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STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
DIVISION OF PARKS AND RECREATION

31B

172 Pembroke Road Concord, New Hampshire 03301  
Phone: (603) 271-2411 Fax: (603) 271-3553 E-Mail: [nhparks@dnrc.nh.gov](mailto:nhparks@dnrc.nh.gov)  
Web: [www.nhstateparks.org](http://www.nhstateparks.org)

August 12, 2020

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

**REQUESTED ACTION**

Authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation, Cannon Mountain to enter into a **Retroactive** amendment to an existing contract (Contract #1057869) with Drive Brand Studio, Inc. (VC #174386), North Conway, NH for Cannon's marketing and advertising services, by exercising a 2-year contract renewal option, extending the contract end date from June 30, 2020 to June 30, 2022 and increasing the price limitation by \$370,000 from \$841,500 to \$1,211,500, effective upon Governor and Executive Council approval. This request represents a 33% reduction in Cannon's planned two-year \$561,000 marketing budget. The original contract was approved by Governor and Executive Council on August 23, 2017, Item #69. 100% Other Funds (Agency Income).

Funds are available in the following account for FY 2021, anticipated to be available in Fiscal Year 2022, upon the continued appropriation of funds in the future operating budget with the authority to adjust the encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified.

03-035-035-351510-37030000, Cannon Mountain

	<u>FY 2021</u>	<u>FY 2022</u>
069-500567 Promotional-Marketing Expenses	\$185,000	\$185,000

**EXPLANATION**

This mutually agreed upon renewal was scheduled for a joint review during the spring season. However, with the devastating impact of the COVID-19 pandemic on the ski and snowboard industry this past late winter, including Cannon, more pressing priorities took our attention away from the planned review. Waiting to review the contract while the economy was in the process of re-opening also helped address some of the future uncertainty. In a recent meeting with Drive Brand Studio (DBS) at their location in North Conway, we re-visited our contractual relationship status and noted that the delayed action to seek renewal brought us very close to the end of the current contract period. Therefore, we took steps to act quickly to seek an extension once we agreed to do so. However, we were not able to complete the request in a timely enough manner to be put on the schedule for consideration prior to the end of the fiscal year, thus the **Retroactive** nature of the renewal.

Communication with prospective guests will be absolutely critical this fall and winter throughout the ski and snowboard industry as we prepare to educate guests not only on the fact that we plan to open and remain open, but as to what steps we've taken to safeguard their health and well-being and the steps that they must take while visiting in order to do the same. The nature of our marketing effort will change due to the pandemic but also allows us to reduce expenses.

DBS's marketing and advertising campaign over the last three years has far exceeded expectations. Their most recent effort earned Cannon the National Ski Areas Association's marketing award for "Best Use of Video" in 2019 as well as 2 first place "Telly" awards for their "Cannon Is Mine" video series. This past winter's campaign was part of a multi-year marketing strategy that Cannon would like to continue to have them implement into the next two fiscal years. Along with successful marketing campaigns, DBS has also helped drive increases in season pass-holders and day-ticket sales while bolstering Cannon's competitive position in the marketplace. Their experience will continue to elevate Cannon Mountain through successful implementation of creative and innovative marketing and advertising programs that will help us communicate expectations to skiers during the pandemic as well as continue maintain Cannon's successful brand.

The Attorney General's Office has reviewed and approved this contact amendment as to form, substance and execution.

Respectfully submitted,



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Philip A. Bryce  
Director

Concurred,



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Sarah L. Stewart  
Commissioner

## AMENDMENT OF P-37 CONTRACT AGREEMENT

The Department of Natural and Cultural Resources and Drive Brand Studio, Inc. hereby mutually agree to amend the contract for Marketing and Advertising Services for Cannon Mountain, Franconia, NH, originally approved by the Governor and Executive Council on August 23, 2017, Item #69.

1. Amend P-37 Agreement Provision 1.7, Completion Date, and Exhibit B, Term, by exercising the contract renewal option for an additional two-year period and thus extending the completion date from June 30, 2020 to June 30, 2022;
2. Amend P-37 Agreement Provision 1.8, Price limitation, and Exhibit B, Contract Price, by increasing the price limitation by \$370,000 from \$841,500 to \$1,211,500;
3. All other terms and conditions of the contract shall remain the same in full force and effect as originally set forth; and
4. This amendment is subject to approval by the Governor and Executive Council.


IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year above written.

### For the Contractor:

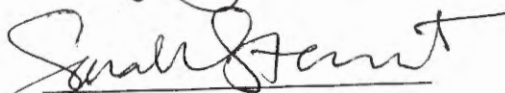
  
Drive Brand Studio, Inc.

8/10/2020  
Date

### For the Department of Natural and Cultural Resources:

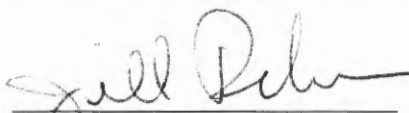
  
Philip A. Bryce, Director  
Division of Parks and Recreation

8-12-20  
Date

  
Sarah L. Stewart, Commissioner

8/10/2020  
Date

Approved as to form, substance and execution:

  
Attorney General

8/13/20  
Date



# 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 DRIVE BRAND STUDIO, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on March 20, 2001. 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: **373809**

Certificate Number : **0004938101**



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this **29th** day of **June** A.D. **2020**.

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

William M. Gardner  
Secretary of State

**DRIVE BRAND STUDIO, INC.**

**CERTIFICATE OF VOTE**

I, Andrew A. Dean, of Cooper Cargill Chant, P.A. do hereby certify that:

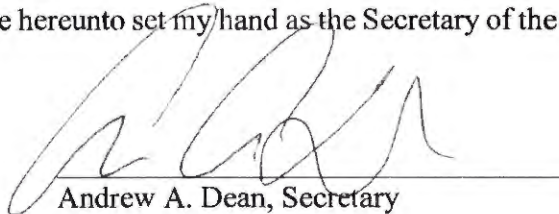
1. In the absence of the Secretary's presence I am the duly elected temporary Secretary of Drive Brand Studio, Inc.;
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of the corporation, duly held on August 10, 2020;

RESOLVED: That this corporation enters into a contract with the New Hampshire Division of Economic Development/Cannon Mountain, 172 Pembroke Road, Concord, NH 03302.

RESOLVED: That Nancy S. Clark, is hereby authorized on behalf of this corporation to enter into said contract with the State and to execute any and all documents, agreements, and other instruments, and any amendments, revisions, or modifications thereto, as she may deem necessary, desirable, or appropriate. Nancy S. Clark is the duly elected President of the corporation.

3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of August 10, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of the corporation this 10<sup>th</sup> day of August, 2020.

  
Andrew A. Dean, Secretary

STATE OF NEW HAMPSHIRE  
COUNTY OF CARROLL

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of August, 2020 by Andrew A. Dean, as Secretary of Drive Brand Studio, Inc.



Monica B. Ellison  
Notary Public/Justice of the Peace  
Print Name: MONICA B. ELLISON  
My Commission Exp: MAY 18, 2021



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/25/2020

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 endorsement(s).

<b>PRODUCER</b> Chalmers Insurance Group - North Conway PO Box 2480 3277 White Mountain Highway North Conway NH 03860	<b>CONTACT NAME:</b> Mindy Prescott, CIC <b>PHONE (A/C, No, Ext):</b> (603) 356-6926 <b>FAX (A/C, No):</b> (603) 356-6934 <b>E-MAIL ADDRESS:</b> mprescott@ChalmersInsuranceGroup.com																					
<b>INSURED</b> Drive Brand Studio, Inc. P.O. Box 2838 North Conway NH 03860	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>Main Street America Assurance</td><td>29939</td></tr><tr><td>INSURER B:</td><td>NGM Insurance Company</td><td>14788</td></tr><tr><td>INSURER C:</td><td>Travelers Property Casualty of America</td><td>25674</td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Main Street America Assurance	29939	INSURER B:	NGM Insurance Company	14788	INSURER C:	Travelers Property Casualty of America	25674	INSURER D:			INSURER E:			INSURER F:		
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INSURER F:																						

**COVERAGES****CERTIFICATE NUMBER:** CL2062537989**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			BPP5122J	09/11/2019	09/11/2020	EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						GENERAL AGGREGATE \$ 4,000,000
							PRODUCTS - COMP/OP AGG \$ 4,000,000
							Exclude Personal and \$ 2,000,000
B	<b>AUTOMOBILE LIABILITY</b>			B1P5122J	09/11/2019	09/11/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY	<input checked="" type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY	<input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident) \$
							Uninsured motorist \$ 1,000,000
	<b>UMBRELLA LIAB</b>						EACH OCCURRENCE \$
	<b>EXCESS LIAB</b>						AGGREGATE \$
	DED						\$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>			UB6J162715	10/22/2019	10/22/2020	PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

Operations: Marketing and Advertising

**CERTIFICATE HOLDER****CANCELLATION**

Cannon Mountain Aerial Tramway & Ski Area 9 Franconia North State Park  Franconia NH 03580	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  <i>Mindy Prescott, CIC</i>
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STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
**DIVISION of PARKS and RECREATION**  
172 Pembroke Road Concord, New Hampshire 03301  
Phone: (603) 271-3556 Fax: (603) 271-3553  
Web: www.nhstateparks.org

August 9, 2017

His Excellency, Governor Christopher T. Sununu  
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, Cannon Mountain to enter into a contract with Drive Brand Studio, Inc. (VC# 174386), North Conway, NH in the amount of \$841,500 for marketing and advertising services upon Governor and Executive Council approval through June 30, 2020, with the option to renew for an additional two-year period upon consent of both parties and Governor and Executive Council approval. **100% Agency Income**

Funding is available as follows pending budge approval for Fiscal Year 2020:

	<b><u>FY 2018</u></b>	<b><u>FY 2019</u></b>	<b><u>FY 2020</u></b>
03-35-35-351510-37030000			
Cannon Mountain	\$280,500	\$280,500	\$280,500
069-500567 Promotional-Marketing Expenses			

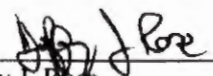
**EXPLANATION**

On April 18, 2017, a Request for Proposals for "*Marketing and Advertising Services for Cannon Mountain*" was advertised on the Department of Administrative Services' website. Four (4) firms submitted proposals by the closing date of May 2, 2017. Drive Brand Studio, Inc. was subsequently recommended based on the scoring provided by the review panel. A list of review panel members and summary of the scoring is attached for your review.

The Division of Parks and Recreation is confident that Drive Brand Studio, Inc. will be able to strategically position Cannon Mountain amongst other competitive ski areas within New Hampshire and New England. Drive Brand Studio's experience will benefit Cannon Mountain through successful implementation of creative and innovative marketing and advertising programs. Their enthusiasm for the sport and the mountain will continue to drive success in overall market gain for Cannon Mountain.

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

Respectfully Submitted,

  
\_\_\_\_\_  
Jeffrey J. Rose  
Commissioner

## Proposal Evaluation for Cannon Mountain's Marketing and Advertising Services

The Division of Parks and Recreation, Cannon Mountain, issued a Request for Proposals (RFP) on April 18, 2017, for a firm to provide marketing and advertising services for Cannon Mountain Aerial Tramway and Ski Area located in Franconia Notch State Park, Franconia, New Hampshire.

The deadline for submitting responses to the RFP was May 2, 2017. The four (4) firms listed below submitted proposals by the deadline and each was scored based on category 1 through 3 of the Criteria for Scoring.

- Drive Brand Studio, Inc. of North Conway, NH
- m5 Marketing Communications of Manchester, NH
- Rumbletree of North Hampton, NH
- Millennium Integrated Marketing of Manchester, NH

Subsequently, the review panel narrowed the field of 4 proposals to the two (2) highest scoring firms. These 2 firms completed an oral and visual presentation, which was then reflected in updated scores for each firm. Below is an overview of scoring for all firms that submitted proposals. The individual scoring results for all 4 firms is attached.

Firm Names	Scoring Criteria			Total score
	Vendor's Work Experience (30%)	Vendor's Technical Capability (50%)	Vendor's Written Proposal/Cost (20%)	
Drive Brand Studio, Inc.	30	46	19	95
m5 Marketing	26	40	14	80
Rumbletree	20	40	11	72
Millennium Integrated	24	32	14	69
Average criteria score:	25	39	15	79

### Criteria for Scoring:

- |  |                    |
|--|--------------------|
| 1. Experience and Qualifications of Key Staff and Subcontractors | Maximum Points: 30 |
| 2. Strategy, Methodology, and Overall Effectiveness              | Maximum Points: 50 |
| 3. Responsiveness to Deliverables and Cost of Services           | Maximum Points: 20 |

The review panel's recommendation is to award this contract to Drive Brand Studio, Inc., based on the scores for the above mentioned criteria.

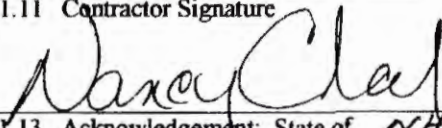
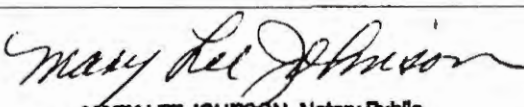
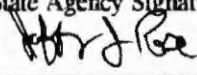


**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS****1. IDENTIFICATION.**

1.1 State Agency Name Department of Resources & Economic Development		1.2 State Agency Address 172 Pembroke Rd, Concord NH 03301	
1.3 Contractor Name Drive Brand Studio, Inc.		1.4 Contractor Address 170 Kearsarge Street, P.O.Box 2838, North Conway, NH 03860	
1.5 Contractor Phone Number 603-356-3030	1.6 Account Number 37030000-500567-35CA0302	1.7 Completion Date June 30, 2020	1.8 Price Limitation \$841,500
1.9 Contracting Officer for State Agency Jeffrey J. Rose, Commissioner		1.10 State Agency Telephone Number 603-271-2411	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Nancy Clark, Owner - Drive Brand Studio	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>CARROLL</u> On <u>5/20/17</u> , 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 <del>or Justice of the Peace</del>  [Seal] <b>MARY LEE JOHNSON, Notary Public</b> My Commission Expires September 19, 2017			
1.13.2 Name and Title of Notary <del>or Justice of the Peace</del>			
1.14 State Agency Signature  Date: <u>6/6/17</u>	1.15 Name and Title of State Agency Signatory <u>Jeffrey J. Rose, Commissioner</u>		
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>M/A</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>Jeanne H. Giguere</u> On: <u>6/12/17</u>			
1.18 Approval by the Governor and Executive Council (if applicable) 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, 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 1.18, 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 1.14 ("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-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. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. 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.

## **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 notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and 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 \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form 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 thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) 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 unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

#### 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 OSC  
Date 5/22/17



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

**Cannon Mountain Marketing/Advertising Services**

**EXHIBIT A**

**Scope of Work:** The Contractor shall provide the State with Marketing and Advertising Services at Cannon Mountain Ski Area in accordance with and as indicated by the Department's Request for Proposals (Marketing/Advertising Services for Cannon Mountain) dated April 18, 2017, which the Contractor acknowledges receipt of, and the following scope of work:

1. The Contractor shall work as Cannon Mountain's partner and shall be responsible for, with the help of research provided by Cannon Mountain staff and augmented by its own valid research, recommending marketing strategies, producing high quality advertising and promotional materials designed to meet Cannon Mountain's goals of increasing year-round visitation with an emphasis on winter. Additional work to promote Franconia Notch State Park shall also be required.
2. The Contractor shall provide at a minimum: creative planning, media planning, media calendars, job estimates, monthly budget and reconciliation updates, detailed monthly billings, and analyzing and quantifying the effectiveness of promotional activities.
3. The Contractor will not provide printing services either directly or via sub-contract. The State's Bureau of Graphic Services through a competitive bid process will provide printing services. The Contractor shall provide design and printing specifications, and may represent the State for press proofs, with Cannon Mountain approval.
4. The Contractor shall meet regularly with Cannon Mountain staff and partners to plan, communicate, and review advertising and marketing strategies. Meetings shall be held monthly, April through September, and weekly, October through March, in person or via phone.
5. The Contractor shall be responsible for negotiation and placement of all media. Cost of placement shall be net to Cannon Mountain and it is expected that the Contractor will negotiate added value. Lift tickets may be used as part of negotiation, upon approval by the Cannon Mountain marketing representative.
6. The Contractor shall recommend advertising schedules for newspapers, magazines, television, radio, interactive, brochure distribution and other media and stay within the total contracted amount, subject to budget approval.
7. The Contractor shall provide expertise in snowsports trade and consumer marketing, as well as, domestic and international markets, to enhance and expand current target markets such as increasing its family and youth markets and attracting first-time skiers and riders.
8. The Contractor shall develop a strategy to position Cannon Mountain uniquely apart from other ski areas/attractions in order to protect and increase its market share.
9. The Contractor may employ qualified sub-contractors as needed. The Contractor agrees to give special emphasis to the use of New Hampshire businesses and businesses with ski/recreation/tourism experience.
10. The Contractor shall propose strategies to expand promotional efforts effectively in new markets and continue to develop traditional markets. Contractor shall provide public relations/publicity support in coordination with the Cannon Mountain staff.

11. The Contractor shall solicit external partner and sponsor relationships to generate additional funding in order to leverage Cannon Mountain's marketing dollars and advertising/marketing efforts. The Contractor shall continue to manage the Lodging Partner Program as part of this effort.
12. The Contractor shall participate in industry events (when requested) such as Ski NH Media Events, Boston Snowsports Expo, and other industry-related trade shows. The Contractor shall be responsible for managing all aspects and execution of the Boston Snowsports Expo. The Contractor may subscribe to industry organizations to be able to compare Cannon with other areas in New Hampshire, the Northeast, and across the country.

## **EXHIBIT B**

### **Contract Price**

The contract price shall not exceed \$280,500 in each State Fiscal Year (2018, 2019, and 2020) for a total of \$841,500.

### **Method of Payment**

Payments shall be made monthly upon satisfactory completion of the work and receipt of itemized invoices, as follows:

- **Agency Fee:** The Contractor shall be paid an annual agency fee of \$53,550 to be divided into twelve monthly installments of \$4,462.50; and
- **Media Costs:** All approved and verified media costs paid by the Contractor during the month may be billed to Cannon Mountain. Copies of the corresponding documentation for media costs must be attached to the invoice.

Submit invoices on the first day of the month to:

Cannon Mountain  
260 Tramway Drive  
Franconia, NH 03580

### **Term**

This contract shall commence upon Governor and Executive Council approval with a completion date of June 30, 2020, with the option to renew for an additional two-year period upon consent of both parties and Governor and Executive Council approval.

## **EXHIBIT C**

There are no additional or special provisions to 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 DRIVE BRAND STUDIO, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on March 20, 2001. 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: 373809



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 21st day of April A.D. 2017.

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

William M. Gardner  
Secretary of State

**DRIVE BRAND STUDIO, INC.**

**CERTIFICATE OF VOTE**

I, Kenneth R. Cargill, of Cooper Cargill Chant, P.A. do hereby certify that:

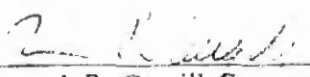
1. I am the duly elected Secretary of Drive Brand Studio, Inc.;
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of the corporation, duly held on April 28, 2017;

RESOLVED: That this corporation enters into a contract with the New Hampshire Division of Economic Development Cannon Mountain, 172 Pembroke Road, Concord, NH 03302.

RESOLVED: That Nancy S. Clark, is hereby authorized on behalf of this corporation to enter into said contract with the State and to execute any and all documents, agreements, and other instruments, and any amendments, revisions, or modifications thereto, as she may deem necessary, desirable, or appropriate. Nancy S. Clark is the duly elected President of the corporation.

3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of April 28, 2017.

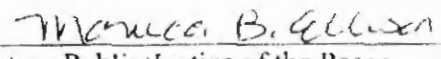
IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of the corporation this 16<sup>th</sup> day of May, 2017.

  
Kenneth R. Cargill, Secretary

STATE OF NEW HAMPSHIRE  
COUNTY OF CARROLL

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of May, 2017 by Kenneth R. Cargill, as Secretary of Drive Brand Studio, Inc.



  
Notary Public/Justice of the Peace  
Print Name: \_\_\_\_\_  
My Commission Exp: \_\_\_\_\_



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/15/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Chalmers Insurance Group - North Conway PO Box 2480 3277 White Mountain Highway North Conway NH 03860 <b>INSURED</b> GLEN GROUP INC & DRIVE BRAND STUDIO INC PO BOX 2838 NORTH CONWAY NH 03860-2838	<b>CONTACT</b> NAME: Mindy Prescott, CIC PHONE (A/C, No, Ext): (603) 356-6926 FAX (A/C, No): (603) 356-6934 E-MAIL: mprescott@ChalmersInsuranceGroup.com ADDRESS:  <b>INSURER(S) AFFORDING COVERAGE</b> INSURER A MMG Insurance Company NAIC # 15997 INSURER B Travelers Indemnity Co of America 25666 INSURER C: INSURER D: INSURER E: INSURER F:
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**COVERAGES** **CERTIFICATE NUMBER: CL1751526178** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>X</b>	<b>COMMERCIAL GENERAL LIABILITY</b>					
<b>A</b>	CLAIMS-MADE <b>X</b> OCCUR		BP10987286	9/11/2016	9/11/2017	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 Exclude Personal and \$
	GENL AGGREGATE LIMIT APPLIES PER					
<b>X</b>	<b>POLICY</b> <b>PRO-JECT</b> <b>LOC</b>					
	OTHER					
<b>A</b>	<b>AUTOMOBILE LIABILITY</b>					
	ANY AUTO					COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	ALL OWNED AUTOS <b>X</b> SCHEDULED AUTOS		KA10987286	9/11/2016	9/11/2017	BODILY INJURY (Per person) \$
<b>X</b>	HIRED AUTOS <b>X</b> NON-OWNED AUTOS					BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						Uninsured motorist combined \$ 1,000,000
	<b>UMBRELLA LIAB</b> <b>OCCUR</b>					EACH OCCURRENCE \$
	<b>EXCESS LIAB</b> <b>CLAIMS-MADE</b>					AGGREGATE \$
	<b>DED</b> <b>RETENTION \$</b>					\$
<b>B</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	<b>Y/N</b>				<b>PER STATUTE</b> <b>OTH-ER</b>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<b>N/A</b>	UB7D222619	10/22/2016	10/22/2017	E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

Operations: Advertising & Marketing

## CERTIFICATE HOLDER

Cannon Mountain Aerial Tramway & Ski Area  
9 Franconia North State Park  
Franconia, NH 03580

## CANCELLATION

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

M Prescott, CIC/MPRES

Mindy Prescott, CIC

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