

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

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name		1.2 State Agency Address	
1.3 Contractor Name		1.4 Contractor Address	
1.5 Contractor Phone Number	1.6 Account Unit and Class	1.7 Completion Date	1.8 Price Limitation
1.9 Contracting Officer for State Agency Alexis Rudko, Deputy Chief, NH Trails Bureau		1.10 State Agency Telephone Number	
1.11 Contractor Signature  <div style="text-align: right;">Date:</div>		1.12 Name and Title of Contractor Signatory	
1.13 State Agency Signature  <div style="text-align: right;">Date:</div>		1.14 Name and Title of State Agency Signatory	
1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i>  By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i>  By: _____ On: _____			
1.17 Approval by the Governor and Executive Council <i>(if applicable)</i>  G&C Item number: _____ G&C Meeting Date: _____			

**2. 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 B which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("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.

3.3 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. 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 by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C which is incorporated herein by reference.

5.2 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. 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.

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 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

**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 applicable 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 employment opportunity laws and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. The Contractor 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 this Agreement and all rules, regulations and orders pertaining to 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 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

## **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) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

## **9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar 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. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

## **10. PROPERTY OWNERSHIP/DISCLOSURE.**

10.1 As used in this Agreement, the word "Property" shall mean all data, 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.

10.2 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.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

**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.**

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, 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 continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial 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 or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 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 any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

#### **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. The Contractor shall furnish the Contracting Officer identified in block 1.9, or any 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.** A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

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

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

#### **19. CHOICE OF LAW AND FORUM.**

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

**20. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**21. THIRD PARTIES.** This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

**22. 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.

**23. SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

**24. FURTHER ASSURANCES.** The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

**25. 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.

**26. 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 with respect to the subject matter hereof.

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF NATURL AND CULTURAL RESOURCES  
DIVISION OF PARKS AND RECREATION  
BUREAU OF TRAILS

**EXHIBIT A – Special Provisions**

**A. Contractor’s Relation to the State**

Add the following paragraph to the end of Section 11. CONTRACTOR’S RELATION TO THE STATE.

The CONTRACTOR understands and accepts the risks, hazards, and dangers inherent in carrying out any duties and responsibilities of volunteer activities hosted by the CONTRACTOR. The CONTRACTOR shall be solely responsible and liable for its officers, staff, members, volunteers, subcontractors, guests, and its operations, programs, and all other associated activities conducted on the TRAIL and PROPERTY.

**B. Indemnification**

Add the following paragraphs to the end of Section 13. INDEMNIFICATION.

The STATE and CONTRACTOR are entitled to the protections of RSA 508:14, RSA 508:17, RSA 215-C: 55, RSA 212:34, RSA 216-A:3-h and the NH Volunteer Immunity Laws, and any other statutory liability protections.

**C. Insurance**

Add the following paragraph to the end of Section 14. INSURANCE.

14.4. The STATE shall not be held responsible or liable for any loss or damage of personal property held by the CONTRACTOR and displayed, stored, placed or left on or within the TRAIL or PROPERTY at any time, including but not limited to the personal property of its staff, volunteers, contractors, partners, guests, and any other participants of the CONTRACTOR activities. The CONTRACTOR shall be responsible for insuring its personal property.

**EXHIBIT B – Scope of Work**

- 1) TRAIL. The parties agree to work cooperatively in providing and maintaining, through environmentally sound action, a safe, functional, attractive and user-friendly snowmobile trail system (the TRAIL) over existing ways on the PROPERTY(s), as depicted on the attached map(s), see **Exhibit A: NAME OF Trail Map**.

During the TERM, the STATE grants to the CONTRACTOR, in cooperation and coordination with the STATE, **non-exclusive** rights to operate, manage, maintain and use the TRAIL; and to honor the public right to use the TRAIL. The TRAIL shall be open to the public for snowmobile use as defined in RSA 215-C, and for other non-motorized uses, and shall not be limited to use by members of the CONTRACTOR only.

“Non-exclusive” access and use granted herein, or by any other permit or agreement between the

parties, is a privilege for access to and use of said PROPERTY and TRAIL; and does not represent nor imply a real property interest in the PROPERTY and TRAIL for which the STATE shall reserve for itself control and all rights and privileges.

- a. *Damage to STATE Property.* The CONTRACTOR shall not cause or do damage to the TRAIL, PROPERTY, or any areas permitted for its use, reasonable wear and tear accepted; and shall promptly report any and all damage to the TRAIL, PROPERTY, or areas permitted for its use occasioned by accident or other such events to the Bureau of Trails District Supervisor or designee within 24 hours of the discovery of damage. The CONTRACTOR shall be held legally and financially liable for any and all damages, repairs or rehabilitation caused by its own actions for use of or its operations within or upon the TRAIL and PROPERTY areas or facilities, including damages caused by its staff, volunteers, contractors, partners, and other users associated with the CONTRACTOR activities granted herein.
- 2) TRAIL MAINTENANCE. The CONTRACTOR agrees to assist the STATE with the maintenance of the TRAIL. Maintenance shall include, but not be limited to, routine inspection, installation, repair, and replacement of bridges and culverts, removal of rocks and stumps, placement of gravel and natural fill, smoothing the trail surface, installation of broad-based dips, water bars and ditches, removal of fallen trees, cutting back vegetation encroaching on the TRAIL to assist with safe winter grooming practices, and grooming the TRAIL.
  - a. Kiosks: There are several kiosks located at various points along the TRAIL. These are permanently fixed to the TRAIL and are the property of the STATE. The CONTRACTOR shall not remove or alter these kiosks without prior approval from the STATE. The CONTRACTOR may perform regular maintenance and upkeep to the kiosks. The CONTRACTOR shall not add any additional kiosks to any part of the TRAIL without prior approval from the STATE. Requests for additional kiosks shall be made to the STATE through the CONTRACTOR's Annual Work Plan.

Any additional structures that were installed to the TRAIL prior to this AGREEMENT are subject to removal at the STATE's discretion. No other structures may be installed to the TRAIL without prior approval from the STATE.
  - b. The CONTRACTOR may apply for Grant-In-Aid (GIA) and/or Recreational Trails Program (RTP) grant funds in order to complete maintenance of the TRAIL. The CONTRACTOR is also permitted to solicit and receive donations on behalf of, and for use in, the maintenance of the PROPERTY. Third party donations shall not constitute a claim or interest within the PROPERTY. The CONTRACTOR shall notify all donor(s) of this policy in writing.
  - c. The STATE agrees that the CONTRACTOR is a maintenance partner of the STATE, and as such, the STATE agrees that the CONTRACTOR shall not be responsible for providing repairs on the PROPERTY caused by unexpected catastrophic events, natural or otherwise, damages caused by others, major TRAIL damages, or impacts caused by the public use of the TRAILS. Such significant repairs would be done in partnership between the parties, including, but not limited to, shared labor, materials, and expenses.
  - d. The CONTRACTOR agrees to maintain all necessary safeguards for the safety of the public and CONTRACTOR volunteers. The CONTRACTOR shall not be liable for personal injury or property damage from construction, maintenance, or trail improvements for public recreational use, pursuant to RSA 508:14, II, in the absence of gross negligence or willful or wanton misconduct.
  - e. The CONTRACTOR agrees to maintain a record of all persons involved in volunteer work on the PROPERTY. Said record will contain the volunteer's full name, dates and hours of volunteer work, and type of volunteer work performed to enable the protections under RSA 508:17.

- f. The CONTRACTOR agrees to maintain all equipment, to include but not be limited to, chainsaws, handsaws, limb saws, excavators, backhoes, rock rakes, graders, groomers, and drags, utilized for trail work on the PROPERTY, in proper operating condition with all safety devices functioning.
  - g. The CONTRACTOR shall ensure that its officers, staff, members and volunteers are properly trained, certified and licensed to carry out all CONTRACTOR activities, in accordance with current safety and operating standards, practices and conduct necessary for the proper execution of its activities. The CONTRACTOR shall comply with any additional or specialized training required by DNCR, as specified in the PLAN, Special Use Permit(s), or any other agreement between the parties.
  - h. The CONTRACTOR agrees that volunteers must use, at a minimum, the following Personal Protective Equipment (PPE) when utilizing a chainsaw for trail work: Hardhat, Ear protection, Leather gloves, Eye or face screen protection, Long sleeve tops, Long pants and cut resistant chaps that extend from waist to top of boot, and Non-skid boots with lug soles and steel toe or composite toe protection.
  - i. All TRAIL maintenance activities done by the CONTRACTOR, other than routine trail brushing and grooming, shall be pre-approved by the STATE through its **district supervisor**. Any and all structural improvements fixed or permanently installed on the PROPERTY by the CONTRACTOR or its subcontractors, shall vest, free and clear and without cost, to the STATE upon project completion. The STATE reserves the right to terminate this AGREEMENT if the CONTRACTOR carries out any unauthorized work on the PROPERTY.
  - j. The CONTRACTOR agrees to work cooperatively with the STATE to do such things, as are reasonably necessary and practicable, including the use of gates and barriers and appropriate official signs, to keep snowmobile use on the TRAIL and to restrict access by vehicles other than snowmobiles.
  - k. The CONTRACTOR agrees, from TRAIL setup in the fall through sign retrieval in the spring, to maintain the TRAIL in a litter-free condition and shall promptly dispose of all litter, trash, and manmade debris associated with snowmobiling in a proper manner and offsite.
- 3) CHAINSAW CERTIFICATION. During the full term of this AGREEMENT, no CONTRACTOR volunteer may operate a chainsaw while engaged in trail work on the PROPERTY unless the volunteer first:
- a. Completes a DNCR chainsaw safety course and receives certification therefor; or
  - b. Provides a copy of such certification from another acceptable trainer to the STATE.
  - c. The CONTRACTOR will provide DNCR with a list of every volunteer so certified as part of its PLAN.
  - d. Information on DNCR chainsaw training is available from the Bureau of Trails.
- 4) TRAIL SIGNAGE. The CONTRACTOR agrees to adequately mark the TRAIL to indicate the location of the TRAIL, to assist in restricting snowmobile use to within the designated TRAIL corridor, and to post any other restrictions to TRAIL use, in accordance with the "Snowmobile Guidelines for Trail Signing," published by NH Bureau of Trails, or any succeeding standards.
- a. All spur, side or connecting trails shall be posted to indicate that snowmobile access and use thereon is prohibited.
  - b. If possible, all TRAIL signage shall be placed on signposts. If not possible, any signage posted on trees shall be done with aluminum nails.
  - c. Permanent signposts and signs shall only be installed with written approval from the STATE regional forester.

- d. The CONTRACTOR agrees to remove non-permanent signage as soon as the season ends, as conditions allow, but no later than June 1<sup>st</sup>.
- 5) MONITORING TRAIL USE. In cooperation and consultation with the STATE, the CONTRACTOR shall monitor snowmobile usage on the TRAIL to ensure that the ecological conditions are not substantially diminished or degraded by snowmobile use and that snowmobile use is limited to the designated TRAIL and is done in compliance with current State laws, administrative rules and this AGREEMENT. The STATE and the CONTRACTOR agree to meet at least annually, **before November 15<sup>th</sup>** and more often at the request of either party, to discuss the **Annual Work Plan**, upcoming CONTRACTOR events and to include any snowmobile use issues that may develop and to consider TRAIL management options.
- 6) ANNUAL WORK PLAN. The CONTRACTOR shall submit an **Annual Work Plan** (the PLAN) to the STATE, due by each **May 1<sup>st</sup>**. The PLAN shall include, but not be limited to, the following:
- a. Record of the previous year's maintenance activities and upcoming planned maintenance activities, including hours of contracted and volunteer work, materials and maintenance costs, and funding sources; and
  - b. Upcoming CONTRACTOR events or activities to occur on the TRAIL or PROPERTY.
- The STATE shall review the PLAN and shall, within thirty (30) days of submission, either approve the PLAN or request revision and resubmission of the PLAN for final approval by the STATE. The PLAN shall not be considered approved until it is signed by the STATE. Issues, if any, rendering the PLAN unacceptable to the STATE, shall be resolved between the STATE and the CONTRACTOR. In the event the parties cannot agree on a final PLAN that is acceptable to the STATE, the proposed projects and events requested by the CONTRACTOR in its PLAN shall not proceed until agreement is reached between the STATE and the CONTRACTOR.
- 7) FEES. The parties shall agree to the following provisions concerning fees, and the financial capacity of the CONTRACTOR, associated with the CONTRACTOR's activities within or use of the TRAIL and PROPERTY.
- a. *Event fees*. The CONTRACTOR shall not be charged administrative fees for its annual events scheduled in advance included in the Annual Work Plan (the PLAN) and approved by the STATE. The Group shall pay all other applicable fees, pursuant to the STATE'S Special Use Permit (the "SUP") process outlined in administrative rules [Res 7400](#): Reserved and Privileged Use of DNCR Lands, Facilities and Resources.
  - b. *Fees charged to third parties*. All fees charged to third parties by the CONTRACTOR for activities within or use of the TRAIL or PROPERTY shall be specified in advance or by separate SUP and approved by the STATE. Fees charged to third parties by the CONTRACTOR shall not grant privileges not normally afforded to the general public, without the prior written consent of the STATE.
  - c. *Use of revenue*. The CONTRACTOR shall use the fees, donations, and revenue collected from its events and activities, within and/or associated with the TRAIL and PROPERTY to support the mutual goals of the parties, which shall be approved by the STATE.
  - d. *Subsequent material change of financial circumstance*. If during the term of this AGREEMENT, there is a material improvement in the financial condition of the CONTRACTOR due to its use of the TRAIL and PROPERTY, then the CONTRACTOR and the STATE shall negotiate in good faith to modify the terms of this AGREEMENT so as to reflect STATE'S statutory obligations under [RSA 216-A:3-g](#): Fees for Park System.



- 8) SPECIAL USE PERMITS. Special Use Permits (SUP) are required to grant the CONTRACTOR permission to hold special events and programs, and to reserve facilities or areas of the TRAIL and PROPERTY, not covered in the PLAN approved by the STATE. The CONTRACTOR shall apply for a SUP through the Department's onsite operations contact, pursuant to the requirements of [Res 7400](#): Reserved and Privileged Use of Department Lands, Facilities and Resources. All associated permit fees shall apply.
- 9) SIGNS AND ADVERTISING. The CONTRACTOR shall include the Division of Parks and Recreation, Bureau of Trails as a partner of the CONTRACTOR in its work products, outreach materials, advertising and promotions for activities occurring on the TRAIL or PROPERTY, including but not limited to its reports, press releases, newsletters, website pages, and signage.
- 10) REPRESENTATION. In matters pertaining to this AGREEMENT, and provisions herein, the STATE shall be represented by its Bureau of Trails Chief or designee, and the CONTRACTOR shall be represented by its Board of Directors President. Prior to the filing of any formal proceedings with respect to a dispute, the party believing itself aggrieved shall call for progressive management involvement in the dispute negotiation by written notice to the other party. The parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed.

The CONTRACTOR shall comply with all reasonable requests made by the STATE. The decision of the DNCR 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.

- 11) COMPLIANCE WITH TRAIL-RELATED LAWS AND REGULATIONS. This AGREEMENT and the snowmobile use on the PROPERTY shall be in accordance with New Hampshire laws and State rules, regulations and policies pertaining to such use, as may be amended. Current applicable laws, rules, regulations, and policies regarding snowmobile use are made part of this AGREEMENT by reference. The term "snowmobile" is defined in RSA 215-C:1.
- 12) RESOURCE AND USE PROTECTION. The CONTRACTOR shall work cooperatively with the STATE to mitigate the impact of the TRAIL on natural, historical and cultural resources, and other uses within the PROPERTY, as authorized by the STATE.
- 13) STATE OPERATIONS AND NOTIFICATION. The STATE, and its agents, reserves its right to enter the PROPERTY with persons and equipment for purposes of maintaining the TRAIL and PROPERTY at any time, at its discretion. The STATE reserves its right to restrict or close its lands, facilities, or trails to public use, pursuant to Res 7300, or for other STATE activities, including but not limited to timber operations.
- a. The STATE, through its regional forester, agrees to provide written notification to the CONTRACTOR, no less than one week in advance of any proposed maintenance, management, and forestry activities that will occur on or within close proximity to the TRAIL, and impact its use or maintenance, in order to coordinate a temporary reroute or closure of the TRAIL and notification to the public of said reroute or closure.
  - b. In a non-emergency situation, the STATE shall notify the CONTRACTOR in writing no less than one month in advance, prior to a permanent planned closure or relocation of the TRAIL.
- 14) EMERGENCY TRAIL CLOSURE. The STATE maintains its right to close or relocate the TRAIL, or portions

thereof, during an emergency situation such as, but not limited to, any of the conditions listed below. The STATE shall inform the CONTRACTOR of an emergency TRAIL closure or relocation, as soon as practicable.

- a. Weather conditions that make the TRAIL unsuitable for recreational use;
- b. Public safety that is endangered due to TRAIL conditions;
- c. Use of the TRAIL that is resulting in significant degradation of surface waters;
- d. Damage to the TRAIL that may occur due to heavy rain, mud, or other condition;
- e. Use of the TRAIL that is resulting in significant unauthorized use on the remaining right of way; or
- f. Any other reason that would cause public safety or environmental concerns that is sufficient to close the TRAIL to recreational use, as determined by the STATE.

### **EXHIBIT C – Payment & Terms**

#### **Fee Price**

Organization Name:     Name of organization

Vendor Code:           #####

#### **Term of AGREEMENT**

This contract, and the obligations of the parties hereunder, shall be for a period of five (5) years and become effective on the date the contract is signed by both parties.