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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

July 6, 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, Cannon Mountain **RETROACTIVE** authority to exercise a contract renewal option with Glen Group, Inc. (VC# 174386), North Conway, NH in the amount of \$561,000 for advertising and promotional services effective July 1, 2015 through June 30, 2017. The original contract was approved by Governor and Executive Council on July 10, 2013, Item #61. 100% Ski Area Funds.

Funds to support this request are anticipated to be available in the following account in State FY 2016 and FY 2017 upon availability and continued appropriation of funds in the future operating budget:

	<u>FY2016</u>	<u>FY2017</u>
03-35-35-351510-37030000		
Cannon Mountain		
069-500567 Promotional Marketing Expense	\$280,500	\$280,500

**EXPLANATION**

Glen Group has led a successful advertising and promotional campaign for Cannon over the last two years. With approval of this renewal, they will continue to provide a successful new multi-year marketing strategy. Glen Group's marketing services continue to contribute to maintaining a competitive position in the marketplace for Cannon Mountain. Their current marketing campaign for Cannon has gained national recognition as a finalist for the National Ski Areas Association 2015 Marketing Awards. We expect that their services and experience will continue to exceed expectations and elevate Cannon Mountain as we proceed with new and continued advertising and marketing efforts. To that end, we have added a modest increase for additional efforts within the scope of services provided. With this renewal, we look forward to continuing the successful and ongoing marketing momentum for Cannon Mountain. An evaluation of the renewal option conducted prior to making the decision to proceed with this request was not completed until after July 1<sup>st</sup> causing a short delay of this submission.

Respectfully Submitted,

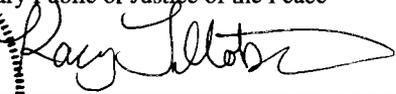
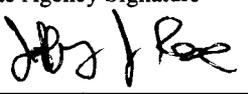
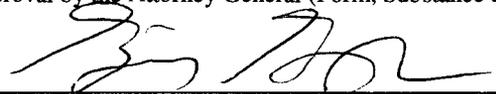
  
Jeffrey J. Rose  
Commissioner

Subject: Cannon Mountain Advertising and Marketing Renewal Services 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 <u>Department of Resource &amp; Economic Development</u>		1.2 State Agency Address <u>P.O. Box 1856, Concord, NH 03302-1856</u>	
1.3 Contractor Name <u>Glen Group, Inc.</u>		1.4 Contractor Address <u>170 Kearsarge St. Box 2838, No. Conway, NH 03860</u>	
1.5 Contractor Phone Number <u>603-356-3030</u>	1.6 Account Number <u>37030000-500567-35CA0302</u>	1.7 Completion Date <u>June 30, 2017</u>	1.8 Price Limitation <u>\$561,000</u>
1.9 Contracting Officer for State Agency <u>Jeffrey J. Rose, Commissioner</u>		1.10 State Agency Telephone Number <u>603-271-2411</u>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <u>Nancy S. Clark</u>	
1.13 Acknowledgment: State of <u>NH</u> , County of <u>Carroll</u> On <u>5/26/15</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.			
Signature of Notary Public or Justice of the Peace 			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Kay Wilson, Notary Public</u>			
1.14 State Agency Signature 		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>11/1</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>7/9/15</u>			
1.18 Approval by the Governor and Executive Council By: On:			

**RECEIVED**  
**MAY 27 2015**  
**D.R.E.D.**

**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 *OSC*  
Date *5/26/15*

**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 ASC  
Date 5/26/15

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**

**Cannon Mountain Marketing/Advertising Services**

**EXHIBIT A**

Scope of Work: The purpose of this Contract is for the Contractor to provide the State with Marketing and Advertising Services at Cannon Mountain Ski Area for two fiscal years 2016 and 2017. The Contractor requires receipt of, and the following scope of work:

1. The Contractor will work as Cannon Mountain's partner and will be responsible for, with the help of research provided by Cannon Mountain and augmented by its own valid research, recommending marketing strategies and 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 will be required;
2. The Contractor must 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 work cooperatively and financially manage the current web vendor account, S. Max Kloeppel Web Design. Contractor must dedicate approximately \$10,000 in FY16 and \$15,000 in FY17 for web development.
4. 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. Contractor shall provide design and printing specifications, and may represent the State for press proofs, with Cannon Mountain approval;
5. The Contractor will meet regularly with Cannon Mountain staff and partners to plan, communicate, and review advertising and marketing strategies. Meetings should be held monthly, April through September and weekly, October through March, in person or via phone;
6. The Contractor will be responsible for negotiation and placement of all media. Cost of placement will 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;
7. The Contractor will recommend advertising schedules for newspapers, magazines, television, radio, interactive, brochure distribution and other media and stay within the total contracted amount, subject to legislative approval of proposed budget;
8. The Contractor will provide expertise in snowsports trade and consumer marketing, as well as domestic and international markets, to enhance and expand current target markets.
9. The Contractor must develop a strategy to position Cannon Mountain uniquely apart from other ski areas/attractions in order to protect and increase its market share;
10. The Contractor may employ qualified sub-contractors as needed. Preference should be given to New Hampshire businesses and businesses with ski/recreation/tourism experience when possible;
11. The Contractor must propose strategies to expand promotional efforts effectively in new markets and continue to develop traditional markets. Contractor will provide public relations/publicity support in coordination with the Cannon Mountain staff;

12. The Contractor will 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 will continue to manage the Lodging Partner program as part of this effort.
13. The Contractor will participate in industry events (when requested) such as Ski NH Media Events, Boston Snowsports Expo and Eastern Ski Writers' Association Meetings. The contractor will 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

Payments shall be made upon satisfactory completion of work and receipt of itemized invoices:

Agency Fee:

Annual Agency Fee: \$53,550 (fifty three thousand five hundred fifty dollars)

This annual fee will be divided into twelve monthly payments of \$4,462.50 (four thousand four hundred sixty two dollars and 50 cents)

Monthly invoices will be sent on the first day of the month to:

Cannon Mountain  
260 Tramway Drive  
Franconia, NH 03580

Media:

Each month all approved and verified media invoices paid by the Contractor during the month shall be billed to Cannon Mountain. The monthly invoice and corresponding documentation of media payments shall be sent on the first day of the month to Cannon Mountain at the above address.

Total contract shall not exceed: \$280,500 in each State fiscal year, and \$561,000 in total.

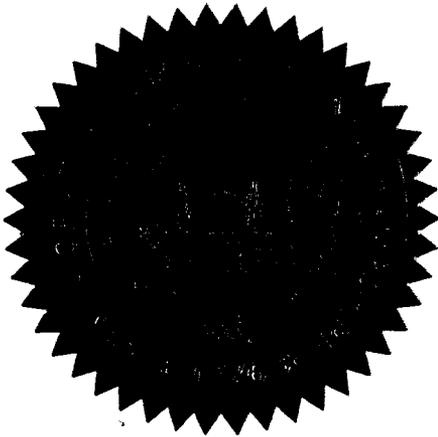
### EXHIBIT C

There are no additional or special provisions in 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 GLEN GROUP, INC. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on March 20, 2001. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 7<sup>th</sup> day of May, A.D. 2015

A handwritten signature in cursive script, appearing to read 'William M. Gardner', written in black ink.

William M. Gardner  
Secretary of State

**GLEN GROUP, INC.**

**CERTIFICATE OF VOTE**

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

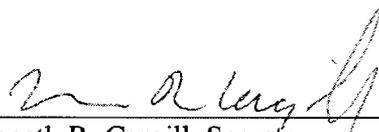
1. I am the duly elected Secretary of Glen Group, Inc.;
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of the corporation, duly held on May 28, 2015;

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.

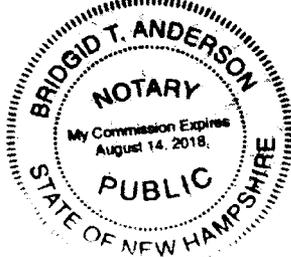
3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of May 28, 2015.

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of the corporation this 8<sup>th</sup> day of July, 2015.

  
\_\_\_\_\_  
Kenneth R. Cargill, Secretary

STATE OF NEW HAMPSHIRE  
COUNTY OF CARROLL

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of July, 2015 by Kenneth R. Cargill, as Secretary of Glen Group, Inc.



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



Item # 61 7/10/13



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

June 21, 2013

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, Cannon Mountain to enter into a contract with Glen Group, Inc. (VC# 174386), North Conway, NH in the amount of \$510,000 for advertising and promotional services upon Governor and Executive Council approval for the period July 15, 2013 through June 30, 2015, with the option to renew for an additional two-year period upon consent of both parties and Governor and Executive Council approval. 100% Ski Area Fund

Funding is available in account titled, Cannon Mountain, as follows:

		<u>FY2014</u>	<u>FY2015</u>
03-35-35-351510-37030000-069-500567	Promotional – Marketing Exp	\$255,000	\$255,000

**EXPLANATION**

In accordance with the State of New Hampshire Code of Administrative Rules (Adm 322.07), the Division of Park and Recreation, Cannon Mountain issued a Request for Proposals on May 3, 2013. Subsequently, three agencies inquired and one submitted a formal written proposal in May 2013.

A selection committee, John DeVivo, General Manager for Cannon Mountain, Greg Keeler, Marketing Director for Cannon Mountain, and Tai Freigh, Communications Manager for the Division of Travel and Tourism Development reviewed the proposal and scored it based on a pre-determined set of criteria. The Committee's decision was Glen Group, Inc. A copy of the scoring summary is included for your information.

The Division of Parks and Recreation is confident that Glen Group will be able to strategically position Cannon Mountain amongst other competitive areas. Glen Group's experience will continue to elevate Cannon Mountain to a new advertising and marketing level and their enthusiasm for the sport and the mountain will prove to be a 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, *JRM*

Jeffrey J. Rose  
Commissioner

**R** coring Attachment

**Combined Worksheet for Scoring Cannon Advertising Agency Proposal**

Total scores given by the three-member selection committee.

Firms that Responded to Marketing RFP	Criteria 1 Work Experience Max. Score: 90	Criteria 2 Technical Capability Max. Score: 180	Criteria 3 Written Proposal Max. Score: 30	Agency Fee % of total Contract	Total Max Score: 300
Glen Group, Inc. North Conway, NH	81	161	28	20%	270

**Selection Committee:**

Tai Freigh, Communications Manager, Division of Travel & Tourism Development  
 John DeVivo, General Manager, Cannon Mountain Ski Area & Franconia Notch State Park  
 Greg Keeler, Director of Marketing & Sales, Cannon Mountain Ski Area & Franconia Notch State Park

Subject: Cannon Mountain Advertising and Marketing Services 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 <u>Department of Resource &amp; Economic Development</u>		1.2 State Agency Address <u>P.O. Box 1856, Concord, NH 03302-1856</u>	
1.3 Contractor Name <u>Glen Group, Inc.</u>		1.4 Contractor Address <u>170 Kearsarge St. Box 2838, No. Conway, NH 03860</u>	
1.5 Contractor Phone Number <u>603-356-3030</u>	1.6 Account Number <u>010-035-3703-069-13</u>	1.7 Completion Date <u>June 30, 2015</u>	1.8 Price Limitation <u>\$510,000.00</u>
1.9 Contracting Officer for State Agency <u>Greg Keeler, Advertising Manager</u>		1.10 State Agency Telephone Number <u>603-823-8800 ext. 789</u>	
1.11 Contractor Signature <u>[Signature]</u>		1.12 Name and Title of Contractor Signatory <u>Nancy Clark, President</u>	
1.13 Acknowledgement: State of <u>New Hampshire</u> County of <u>Carroll</u> On <u>6.17.13</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 or Justice of the Peace <u>[Signature]</u>			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Sarah McCarthy</u>			
1.14 State Agency <u>[Signature]</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>N/A</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: <u>[Signature]</u> On: <u>6/24/13</u>			
1.18 Approval by the Governor and Executive Council By: <u>[Signature]</u> 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 KJSC  
Date 6/12/13

**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 MSC  
Date 6/17/13

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

**15. WORKERS' COMPENSATION.**

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

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

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

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

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

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

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

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

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

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

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

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

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

Contractor Initials NJC  
Date 6/12/13

**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 purpose of this Contract is for the Contractor to provide the State with Marketing and Advertising Services at Cannon Mountain Ski Area for two fiscal years, with a two-year option to renew upon written consents of both parties and Governor and Executive Council approval. The Contractor requires receipt of, and the following scope of work:

1. The Contractor will work as Cannon Mountain's partner and will be responsible for, with the help of research provided by Cannon Mountain and augmented by its own valid research, recommending marketing strategies and 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 will be required;
2. The Contractor must 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 work cooperatively and financially manage the current web vendor account, S. Max Kloeppel Web Design. Contractor must dedicate approximately \$10,000 in FY14 and \$15,000 in FY15 for web development. FY16/17 amounts TBD, if contract is extended;
4. 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. Contractor shall provide design and printing specifications, and may represent the State for press proofs, with Cannon Mountain approval;
5. The Contractor will meet regularly with Cannon Mountain staff and partners to plan, communicate, and review advertising and marketing strategies. Meetings should be held monthly, April through September and weekly, October through March, in person or via phone;
6. The Contractor will be responsible for negotiation and placement of all media. Cost of placement will 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;
7. The Contractor will recommend advertising schedules for newspapers, magazines, television, radio, interactive, brochure distribution and other media and stay within the total contracted amount, subject to legislative approval of proposed budget;
8. The Contractor will provide expertise in snowsports trade and consumer marketing, as well as domestic and international markets, to enhance and expand current target markets.
9. The Contractor must develop a strategy to position Cannon Mountain uniquely apart from other ski areas/attractions in order to protect and increase its market share;
10. The Contractor may employ qualified sub-contractors as needed. Preference should be given to New Hampshire businesses and businesses with ski/recreation/tourism experience when possible;
11. The Contractor must propose strategies to expand promotional efforts effectively in new markets and continue to develop traditional markets. Contractor will provide public relations/publicity support in coordination with the Cannon Mountain staff;

12. The Contractor will solicit external partner and sponsor relationships to generate additional funding in order to leverage Cannon Mountain's marketing dollars and advertising/marketing efforts;
13. The Contractor, at Contractor's expense, will participate in industry events (when requested) such as Ski NH Media Events, Boston Snowsports Expo and Eastern Ski Writers' Association Meetings. 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

Payments shall be made upon satisfactory completion of work and receipt of itemized invoices:

Agency Fee:

Annual Agency Fee: \$51,000 (fifty-one thousand dollars)

This annual fee will be divided into twelve monthly payments of \$4,250.00 (four thousand two hundred and fifty dollars)

Monthly invoices will be sent on the first day of the month to:

Cannon Mountain  
260 Tramway Drive  
Franconia, NH 03580

Media:

Each month all approved and verified media invoices paid by the Contractor during the month shall be billed to Cannon Mountain. The monthly invoice and corresponding documentation of media payments shall be sent on the first day of the month to Cannon Mountain at the above address.

Total contract shall not exceed: \$255,000 in each State fiscal year, and \$510,000 in total.

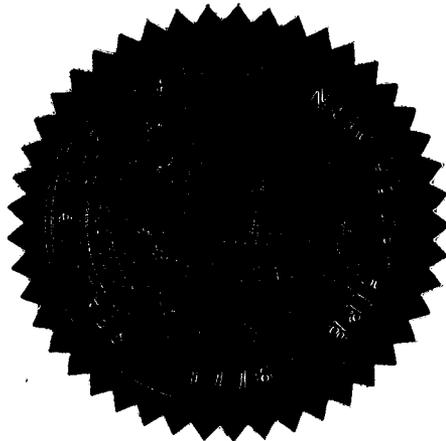
### EXHIBIT C

There are no additional or special provisions in 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 GLEN GROUP, INC. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on March 20, 2001. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 12<sup>th</sup> day of June, A.D. 2013

A handwritten signature in cursive script, reading "William M. Gardner".

William M. Gardner  
Secretary of State

**GLEN GROUP, 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 Glen Group, 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 June, 2013;

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

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.

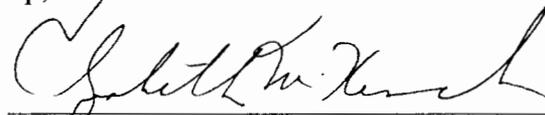
3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of June 10, 2013.

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of the corporation this 10<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
Kenneth R. Cargill, Secretary

STATE OF NEW HAMPSHIRE  
COUNTY OF CARROLL

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of June, 2013 by Kenneth R. Cargill, as Secretary of Glen Group, Inc.

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



