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STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
DIVISION of PARKS and RECREATION
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856
PHONE: (603) 271-3556 FAX: (603) 271-3553 E-MAIL: nhparks@dred.state.nh.us
WEB: www.nhstateparks.org

September 18, 2012

His Excellency, Governor John H. Lynch
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Resources and Economic Development, Division of Parks and Recreation to amend a Memorandum of Agreement (MOA) with The Old Man of the Mountain Revitalization Fund, Inc. *d/b/a* Old Man of the Mountain Legacy Fund of Concord, NH, to work cooperatively to memorialize the Old Man of the Mountain at Franconia Notch State Park, by extending the end date to December 31, 2015 from the original end date of December 31, 2012. No funding is involved in this time extension. The original MOA was approved by the Governor and Executive Council on February 7, 2007, Item #48.

EXPLANATION

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

The original MOA formalized a partnership between the Division and the Old Man of the Mountain Legacy Fund to develop and fundraise for project initiatives memorializing the Old Man of the Mountain. The MOA is due to expire on December 31, 2012. This amendment to the MOA is to provide for and continue the same partnership for another 4-year period through December 31, 2015.

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

Respectfully submitted,

Philip A. Bryce
Director

Concurred,

George M. Bald
Commissioner

PAB/GMB/mc
Attachments

AMENDMENT TO
MEMORANDUM OF AGREEMENT

THIS AMENDMENT is made to a Memorandum of Agreement ("Agreement") pursuant to the terms of said Agreement by and between the New Hampshire Department of Resources and Economic Development, Division of Parks and Recreation ("Division") and The Old Man of the Mountain Revitalization Fund, Inc. d/b/a Old Man of the Mountain Legacy Fund ("Legacy Fund"), P.O. Box 6, Franconia, NH 03580.

WHEREAS, the parties have entered into the Agreement above mentioned, approved by the Governor and Executive Council on February 7, 2007, Item #48, in which the Division and the Legacy Fund works cooperatively to memorialize the Old Man of the Mountain at Franconia Notch State Park ("Park); and

WHEREAS, pursuant to the provisions of Item 14 of the Agreement, the Agreement may be amended only by an instrument in writing signed by both parties hereto and approved by the Governor and Executive Council;

NOW THEREFORE in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties do hereby agree as follows:

1. Term of Contract
   To amend Item 1 by extending the term of the Agreement to commence upon date of signatures by all parties and ending on December 31, 2015, unless sooner terminated in accordance with the provisions of the Agreement.

2. Continuance of Agreement
   Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement and the obligations of the parties thereunder, shall remain in full force and effect in accordance with the terms and conditions set forth therein.

IN WITNESS WHEREOF, the parties hereunto have set their hand on the date herein named:

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

Richard Hamilton 8-22-12
Richard Hamilton, Chairman Date
Duly Authorized

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

8-27-12
Philip A. Bryce, Director Date

Concur TM
8/30/12
George M. Bald, Commissioner Date

Approved to Form, Substance, and Execution,
9/20/12
Attorney General's Office, NH Department of Justice

Governor and Executive Council Approved: Date _____ Item # _____
PAB/ttl.082012

Item # 48 2/7/07

STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
DIVISION of PARKS and RECREATION
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

GEORGE M. BALD
Commissioner

ALLISON MCLEAN
Director

(603)271-3556
FAX: (603)271-3553
WEB: www.nhstateparks.org
E-MAIL: nhparks@dred.state.nh.us

February 7, 2007

His Excellency Governor John H. Lynch
And the Honorable Executive Council
State House
Concord, NH 03301

REQUESTED ACTION

Authorize the Department of Resources and Economic Development, Division of Parks and Recreation to enter into a Memorandum of Agreement with The Old Man of the Mountain Revitalization Fund, Inc. d/b/a Old Man of the Mountain Legacy Fund to work cooperatively to memorialize the Old Man of the Mountain at Franconia Notch State Park upon approval of Governor & Executive Council to December 31, 2012.

EXPLANATION

The State symbol, The Old Man of the Mountain located in Franconia Notch State Park, collapsed on May 3, 2003. This loss has resulted in a decline of tourism and related revenues. The Old Man of the Mountain Task Force was established for the purpose of making recommendations for memorializing the Old Man of the Mountain and set forth a variety of initiatives for this purpose. The Old Man of the Mountain Revitalization Fund, Inc., a non-profit organization was established for the purpose of raising funds necessary to implement the ideas generated by the Old Man of the Mountain Task Force.

The agreement formalizes the partnership between the Division and the Revitalization Fund to develop and fund raise for project initiatives to memorializing the Old Man of the Mountain in Franconia Notch State Park. All donations raised by the Revitalization Fund and donated to the Division for the purposes of supporting these initiatives shall go before Governor and Executive Council for approval separately.

The attached agreement has been approved by the Department of Justice as to form, substance and execution.

Respectfully submitted,
Allison A. McLean
Allison A. McLean
Director

Concurred,
for
George M. Bald
Commissioner

AAM/TTL/jc

Attachments

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

OLD MAN OF THE MOUNTAIN
LEGACY FUND

MEMORANDUM OF AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

1. TERM: This Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Council of the State of New Hampshire approve this agreement ("the Effective Date") through December 31, 2012.

2. PROJECT INITIATIVES: The Legacy Fund shall at its sole expense provide the Division with a proposal of all initiatives recommended to be implemented within the Park. The proposal shall include the scope of work and cost estimates. To the extent possible, all Project Initiatives shall incorporate energy and resource-efficient, low-maintenance designs.

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

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

a) *Project Initiatives.* Project Initiatives made pursuant to this Agreement may include but are not limited to viewfinders at the shore of Profile Lake, interpretive kiosks, sculptures, school curriculum, traveling exhibits, and a visitors center/museum or enhancements to the existing Old Man of the Mountain Museum located in Franconia Notch State Park.

b) *Site selection.* The Legacy Fund shall at its sole expense provide the Division with a detailed proposal for recommended siting and landscaping forthe Project Initiatives within the Park. The Division shall provide the Legacy Fund, at no cost, existing Park records, drawings or plans that would support this effort. Final decision for site selection and landscaping shall be made by the Division Director.

c) *Site development.* The Legacy Fund shall at its own expense contract for and support the financing of the Project Initiatives. The Division shall provide project oversight and coordinate necessary Section 106 (historical resources), Natural Heritage, and LWCF Section 6(f) reviews. The Legacy Fund agrees to support the hiring and financing of an archeologist and any other consultant, if required for compliance with Sections 6(f) and 106. The Legacy Fund agrees that no work will begin until all applicable regulatory approvals have been obtained by the Division.

d) *Maintenance.* The Division shall at its sole expense maintain any and all Project Initiatives developed and installed pursuant to this Agreement.

3. REPRESENTATION:

a) *Legacy Fund meetings.* Meetings of the Legacy Fund shall be attended by the Director of the Division of Parks and Recreation or designee to further the purposes herein on behalf of the Division.

b) *Project planning.* Project planning and implementation of initiatives developed under this Agreement (Project Initiatives) and destined for the Park shall be coordinated between the Division Deputy Director and the Legacy Fund President.

c) *Design and installation activities.* The design and installation of Project Initiatives, including but not limited to memorials, programs, signage and exhibits, shall be coordinated between the DRED Architect, the Division marketing manager, and the Legacy Fund Executive Assistant.

4. FUNDRAISING: The Legacy Fund shall fund raise to provide financial support of Old Man of the Mountain Project Initiatives destined for the Park. The Legacy Fund shall be responsible for all costs, staffing, and administration of its fundraising activities.

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

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

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

6. SPECIAL USE PERMITS: Special Use Permits are required to grant the Legacy Fund permission to hold special events at the Park that go beyond the routine recreational activities at the Park. The Legacy Fund shall apply for a Special Use Permit from the Park Manager in accordance with park permitting processes, at least one month prior to the event. Special events and all related activities shall not adversely impact the use of the Park by the public.

7. CONFLICT RESOLUTION: The Legacy Fund shall comply with all reasonable requests made by the State. The decision of the Commissioner relative to the proper performance of the conditions of this Agreement shall be final and conclusive as to each matter not covered in the Agreement and questions that may arise in connection with the privileges granted, and also as to each matter which is not clearly covered herein.

8. COMPLIANCE WITH LAWS AND REGULATIONS – EQUAL OPPORTUNITY: The Legacy Fund shall comply with all statutes, laws, regulations, andorders of federal, state, county or municipal authorities which impose any obligation or duty upon the Legacy Fund, including but not limited to civil rights and equal opportunity laws. The Legacy Fund shall also comply with the policies and regulations of the Department of Resources and Economic Development. The Legacy Fund shall procure at its expense all necessary licenses and permits required in connection with the activities described herein.

   During the term of this Agreement, the Legacy Fund shall not discriminate against members of the public, employees or applicants for employment because of race, color, religion, creed, age, sex, disability or national origin and will take affirmative action to prevent such discrimination. The Legacy Fund shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 CFR Part 60), and with any rules, regulations and guidelines as the State of New Hampshire issues to implement these regulations.

   The Legacy Fund shall comply with all applicable copyright laws

9. PERSONNEL: The Legacy Fund shall, at its own expense and at all times, provide all personnel necessary to perform the services. The Legacy Fund warrants that all personnel engaged in the services shall be qualified to perform the services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

10. TERMINATION: This Agreement shall be subject to cancellation by either party, regardless of grounds therefore, by giving all parties ninety (90) days written notice of cancellation.

11. RELATION TO THE DIVISION: In the performance of this Agreement, the Legacy Fund is neither an agent nor employee of the Division. Neither the Legacy Fund nor any of its officers, employees, agents, or members shall have authority to bind the Division, or receive any benefits, workers' compensation or emoluments provided by the Division to its employees.

12. INDEMNIFICATION: The Legacy Fund shall defend, indemnify, and hold harmless the State, and its officers and employees, from and against any and all losses suffered by the State, it officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Legacy Fund or its subcontractors, agents or assignees. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

13. WAIVER OF BREACH: No failure by either party to enforce any provisions hereof after any event of default shall be deemed a waiver of its rights with regard to that event, or any subsequent event.

14. AMENDMENT: This agreement may be amended only by an instrument in writing signed by both parties hereto and approved by the Governor and Executive Council.

15. CONSTRUCTION OF AGREEMENT AND TERMS: This Agreement shall be construed in accordance with the laws of the State of New Hampshire.

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

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

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

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

THE OLD MAN OF THE MOUNTAIN REVITALIZATION FUND, INC.
D/B/A OLD MAN OF THE MOUNTAIN LEGACY FUND

1-22-07

Maura Weston, President — Date
Duly Authorized

STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT

Concur:

Allison A. McLean 1/23/07

Allison A. McLean, Director — Date
Division of Parks and Recreation

for 1/23/07

George M. Bald, Commissioner — Date
Dept Resources and Economic Development

Approved to Form, Substance, and Execution,

1/23/07

Richard W. Head — Date
Associate Attorney General, NH Department of Justice

Governor and Executive Council Approved: Date 2-7-07 Item # 48

AAM/ttl