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STATE OF NEW HAMPSHIRE  
DEPARTMENT of NATURAL and CULTURAL RESOURCES  
DIVISION of PARKS and RECREATION  
172 Pembroke Road Concord, New Hampshire 03301  
Phone: (603) 271-3556 Fax: (603) 271-3553  
Web: www.nhstateparks.org

November 27, 2018

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

**REQUESTED ACTION**

1. Authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation (the "Department" and "Division") to amend the Memorandum of Agreement (the "Agreement") with the Old Man of the Mountain Revitalization Fund, Inc. d/b/a Old Man of the Mountain Legacy Fund (the "Legacy Fund" VC #167907) by extending the completion date to December 31, 2020 from the original completion date of December 31, 2018. The original Agreement was approved by Governor and Executive Council on December 16, 2015, Item #55.
2. Further, authorize the Department to allocate up to \$75,000 of matching funds to support a portion of the Legacy Fund's Profile Lake Walkway project which will provide new recreational opportunities in Franconia Notch State Park upon Governor and Executive Council approval through December 31, 2020. **100% Capital Funds**

Funding is available as follows:

**FY 2019**

03-35-35-350030-17190000	
17-228:1-XVIII:B – Building Roofs and Repairs	\$75,000
034-500162-35B022AL Capital Projects	

**EXPLANATION**

Extending the term of the Agreement for an additional two (2) years will enable the Legacy Fund to complete its final project located at the Old Man of the Mountain Memorial Plaza in Franconia Notch State Park. The project includes construction of an accessible walkway from the existing plaza to a new accessible fishing platform to be built at the northeast cove of Profile Lake. In addition, there will be new crossings at the inlet and outlet of Profile Lake to connect existing walkways with the Pemi Trail on the west side of Profile Lake.

The project will be the culmination of the Legacy Fund's work to memorialize the Old Man of the Mountain and will benefit Franconia Notch State Park by opening new recreational opportunities some of which will be specifically designed to accommodate visitors with disabilities. The initial phase of the project which includes design, engineering and permitting is already underway under the auspices of the Legacy Fund.

The Legacy Fund will fundraise and contribute not less than 50% of the project funds needed to complete this project, and the Department will allocate up to \$75,000 of matching funds to support this effort. The Department will facilitate the extension of recreational opportunities in Franconia Notch State Park and will enable the Old Man Memorial Plaza work to be concluded by 2020.

Respectfully submitted,

Philip A. Bryce  
Director

Concurred,  
  
Sarah L. Stewart  
Commissioner



## AMENDMENT TO MEMORANDUM OF AGREEMENT



THIS AMENDMENT is made to a Memorandum of Agreement ("Agreement") pursuant to the terms of the Agreement by and between the STATE OF NEW HAMPSHIRE, DEPARTMENT OF NATURAL AND CULTURAL RESOURCES, DIVISION OF PARKS AND RECREATION (the "Division") and THE OLD MAN OF THE MOUNTAIN REVITALIZATION FUND, INC. D/B/A OLD MAN OF THE MOUNTAIN LEGACY FUND (the "Legacy Fund"), P.O. Box 6, Franconia, NH 03580.

WITNESSETH:

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; and

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; and

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; and

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; and

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; and

WHEREAS, the parties have entered into the Agreement above mentioned, approved by the Governor and Executive Council on December 16, 2015, Item #55, in which the Division and the Legacy Fund works cooperatively to memorialize the Old Man of the Mountain at Franconia Notch State Park (the "Park"); and

WHEREAS, pursuant to the provisions of Part 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; and

WHEREAS, pursuant to the provisions of Part 14 of the Agreement, the parties agree to amend Part 1 of the Agreement to extend the term for an additional two (2) years so as to enable the parties to complete a Legacy Fund project at the Park; and

WHEREAS, pursuant to the provisions of Part 14 of the Agreement, the parties agree to amend the Agreement by adding Part 4.a, to enable the Division to allocate a certain amount of its Capital Project funds as matching funds to support a portion of the Legacy Fund's project;

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 Agreement. To amend Part 1 of the Agreement to extend the term an additional two (2) years with Governor and Council approval through December 31, 2020, unless sooner terminated in accordance with the provisions of the Agreement.
2. Project Initiatives. To amend Part 2 of the Agreement:
  - a. To add Part 2.e) Profile Lake Walkway. The Legacy Fund shall at its own expense contract for and support the financing of the Profile Lake Walkway project located at the Park. The Legacy Fund shall require that its contractors, at their sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and 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 to Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Financing shall include those fundraising activities outlined in Part 4, Fundraising, of the Agreement, as amended.

The Division shall at its own expense provide the Legacy Fund with project design plans, project oversight, and coordinate necessary 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.

The Legacy Fund shall have no authority to bind, obligate, or restrict the Division in any way or at any time for any reason, including but not limited to any and all obligations, conditions, restrictions, regulation, or stipulations of any grant funding, donations, subcontracts, agreements or permits obtained or executed by or that may arise out of the Legacy Fund in its performance of its activities and operations described herein. Third party grants, donations or other contributions or material support shall not constitute a claim or interest within the Premises.

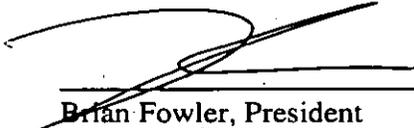
3. Fundraising. To amend Part 4 of the Agreement:
  - a. To add Part 4.a) The Legacy Fund shall fundraise and contribute an amount not less than 50% of project funds needed to complete its Profile Lake Walkway project located at the Park.
  - b. To add Part 4.b) The Division shall allocate up to \$75,000 of matching funds to support a portion of the Legacy Fund's Profile Lake Walkway project.
  - c. To add Part 4.c) 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.

- 4. 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:

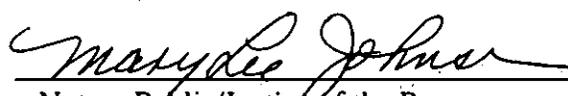
**THE OLD MAN OF THE MOUNTAIN REVITALIZATION FUND, INC.  
d/b/a OLD MAN OF THE MOUNTAIN LEGACY FUND**

  
\_\_\_\_\_  
Brian Fowler, President                      Date  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF CARROLL

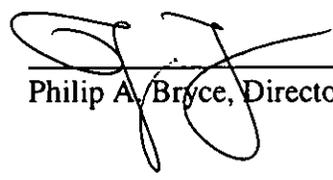
On this 14th day of Nov, 2018, before me, MARY LEE JOHNSON, the undersigned officer, personally appeared **BRIAN FOWLER**, known to me or satisfactorily proven to be the person subscribed to the within instrument, and acknowledged that she was duly authorized and executed the Amendment for the purposes therein contained.

Mary Lee Johnson  
Notary Public, State of New Hampshire  
My Commission Expires Sept. 13, 2022

  
\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires: 9/13/22

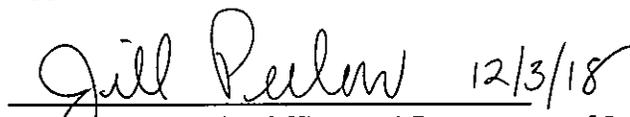
**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES  
DIVISION OF PARKS AND RECREATION**

Concur

  
\_\_\_\_\_  
Philip A. Bryce, Director                      Date  
11-27-18

  
\_\_\_\_\_  
Sarah L. Stewart, Commissioner                      Date  
11/27/18

Approved to Form, Substance, and Execution,

  
\_\_\_\_\_  
Attorney General's Office, NH Department of Justice

Governor and Executive Council Approved: 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 The Old Man of The Mountain Revitalization Fund, Inc. is a New Hampshire nonprofit corporation formed May 6, 2003. 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 4<sup>th</sup> day of November A.D. 2015

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

William M. Gardner  
Secretary of State

### Business Information

#### Business Details

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Business Name:	THE OLD MAN OF THE MOUNTAIN REVITALIZATION FUND, INC.	Business ID:	433581
Business Type:	Domestic Nonprofit Corporation	Business Status:	Good Standing
Business Creation Date:	05/06/2003	Name in State of Incorporation:	Not Available
Date of Formation in Jurisdiction:	05/06/2003	Mailing Address:	PO Box 6, Franconia, NH, 03580, USA
Principal Office Address:	PO Box 6, Franconia, NH, 03580, USA		
Citizenship / State of Incorporation:	Domestic/New Hampshire	Last Nonprofit Report Year:	2015
		Next Report Year:	2020
Duration:	Perpetual	Phone #:	NONE
Business Email:	NONE	Fiscal Year End Date:	NONE
Notification Email:	NONE		

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#### Principal Purpose

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S.No	NAICS Code	NAICS Subcode
1	OTHER / PROVDE AN APPROP&ENDURNNG TRIBUTE TO NH'S BELOVED SYMOL THE OLD MAN OF THE MTN	

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**Registered Agent Information**

Name: Not Available

Registered Office Not Available

Address:

Registered Mailing Not Available

Address:

**Trade Name Information**

Business Name	Business ID	Business Status
OLD MAN OF THE MOUNTAIN LEGACY FUND (/online/BusinessInquire/TradeNameInformation? businessID=142933)	474592	Expired
The Stone Face Race (/online/BusinessInquire/TradeNameInformation? businessID=353936)	532032	Expired
Old Man of the Mountain Legacy Fund (/online/BusinessInquire/TradeNameInformation? businessID=432482)	619788	Active
Friends of the Old Man of the Mountain/Franconia Notch (/online/BusinessInquire/TradeNameInformation? businessID=455833)	625314	Active

**Trade Name Owned By**

Name	Title	Address
No records to view.		

**Trademark Information**

Trademark Number	Trademark Name	Business Address	Mailing Address
No records to view.			

### Business Information

#### Business Details

Business Name:	OLD MAN OF THE MOUNTAIN LEGACY FUND	Business ID:	619788
Business Type:	Trade Name	Business Status:	Active
Expiration Date:	9/21/2019	Last Renewal Date:	Not Available
Business Creation Date:	09/21/2009	Name in State of Formation:	Not Available
Date of Formation in Jurisdiction:	09/21/2009		
Principal Office Address:	PO Box 6, Franconia, NH, 03580, USA	Mailing Address:	PO Box 6, Franconia, NH, 03580, USA
Business Email:	NONE	Phone #:	NONE
Notification Email:	NONE	Fiscal Year End Date:	NONE

#### Principal Purpose

S.No	NAICS Code	NAICS Subcode
1	OTHER / Fund raising for "Old man of the mountain revitalization fund, Inc.	

Page 1 of 1, records 1 to 1 of 1

#### Trade Name Information

Business Name	Business ID	Business Status
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#### Trade Name Owned By

Name	Title	Address
The Old Man of The Mountain Revitalization Fund, Inc. (/online/BusinessInquire/TradeNameInformation?businessID=120830)	Business	Good Standing

Corporate Resolution

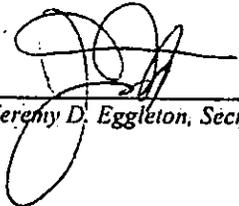
I, **Jeremy D. Eggleton**, hereby certify that I am duly elected Clerk/Secretary of Old Man of the Mountain Legacy Fund. I hereby certify the following is a true copy of a vote taken at a meeting of the Board of Directors/shareholders, duly called and held on August 28, 2018, at which a quorum of the Directors/shareholders were present and voting.

**VOTED:** That **Brian Fowler, President** is duly authorized to enter into contracts or agreements on behalf of The Old Man of the Mountain Legacy Fund, with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any documents which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

**DATED:** 11-15-2018

**ATTEST:**

  
\_\_\_\_\_  
*Jeremy D. Eggleton, Secretary*





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

172 Pembroke Road Concord, New Hampshire 03301.  
Phone: (603) 271-3556 Fax: (603) 271-3553 E-Mail: nhparks@dred.nh.gov  
Web: www.nhstateparks.org

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mac

November 13, 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 to enter into 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 to work cooperatively to memorialize the Old Man of the Mountain at Franconia Notch State Park upon approval of Governor and Executive Council through December 31, 2018. No State Funding Required.

**EXPLANATION**

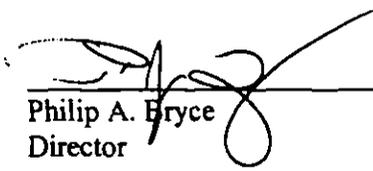
New Hampshire's most significant tourism symbol, the Old Man of the Mountain located in Franconia Notch State Park collapsed on May 3, 2003. The Old Man of the Mountain Task Force (Task Force) was established for purpose of making recommendations for memorializing the Old Man of the Mountain and setting 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.

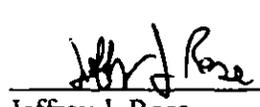
An agreement was formalized in 2007 between the Division and the Old Man of the Mountain Legacy Fund to develop and to raise funds for project initiatives memorializing the Old Man of the Mountain. This partnership has tastefully honored the legacy of the Old Man of the Mountain and enabled Franconia Notch State Park to continue as a premier scenic and recreational destination; however, the Old Man of the Mountain Legacy Fund requests an additional 3-years to complete its project initiatives. The current MOA is due to expire on December 31, 2015. This new MOA is to provide for and continue the partnership for another 3-year period through December 31, 2018.

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

Respectfully submitted,

Concurred,

  
Philip A. Bryce  
Director

  
Jeffrey J. Rose  
Commissioner



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



**MEMORANDUM OF AGREEMENT**

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

Whereas, Franconia Notch State Park (the "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, 2018.
2. **PROJECT INITIATIVES:** The Legacy Fund shall at its sole expense provide the Division with a proposal of all initiatives (the "Project 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 for the 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 raise funds 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 fund raising 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, and orders 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, 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 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.

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

Thomas C. Mansfield 11/5/2015 Richard Hamilton 11-5-15  
Witness Date Richard Hamilton, Chairman Date  
(Duly authorized)

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT**

Philip A. Bryce 11-2-15 Jeffery J. Rose 11/13/15  
Philip A. Bryce, Director Date Jeffery J. Rose, Commissioner Date

Approved as to form, substance and execution  
by the Attorney General's Office:

Brian W. Buonamano 11/30/15  
Brian W. Buonamano, Assist. Attorney General Date

Approved by Governor and Executive Council: 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 The Old Man of The Mountain Revitalization Fund, Inc. is a New Hampshire nonprofit corporation formed May 6, 2003. 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 4<sup>th</sup> day of November A.D. 2015

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

William M. Gardner  
Secretary of State

# 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 Old Man of the Mountain Legacy Fund is a New Hampshire trade name registered on September 21, 2009 and that The Old Man of The Mountain Revitalization Fund, Inc. presently own(s) this trade name. I further certify that it is in good standing as far as this office is concerned, having 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 4<sup>th</sup> day of November, A.D. 2015

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

William M. Gardner  
Secretary of State

Tom Mansfield  
271-3553

Corporate Resolution

I, Meghan McPhaul, hereby certify that I am duly elected Clerk/Secretary of  
(Name)

Old Man of the Mountain Legacy Fund. I hereby certify the following is a true copy of a vote taken at  
(Name of Corporation or LLC)

a meeting of the Board of Directors/shareholders, duly called and held on Nov 6, 2014  
at which a quorum of the Directors/shareholders were present and voting.

VOTED: That Richard Hamilton (may list more than one person) is  
(Name and Title)

duly authorized to enter into contracts or agreements on behalf of

Old Man of the Mountain Legacy Fund with the State of New Hampshire and any of  
(Name of Corporation or LLC)

its agencies or departments and further is authorized to execute any documents which  
may in his/her judgment be desirable or necessary to effect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full  
force and effect as of the date of the contract to which this certificate is attached. I further  
certify that it is understood that the State of New Hampshire will rely on this certificate as  
evidence that the person(s) listed above currently occupy the position(s) indicated and that  
they have full authority to bind the corporation. To the extent that there are any limits on the  
authority of any listed individual to bind the corporation in contracts with the State of New  
Hampshire, all such limitations are expressly stated herein.

DATED: 11-6-14

ATTEST: [Signature] Secretary  
(Name and Title)