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

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November 30, 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 (DRED), Division of Parks and Recreation, Cannon Mountain to enter into a Memorandum of Agreement (MOA) with the Franconia Ski Club (VC #269330), Franconia, NH in an amount not to exceed \$20,000 for the construction and installation of winch anchor points necessary for Cannon to perform slope side grooming at the Mittersill Terrain upon Governor and Executive Council approval through December 31, 2015. 100% Capital Funds

Funding is available as follows:

	<u>FY 2016</u>
03-35-35-350030-17860000	
09-145:1-X-C Mittersill	
034-500162 Capital Projects	\$20,000

EXPLANATION

On February 6, 2013 (Item #47), the Governor and Executive Council approved an Agreement between DRED and Franconia Ski Club (FSC) to accept a gift of an estimated (or in excess of) \$3.5 million in snowmaking, new and existing terrain enhancement, new surface lift, and race/training venue project at Mittersill. With the Mittersill expansion project already underway, DRED is now seeking to enter into this MOA with FSC to provide construction and installation of winch anchor points that are necessary for Cannon to perform slope side grooming. By utilizing the machinery and personnel already on site, the Department is able to keep the cost to a minimum and complete the project this year, as well as minimizes the environmental impact in that area by using the one contractor.

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

Respectfully submitted,

Jeffrey J. Rose
Commissioner

JJR:lm1

MEMORANDUM OF AGREEMENT
between the
DEPARTMENT of RESOURCES AND ECONOMIC DEVELOPMENT
and
FRANCONIA SKI CLUB

This Memorandum of Agreement (MOA) is entered into as of this 21st day of October, 2015, by and between the State of New Hampshire Department of Resources and Economic Development (DRED) and the Franconia Ski Club (FSC), Franconia, New Hampshire for the construction and installation of winch anchor points necessary for slope grooming on the Mittersill terrain area at Cannon Mountain.

Whereas, the State of New Hampshire owns the Mittersill terrain area, which is managed by DRED through the Division of Parks and Recreation, Cannon Mountain Aerial Tramway and Ski Area (Cannon), located at Franconia Notch State Park in Franconia, New Hampshire;

Whereas, DRED and FSC entered into an Agreement dated January 23, 2013 (the "Agreement") which was approved by the Governor and Executive Council on February 6, 2013, Item #47, pursuant to which DRED was granted authority to accept the gift of an estimated (or in excess of) \$3.5 million in snowmaking, new and existing terrain enhancement, new surface lift, and race/training venue project at Mittersill, including the funding, design, planning, permitting, construction, completion, and all related infrastructure of said project, to be completed by FSC, and surrendered wholly to the State upon completion of the project in exchange for agreed upon use provisions for FSC and its approved subcontractors and the ongoing operation by DRED and Cannon Mountain of the trails as outlined in the Agreement;

Now, therefore, in order to provide for low-cost and low environmental impact construction and installation of the winch anchor points necessary for slope side grooming at Mittersill, FSC agrees to perform and shall perform the work identified in the Scope of Services. The State consents to FSC's use of its subcontractor, Glen Builders, for performance of FSC's obligations under this agreement. .

SCOPE OF SERVICES

Design, construction, and installation of the nine (9) necessary winch anchor points, as spec'd and placed on the topographical map of the Mittersill terrain area (and referenced in a walk-through of the area) by Cannon's Trail Maintenance Supervisor / Equipment Operator Foreman. Said scope shall include all design work, welding, cutting, and construction, machine or hand drilling of the slope area(s) in question, and mechanical or hand installation of said winch anchor points, including pre and post-installation slope work, grouting, and the like. Said winch anchor points shall be approved by Cannon's Trail Maintenance Supervisor / Equipment Operator Foreman. The Club will perform its obligations under this agreement in a workmanlike manner.

The following provisions of the Agreement are hereby incorporated by reference into this MOA: Section 4(a) - Assignment; Section 5 - Compliance with Law; Section 6 - Club's Relationship to the State; Section 7 - Conflict of Interest; Section 15 - Defense and Indemnification; Section 21 - Choice of Law; Section 22 - Third Parties.

FUNDING

DRED shall provide funding reimbursement to FSC for actual expenses incurred for labor, equipment and materials. The total reimburseable cost for the work under this MOA shall not exceed \$20,000.

INVOICING

FSC shall provide DRED with a detailed invoice listing the work performed.

LIABILITY

The obligation of FSC under section 15 of the Agreement "Defense and Indemnification" shall apply to FSC's obligations hereunder.

TERMINATION

Either party may terminate this MOA upon providing written notice to the other, thirty (30) days prior to termination. Upon termination, FSC shall be paid for all work completed prior to the termination.

DURATION

This MOA shall continue in effect until December ^{31 (per email approval)} ~~15~~, 2015, unless terminated earlier by either party, or extended in writing by subsequent agreement of the parties and acceptance by the Governor and Executive Council.

AGREEMENT

In WITNESS THEREOF, the parties hereto have executed this MOA, which shall become effective on the date the Governor and Executive Council of the State of New Hampshire approve this MOA.

**State of New Hampshire
Department of Resources and Economic Development**

Jeffrey J. Rose
Jeffrey J. Rose
Commissioner

12/1/15
Date

Franconia Ski Club

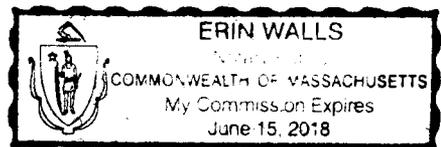
David E. Fitzgerald
David E. Fitzgerald
FSC Board Member; Immediate Past-President
Chair, Mittersill Project Capital Campaign

10/27/2015
Date

State: MA
County: Suffolk

On this 21st day of October, 2015 before me, the undersigned notary public, personally appeared David E. Fitzgerald, Board Member, Franconia Ski Club, provide to me through satisfactory evidence of identification, which was drivers license (state form of identification), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its state purpose.

Erin Walls
(Official Signature and Seal of Notary Public)



APPROVED AS TO FORM, SUBSTANCE AND EXECUTION



NH Attorney General's Office

12/2/15

Date

Governor and Executive Council Approval:

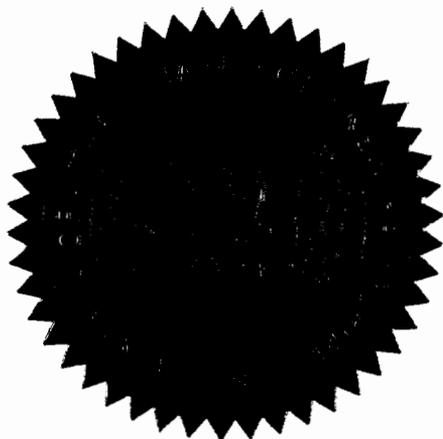
Date: _____

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 FRANCONIA SKI CLUB is a New Hampshire nonprofit corporation formed April 21, 1933. 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 21st day of October A.D. 2015

Handwritten signature of William M. Gardner in cursive script.

William M. Gardner
Secretary of State

FRANCONIA SKI CLUB

SECRETARY'S CERTIFICATE

I, Laura Keating, do hereby certify that I am the duly elected, qualified and acting Secretary of the Board of Directors of the Franconia Ski Club, a New Hampshire nonprofit corporation (the "Company"), and that:

1. The following-named individual is a member of the Board of Directors of the Company, holding the titles set forth opposite their name:

<u>Name</u>	<u>Titles</u>
David E. Fitzgerald	Board Member; Immediate Past President; and Chair, Mittersill Project Capital Campaign Committee

2. Attached hereto as Exhibit A is a true, correct and complete copy of the resolution adopted by unanimous consent of the Board of Directors of the Corporation on October 20, 2015, which resolution has not been amended repealed and is in full force and effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 2nd day of December 2015.

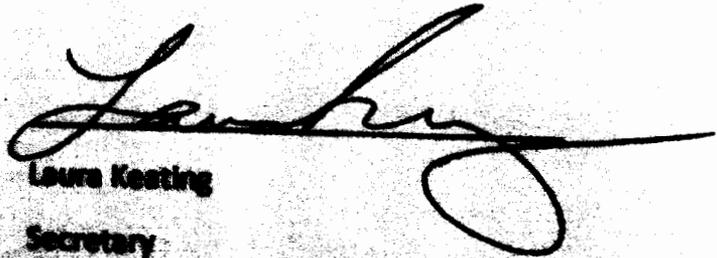

Laura Keating
Secretary

EXHIBIT A

RESOLVED: That the Memorandum of Understanding between the Franconia Ski Club and the State of New Hampshire to install anchor points on the Mittersill trails, as distributed to the Board of Directors on October 20, 2015, is hereby approved ratified and confirmed and that the execution and delivery of such agreement by David E. Fitzgerald on behalf of the Company are hereby approved, ratified and confirmed, and performance by the Company of its obligations under such agreement and all other acts and things, deemed necessary, convenient or desirable in his discretion to carry out the transactions, agreements and documents contemplated thereby, are hereby authorized, approved, ratified and confirmed.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11-12-15

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 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).

PRODUCER/ Frazier Insurance Agency, Inc. Agent- Box 1250, Midlothian VA 23113 Processing Office: Lawson Insurance LLC 1643 24th St West, #110, Billings MT 59102	CONTACT NAME: Jack Lawson PHONE (AG. No. Ext): (800) 823-5297 FAX (AG. No.): (406) 652-3395 E-MAIL ADDRESS: jack@lawsonins.net
	INSURER(S) AFFORDING COVERAGE INSURER A: United States Fire Insurance Company INSURER B: United States Fire Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:

INSURED Sports & Recreation Providers Association (Purchasing Group) & It's Participating Members - Member- National Ski School Program Inc-ALPINE and It's Participating Members
1302 24th St West #169, Billings MT 59102

MEMBER: Franconia Ski Club

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	WOOD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			SRPGAPM-101-0715 Cert#194782	11/01/15	11/01/16	EACH OCCURRENCE \$ 1,000,000.
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	<input checked="" type="checkbox"/>					DAMAGE TO RENTED PREMISES (Ex occurrence) \$ 300,000.
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000.
	<input checked="" type="checkbox"/> Includes Athletic Participants						PERSONAL & ADV INJURY \$ 1,000,000.
	<input checked="" type="checkbox"/> Includes Sexual Abuse & Molestation (\$100,000/\$100,000)						GENERAL AGGREGATE \$ 5,000,000.
	GENL AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COM/OP AGG \$ 5,000,000.
	<input checked="" type="checkbox"/> POLICY	<input type="checkbox"/> PRO	<input type="checkbox"/> LOC				\$
A	AUTOMOBILE LIABILITY			SRPGAPM-101-0715 Cert#194782	11/01/15	11/01/16	COMBINED SINGLE LIMIT (Ex accident) \$ 1,000,000.
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY* (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DED						\$
	RETENTION \$						\$
B	Excess Accident Medical Protection Deductible - \$500. 52 Week Benefit Period Claim Reporting Deadline - 90 days from date of incident			US469278	11/01/15	11/01/16	Maximum Medical Benefit per claim- \$ 25,000. AD&D Benefit Per Claim - \$ 2,500.

NSSP Member - Franconia Ski Club, Box 462, Franconia, NH 03580 ADDED AS INSURED
 NSSP-ALPINE PARTICIPATING MEMBER for Nov. 1, 2015-16 for Ski Racing Instruction, "Dryland"
 Fitness Instruction, Summer/Fall Ski Camps, Non-Owned & Hired Auto.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 CGL Deductible - \$ 0.00 each Bodily Injury or Property Damage Claim
 Participant Legal Liability Coverage for participants in SKI RACES/ COMPETITIONS requires that each participant (or their Parent/ Guardian) sign a release/ waiver form PRIOR to Competing, Partcicing or Instruction.

CERTIFICATE HOLDER IS AN ADDITIONAL INSURED but only as respects the operations of the Named Insured NSSP Participating Member - Franconia Ski Club.

CERTIFICATE HOLDER Cannon Mountain Ski Area Fanconia Notch State Park Headquarters Building 260 Tramway Drive 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 <i>John W. Frazier</i>
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