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STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
DIVISION OF PARKS AND RECREATION

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November 13, 2015

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

**REQUESTED ACTION**

Authorize the Department of Resources and Economic Development, Division of Parks and Recreation to enter into a Memorandum of Agreement (MOA) with the Old Man of the Mountain Revitalization Fund, Inc. d/b/a Old Man of the Mountain Legacy Fund to work cooperatively to memorialize the Old Man of the Mountain at Franconia Notch State Park upon approval of Governor and Executive Council through December 31, 2018. No State Funding Required.

**EXPLANATION**

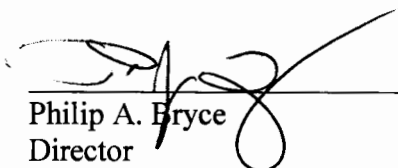
New Hampshire's most significant tourism symbol, the Old Man of the Mountain located in Franconia Notch State Park collapsed on May 3, 2003. The Old Man of the Mountain Task Force (Task Force) was established for purpose of making recommendations for memorializing the Old Man of the Mountain and setting forth a variety of initiatives. The Old Man of the Mountain Legacy Fund, a non-profit organization, was established for the purpose of raising the funding necessary to implement the ideas generated by the Task Force.


An agreement was formalized in 2007 between the Division and the Old Man of the Mountain Legacy Fund to develop and to raise funds for project initiatives memorializing the Old Man of the Mountain. This partnership has tastefully honored the legacy of the Old Man of the Mountain and enabled Franconia Notch State Park to continue as a premier scenic and recreational destination; however, the Old Man of the Mountain Legacy Fund requests an additional 3-years to complete its project initiatives. The current MOA is due to expire on December 31, 2015. This new MOA is to provide for and continue the partnership for another 3-year period through December 31, 2018.

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

Respectfully submitted,

Concurred,

  
Philip A. Bryce  
Director

  
Jeffrey J. Rose  
Commissioner



STATE OF NEW HAMPSHIRE  
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT  
DIVISION OF PARKS AND RECREATION



OLD MAN OF THE MOUNTAIN  
LEGACY FUND

**MEMORANDUM OF AGREEMENT**

In accordance with RSA 227-H:7 and 9, this Memorandum of Agreement (the "Agreement") is entered into by and between the New Hampshire Department of Resources and Economic Development, Division of Parks and Recreation (the "Division") and The Old Man of the Mountain Revitalization Fund, Inc. d/b/a Old Man of the Mountain Legacy Fund (the "Legacy Fund"), c/o Division of Historical Resources, 19 Pillsbury Street, Concord NH 03301.

Whereas, Franconia Notch State Park (the "Park"), located in the Towns of Franconia and Lincoln, New Hampshire, is owned by the State of New Hampshire and managed through the Division of Parks and Recreation;

Whereas, the Park is a grant-assisted property under the federal Land and Water Conservation Fund program and carries certain covenants under Section 6(f) for the preservation of public outdoor recreation;

Whereas, the Old Man of the Mountain, a remarkable natural configuration of ledge and stone slabs on the side of Cannon Mountain that created a profile of a man's face so unusual and distinctive that it was adopted as the state symbol, collapsed on May 3, 2003;

Whereas, the loss of the Old Man of the Mountain has resulted in a decline of tourism and related revenues;

Whereas, the Old Man of the Mountain Task Force, established for the purpose of making recommendations for memorializing the Old Man of the Mountain, set forth a variety of initiatives for this purpose;

Whereas, the Old Man of the Mountain Legacy Fund, Inc., a non-profit organization, was established for the purpose of raising funds necessary to implement the ideas generated by the Old Man of the Mountain Task Force;

Whereas, the Old Man of the Mountain Legacy Fund supports the Division's mission to encourage and support tourism and related economic activity within the State;

Whereas, both the Division and the Legacy Fund wish to work cooperatively to memorialize the Old Man of the Mountain at the Park, while maintaining the natural and scenic values of the Park and ensuring that Franconia Notch State Park retains its preeminence as a scenic and recreational destination for visitors;

Whereas, the Division may accept contributions from private and not-for-profit organizations for purposes of supporting its mission;

Now therefore, the Division of Parks and Recreation and the Legacy Fund agree to the following terms:

1. **TERM:** This Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Council of the State of New Hampshire approve this Agreement ("the Effective Date") through December 31, 2018.
2. **PROJECT INITIATIVES:** The Legacy Fund shall at its sole expense provide the Division with a proposal of all initiatives (the "Project Initiatives") recommended to be implemented within the Park. The proposal shall include the scope of work and cost estimates. To the extent possible, all Project Initiatives shall incorporate energy and resource-efficient, low-maintenance designs.

The Division Director retains the right to request revisions to any project component that impacts the Division and the Park for the purposes of ensuring compatibility with its mission, responsibilities, short- and long-term impacts to resources, and statutory and regulatory requirements. Final decision for implementation of Project Initiatives shall be made by the Division Director.

All site and facility installations and improvements implemented under this Agreement are and shall remain the real or personal property of the Division.

- a) Project Initiatives. Project Initiatives made pursuant to this Agreement may include but are not limited to viewfinders at the shore of Profile Lake, interpretive kiosks, sculptures, school curriculum, traveling exhibits, and a visitors center/museum or enhancements to the existing Old Man of the Mountain Museum located in Franconia Notch State Park.
  - b) Site selection. The Legacy Fund shall at its sole expense provide the Division with a detailed proposal for recommended siting and landscaping for the Project Initiatives within the Park. The Division shall provide the Legacy Fund, at no cost, existing Park records, drawings or plans that would support this effort. Final decision for site selection and landscaping shall be made by the Division Director.
  - c) Site development. The Legacy Fund shall at its own expense contract for and support the financing of the Project Initiatives. The Division shall provide project oversight and coordinate necessary Section 106 (historical resources), Natural Heritage, and LWCF Section 6(f) reviews. The Legacy Fund agrees to support the hiring and financing of an archeologist and any other consultant, if required for compliance with Sections 6(f) and 106. The Legacy Fund agrees that no work will begin until all applicable regulatory approvals have been obtained by the Division.
  - d) Maintenance. The Division shall at its sole expense maintain any and all Project Initiatives developed and installed pursuant to this Agreement.
3. **REPRESENTATION:**
- a) Legacy Fund meetings. Meetings of the Legacy Fund shall be attended by the Director of the Division of Parks and Recreation or designee to further the purposes herein on behalf of the Division.

- b) Project planning. Project planning and implementation of initiatives developed under this Agreement (Project Initiatives) and destined for the Park shall be coordinated between the Division Deputy Director and the Legacy Fund President.
  - c) Design and installation activities. The design and installation of Project Initiatives, including but not limited to memorials, programs, signage and exhibits, shall be coordinated between the DRED Architect, the Division marketing manager, and the Legacy Fund Executive Assistant.
4. **FUNDRAISING:** The Legacy Fund shall raise funds to provide financial support of Old Man of the Mountain Project Initiatives destined for the Park. The Legacy Fund shall be responsible for all costs, staffing, and administration of its fund raising activities.

Pursuant to RSA 4:8 and 216-A:3, the Division shall, with the approval of the governor and council, accept grants, donations and other assistance from the Legacy Fund to be applied towards Project Initiatives destined for the Park, including but not limited to viewfinders, interpretive kiosks, sculptures, visitors center, museum or other enhancements to the Park.

5. **RISK OF LOSS, DAMAGE OR DESTRUCTION:** All site and facility installations and improvements shall be at the sole risk of the Division and the Legacy Fund shall not be liable to the Division or any other person for any loss or damage occasioned by any cause whatsoever to said site and facility installations and improvements.

In the event that site and facility installations and improvements or any part thereof shall, during said term, be destroyed or damaged by fire, flood, war, or other casualty so that the same shall be thereby rendered unfit for the purposes described herein, either the Legacy Fund or the Division may terminate this Agreement at its option. In any event, neither the Division nor the Legacy Fund shall be obligated to rebuild or replace any structure or building wholly or substantially destroyed by fire, flood, war or other casualty.

6. **SPECIAL USE PERMITS:** Special Use Permits are required to grant the Legacy Fund permission to hold special events at the Park that go beyond the routine recreational activities at the Park. The Legacy Fund shall apply for a Special Use Permit from the Park Manager in accordance with park permitting processes, at least one month prior to the event. Special events and all related activities shall not adversely impact the use of the Park by the public.
7. **CONFLICT RESOLUTION:** The Legacy Fund shall comply with all reasonable requests made by the State. The decision of the Commissioner relative to the proper performance of the conditions of this Agreement shall be final and conclusive as to each matter not covered in the Agreement and questions that may arise in connection with the privileges granted, and also as to each matter which is not clearly covered herein.
8. **COMPLIANCE WITH LAWS AND REGULATIONS -- EQUAL OPPORTUNITY:** The Legacy Fund shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Legacy Fund, including but not limited to civil rights and equal opportunity laws. The Legacy Fund shall also comply with the policies and regulations of the Department of Resources and Economic Development. The Legacy Fund shall procure at its expense all necessary licenses and permits required in connection with the activities described herein.

During the term of this Agreement, the Legacy Fund shall not discriminate against members of the public, employees or applicants for employment because of race, color, religion, creed, age, sex, disability or national origin and will take affirmative action to prevent such discrimination. The Legacy Fund 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 CFR Part 60), and with any rules, regulations and guidelines as the State of New Hampshire issues to implement these regulations.

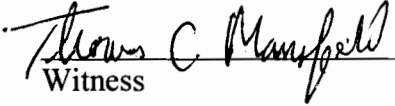
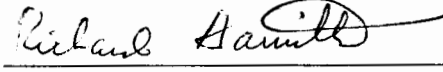
The Legacy Fund shall comply with all applicable copyright laws.

9. **PERSONNEL:** The Legacy Fund shall, at its own expense and at all times, provide all personnel necessary to perform the services. The Legacy Fund 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.
10. **TERMINATION:** This Agreement shall be subject to cancellation by either party, regardless of grounds therefore, by giving all parties ninety (90) days written notice of cancellation.
11. **RELATION TO THE DIVISION:** In the performance of this Agreement, the Legacy Fund is neither an agent nor employee of the Division. Neither the Legacy Fund nor any of its officers, employees, agents, or members shall have authority to bind the Division, or receive any benefits, workers' compensation or emoluments provided by the Division to its employees.
12. **INDEMNIFICATION:** The Legacy Fund shall defend, indemnify, and hold harmless the State, and 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 Legacy Fund or its subcontractors, agents or assignees. 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 shall survive the termination of this Agreement.
13. **WAIVER OF BREACH:** No failure by either party to enforce any provisions hereof after any event of default shall be deemed a waiver of its rights with regard to that event, or any subsequent event.
14. **AMENDMENT:** This agreement may be amended only by an instrument in writing signed by both parties hereto and approved by the Governor and Executive Council.
15. **CONSTRUCTION OF AGREEMENT AND TERMS:** This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
16. **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.
17. **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.


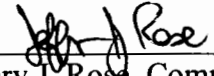
18. **CONDITIONAL NATURE OF AGREEMENT:** Notwithstanding anything in this agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event 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 those 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 Legacy Fund notice of such termination. The State shall not be required to transfer funds from any other account to the account identified in this Agreement in the event funds in that account are reduced or unavailable.

IN WITNESS WHEREOF, the parties hereto have set their hands the date herein named.

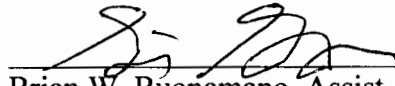
**OLD MAN OF THE MOUNTAIN REVITALIZATION FUND, INC.  
d/b/a OLD MAN OF THE MOUNTAIN LEGACY FUND**

 Witness	<u>11/5/2015</u> Date	 Richard Hamilton, Chairman (Duly authorized)	<u>11-5-2015</u> Date
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**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT**

 Philip A. Bryce, Director	<u>11-2-15</u> Date	 Jeffery J. Rose, Commissioner	<u>11/13/15</u> Date
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Approved as to form, substance and execution  
by the Attorney General's Office:

 Brian W. Buonamano, Assist. Attorney General	<u>11/30/15</u> Date
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Approved by Governor and Executive Council:      Date: \_\_\_\_\_ Item#: \_\_\_\_\_

# 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 The Old Man of The Mountain Revitalization Fund, Inc. is a New Hampshire nonprofit corporation formed May 6, 2003. 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 4<sup>th</sup> day of November A.D. 2015

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

# 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 Old Man of the Mountain Legacy Fund is a New Hampshire trade name registered on September 21, 2009 and that The Old Man of The Mountain Revitalization Fund, Inc. presently own(s) this trade name. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 4<sup>th</sup> day of November, A.D. 2015

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

William M. Gardner  
Secretary of State



Tom Mansfield  
271-3553

**Corporate Resolution**

I, Meghan McPaul, hereby certify that I am duly elected Clerk/Secretary of  
(Name)

Old Man of the Mountain Legacy Fund. I hereby certify the following is a true copy of a vote taken at  
(Name of Corporation or LLC)

a meeting of the Board of Directors/shareholders, duly called and held on Nov 6, 2014  
at which a quorum of the Directors/shareholders were present and voting.

**VOTED:** That Richard Hamilton (may list more than one person) is  
(Name and Title)

duly authorized to enter into contracts or agreements on behalf of

Old Man of the Mountain Legacy Fund with the State of New Hampshire and any of  
(Name of Corporation or LLC)

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. 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:** 11-6-14

**ATTEST:** Meghan McPaul Secretary  
(Name and Title)