Promotion (STEP) II grant.

Time of Performance – The services of DEC shall commence upon Governor and Executive Council approval. All of the services required and performed hereunder shall be completed no later than *September 29, 2013*, per the STEP II grant term.

Personnel

- The DEC shall secure at their own expense all personnel required in performing the services under this Contract.
- All of the services required hereunder shall be performed by the DEC or the State, or under the State’s supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.

Grant Financial Administration

- All financial information, data, reports, records and/or other information necessary for carrying out the services shall be furnished to the State by the DEC. No charge shall be made to the State for such information and the State will cooperate with the DEC in every way possible to facilitate the performance of services described in this Contract.
- The DEC shall develop a financial record keeping system consistent with STEP II grant guidelines, including the establishment of a filing system.
- The State shall receive the receipts submitted by qualified sub-grant recipients and verify eligible and ineligible expenses associated with the sub-grants. Once verified, the information is shared with the DEC for reimbursement to the sub-grant recipient.
- The State shall prepare and submit all required project reporting required by the STEP II grant, including but not limited to progress reporting, quarterly reporting, and other reporting included in the agreement between the State and the US Small Business Administration (SBA).
- All original STEP II grant invoices and billing shall be retained by the State and shall be available to the DEC upon request.
- The State shall prepare and submit drawdown reimbursement requests to the SBA.
- The State shall serve as the main Point of Contact (POC) during the implementation and completion of the STEP II grant for any monitoring visit by staff representatives from the SBA.

- All of the reports, information, data, etc., prepared or assembled by the DEC under this Contract are confidential, except as otherwise provided under applicable law, including RSA 91-A, and the DEC agrees that they shall not be made available to any individual or organization without the prior written approval of the State.

EXHIBIT B

Anticipated Budget

Description	
Cross Sector Grants	
Payment reimbursement processing for grant recipients	\$150,000
Total	150,000
Paris International Air Show	
Booth	\$ 30,000
Branding and Marketing	1,578
Travel – International	10,000
Printing	2,000
Total	\$ 43,578
Administrative Fees	
Granite State District Export Council	\$ 4,840
TOTAL:	\$198,418

Grant Financial Management

- An initial payment of \$118,578 shall be made to the DEC upon Governor and Executive Council approval and receipt of an invoice for a portion of the Cross Sector Grants and Paris International Air Show activities as outlined in the Anticipated Budget above.
- Thereafter the DEC shall submit invoices to the State on a monthly basis, based on actual program expenses. Invoices shall show current and cumulative expenses incurred to date. Based on the invoices submitted, the State will pay the DEC within 30 days of receipt and approval of invoice. The DEC shall submit its final invoices no later than 60 days after the end of the STEP II grant term.
- All DEC invoices shall be submitted to:

Tina Kasim, Program Director
DRED Office of International Commerce
PO Box 1856
Concord, NH 03302-1856

EXHIBIT C

The provisions of Paragraph 14 of the P-37 Contract Agreement are hereby waived for the purposes of this Contract.

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Granite State District Export Council is a New Hampshire nonprofit corporation formed June 24, 1999. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 16th day of October A.D. 2012

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

William M. Gardner
Secretary of State

Certificate of Authority

I, Paula C. Newton, do hereby certify that:
(Name of appointed individual - Cannot be same individual who signed contract)

1. I am a duly elected Clerk of Granite State District Export Council, Inc. (the "Corporation").
2. The following is a true copy of one resolution adopted at a meeting of the Board of Directors of the Corporation duly held on 9 October 2012.
(Date Authority Given)

RESOLUTION:

That John Sutton, Chair, Granite State District Export Council, is hereby authorized on behalf of this Corporation to enter into said contract with the Department of Resources and Economic Development (the State) and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable or appropriate for the administration of State Trade Export Promotion (STEP) Grant II.

3. The forgoing resolution has not been amended or revoked, and remains in full force and effect as of 9 October 2012.
(Date Contract Signed)
4. Paula C. Newton (is/are) the duly elected Treasurer.
(Name of Contract Signatory) (Title of Contract Signatory)

Paula C. Newton
(Signature of board member for the Corporation)

State of New Hampshire

County of Rockingham

The forgoing instrument was acknowledged before me this 30th day of October, 2012 by
Paula C. Newton.
(Name of chair person for the Corporation)

Subscribed and sworn to before me on the 30th day of October, 2012.

Allison D. Cummings
Notary Public / Justice of the Peace

Commission Expires: 9/3/2013

ALLISON D. CUMMINGS
NOTARY PUBLIC
STATE OF NEW HAMPSHIRE
My commission expires Sept. 3, 2013

✱

From: John Sutton [mailto:jsutton@intermapper.com]
Sent: Wednesday, October 24, 2012 3:04 PM
To: Tina Kasim; Justin Osowski
Subject: RE: DEC -STEP II Budget

Hello Tina,

You have my approval and permission to amend the P-37 to reflect the changes for the DEC.

Regards,

John Sutton
Chair: Granite State DEC
Director of Sales and Partner Development
Dartware, LLC
<http://intermapper.com>
(603) 643-8933
<http://linkedin.com/in/suttonj>
Skype: john.sutton82

From: Tina Kasim [mailto:tina.kasim@dred.state.nh.us]
Sent: Wednesday, October 24, 2012 2:59 PM
To: John Sutton; Justin Osowski
Subject: DEC -STEP II Budget
Importance: High

Dear John,

In preparing to submit our contract with DEC to assist with STEP II to Governor and Executive Council, we noticed an error in the budget we submitted to you in the contract. The budget for STEP II included the market research funds from STEP I which have already been expended, but was factored into the STEP II contract by mistake. Therefore, we ask that you review the amended budget below reflecting the new calculations based on the matching grants and Paris air show activities. With your approval and permission, we at the State would then amend the P-37 to reflect the changes for the DEC. Upon your approval, no other action on your part would be required.

Description		
Cross Sector Grants		
	Payment reimbursement processing for grant recipients	\$ 150,000
Total		150,000
Paris International Air Show		
	Booth	\$30,000
	Branding and Marketing	1,578
	Travel – International	10,000
	Printing	2,000
Total		\$ 43,578
Administrative Fees		
	Granite State District Export Council	\$4,840
TOTAL:		\$198,418



Leanne Lavoie

From: Tina Kasim
Sent: Monday, November 05, 2012 9:50 AM
To: Leanne Lavoie
Subject: FW: DEC Contract

Leanne,

Please find below John Sutton's approval to amend the date on the P37.

Thanks

Tina

From: John Sutton [<mailto:jsutton@intermapper.com>]
Sent: Monday, November 05, 2012 9:48 AM
To: Tina Kasim; Justin Osowski
Subject: RE: DEC Contract

Hello Tina,

You have my permission.

Regards,

John Sutton
Director of Sales and Partner Development
Dartware, LLC
<http://intermapper.com>
(603) 643-8933
<http://linkedin.com/in/suttonj>
Skype: john.sutton82

From: Tina Kasim [<mailto:tina.kasim@dred.state.nh.us>]
Sent: Monday, November 05, 2012 9:46 AM
To: John Sutton; Justin Osowski
Subject: DEC Contract
Importance: High

Good morning John,

I received word that an error was found on the P37 contract between the DEC and the State regarding the STEP program. The P-37 has September 30, 2013 listed as the end of the grant when in fact it is September 29, 2013. The correct end date is listed everywhere else except this part; so I am requesting your permission to amend this date on the contract in order to move the contract forward.

If you have any questions, please let me know.

Kind regards,
Tina