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STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
OFFICE of the COMMISSIONER

172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

603-271-2411

FAX: 603-271-2629

March 17, 2014

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

Sole Source

REQUESTED ACTION

Pursuant to RSA 21-I:80, I(b) authorize the Department of Resources and Economic Development, Division of Parks and Recreation (Division) to enter into a **SOLE SOURCE** contract with the Student Conservation Association, Inc. (VC #173352), Charlestown, NH in the amount of \$152,181 to provide services for various park projects upon Governor and Executive Council approval through October 31, 2014. 7% Agency Income, 60% Capital Fund, and 33% Park Fund

Funding is available in accounts titled, Conservation Plate Funds, 13-195:XIII-A State Park Improvements, and Service Parks, as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified:

		<u>FY 2014</u>	<u>FY 2015</u>
03-35-35-350010-34050000-048-500226	Contractual Maintenance B&G	\$10,111	0
03-35-35-350030-79580000-034-500162	Capital Projects	\$10,111	\$81,232
03-35-35-351510-37200000-102-500731	Contracts for Program Services	\$10,111	\$40,616

EXPLANATION

The Student Conservation Association (SCA) is a residential national service program based at Bear Brook State Park which has collaborated with the Division and the Corporation for National Service since 1994. This contract is part of an entire service learning program offered through this partnership.

The SCA will recruit, train, and supervise interns who will provide services for the Division in 2 facets: Conservation Crew Projects and State Park Improvement Projects. The services to be provided will address deferred maintenance, trail maintenance and other necessary projects to improve public recreation areas. These projects include but are not limited to: spring clean-up, scraping and painting buildings, refurbishing picnic tables, constructing tent platforms, repairing trails, clearing brush, and construction of a new wooden bridge.

For the reasons stated above, the Division respectfully requests sole source approval to continue this important partnership with the SCA.

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

Respectfully submitted,

Concurred,

Philip A. Bryce, Director

Jeffrey J. Rose, Commissioner

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Subject: State Park Projects FORM NUMBER P-37 (version 1/09)

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name DRED Division of Parks and Recreation		1.2 State Agency Address PO Box 1856, Concord NH03302-1856	
1.3 Contractor Name The Student Conservation Association, Inc		1.4 Contractor Address PO Box 550, 689 River Rd, Charlestown NH 03063-0550	
1.5 Contractor Phone Number 603-543-1700 x 132	1.6 Account Number See Attached	1.7 Completion Date October 31, 2014	1.8 Price Limitation \$152,181
1.9 Contracting Officer for State Agency Johanna Lyons, Program Planner		1.10 State Agency Telephone Number 603-271-3556 x 218	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Charles "Chip" Hollander, Chief Financial Officer Valerie Bailey, E. VA, Chief of Staff	
1.13 Acknowledgement: State of NH, County of Sullivan On 3/7/14, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] Camilla K. Bailey			
1.13.2 Name and Title of Notary or Justice of the Peace Camilla K. Bailey, Notary			
1.14 State Agency Signature Jeffrey J. Rose		1.15 Name and Title of State Agency Signatory Jeffrey J. Rose, Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: n/a Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: [Signature] On: 3/20/14			
1.18 Approval by the Governor and Executive Council By: On:			

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

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

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

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

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

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

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

Contractor Initials WJP
Date 3.7.14

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 WAP
Date 3.7.14

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.

**State of New Hampshire
Department of Resources and Economic Development
Division of Parks and Recreation**

EXHIBIT A

I. Conservation Crew Projects – Historic Site Fund

Livermore Falls State Forest and Weeks State Park - The SCA shall provide a 6 person crew for a 10-day hitch to clear brush and chip from a cultural resources site and open an existing view shed.

II. State Park Improvement Projects – Capital Fund

The Student Conservation Association, Inc. (SCA) shall provide a 6 person crew for one 10-day hitch and for four 20-day hitches to scrape, prime and paint various state park buildings, to construct tent platforms, to install and refurbish picnic tables and fire rings, and to perform other projects as assigned by the Supervisor of Park Operations. Other projects performed must benefit the long-term investment into our assets.

The Division of Parks and Recreation shall provide proper training in painting and basic carpentry methods as well as to provide all necessary supplies and materials.

III. Conservation Crew Projects – Park Fund

The SCA shall provide the following:

- a) White Lake State Park – A 6 person crew for a 10-day hitch to assist the park manager with spring clean-up such as hazardous tree removal, raking campsites, and prep work for season opening;
- b) Crawford Notch State Park – A 6 person crew for a 20-day hitch to repair and maintain the Arethusa Falls trail and a potential re-route of a short section of the Frankenstein Cliff trail; and
- c) Moose Brook State Park - A 6 person crew for a 20-day hitch to construct a 40' long timber bridge with pressure treated decking and rails per the Division of Parks and Recreation's project design specifications. Bridge will span Perkins Brook to connect Perkins Path with CCC Link Trail at head of a picturesque gorge approximately 3/4 mile from the park office.

The Division of Parks and Recreation shall provide proper training in basic carpentry methods as well as to provide all necessary supplies and materials.

Contractor Initials
Date


3.7.14

**State of New Hampshire
Department of Resources and Economic Development
Division of Parks and Recreation**

EXHIBIT B

The SCA shall provide the Division of Parks and Recreation an itemized invoice at the completion of each hitch and/or project as follows:

I. Conservation Crew Projects – Historic Sites Fund	
• Livermore Falls State Forest and Weeks State Park (10-day)	\$10,111
II. State Park Improvements Project – Capital Fund	
• Spring Hitch (10-day)	\$10,111
• Hitch I (20-day)	20,308
• Hitch II (20-day)	20,308
• Hitch III (20-day)	20,308
• Hitch IV (20-day)	20,308
Sub-Total II:	\$91,343
III. Conservation Crew Projects – Park Fund	
a) White Lake State Park (10-day)	\$10,111
b) Crawford Notch State Park (20-day)	20,308
c) Moose Brook State Park (20-day)	20,308
Sub-Total III:	\$50,727
Grand Total:	\$152,181

EXHIBIT C

There are no special or additional provisions to this contract.

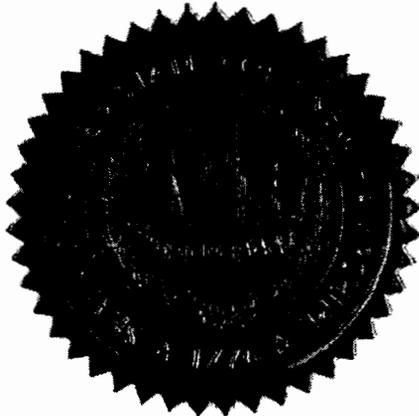
Contractor Initials
Date

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3.7.14

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 STUDENT CONSERVATION ASSOCIATION, INC., a(n) New York nonprofit corporation, registered to do business in New Hampshire on September 16, 1976. 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 13th day of March, A.D. 2014

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

William M. Gardner
Secretary of State

SCA Board of Directors Resolution Regarding Cooperative Agreements

WHEREAS, pursuant to Article VI, Section 4 of the Bylaws of The Student Conservation Association, Inc. (the "Corporation"), the President is expressly authorized to execute on behalf of the Corporation all cooperative agreements and other contracts requiring such execution except to the extent the signing and execution thereof shall be expressly delegated by the Board of Directors to another agent of the Corporation; and

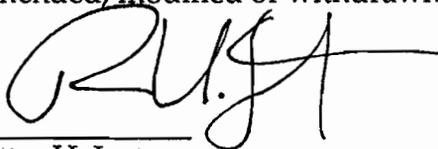
WHEREAS, the Board of Directors hereby intends to confer the power to execute on behalf of the Corporation cooperative agreements and other contracts requiring such execution to certain additional duly authorized officers of the Corporation when they do so at the direction of the President; and

NOW THEREFORE, BE IT RESOLVED, that, upon the direction of the President/Chief Executive Officer, Dale M. Penny, each of the: Chief Financial Officer, Charles P. Hollands; the Executive Vice President/Assistant Secretary, Valerie Bailey; the Senior Vice President for Program, Robert Coates; and the Senior Vice President for Advancement, Karen Davis; be, and each hereby is, individually authorized, empowered and directed to execute on behalf of the Corporation all cooperative agreements and other contracts requiring such execution, and to make, execute and deliver, under the corporate seal of the Corporation or otherwise, any and all written instruments necessary or proper to effectuate the power and authority hereby conferred.

Dated: March 21, 2014

CERTIFICATION:

The foregoing is a true and complete copy of the resolution adopted by the SCA Board of Directors at a regular meeting held on March 21, 2014, and the same has not been amended, modified or withdrawn.



Peter H. Jost
Secretary

Dated: March 26, 2014

