

**Business of the Village Board
Village of Saranac Lake**

SUBJECT: Friends of Mount Pisgah Agreement

Date: 10-28-2024

DEPT OF ORIGIN: Village Manager

Bill # 157 -2024

DATE SUBMITTED 10-24-2024

EXHIBITS: _____

APPROVED AS TO FORM:

Village Attorney

Village Administration

EXPENDITURE
REQUIRED: \$

AMOUNT
BUDGETED: \$

APPROPRIATION
REQUIRED:

SUMMARY STATEMENT

Authorize agreement with Friends of Mount Pisgah (FOMP)

RECOMMENDED ACTION

MOVED BY: White _____ SECONDED BY: Brunette _____

VOTE ON ROLL CALL: **TO TABLE**

MAYOR WILLIAMS	<u>yes</u>
TRUSTEE BRUNETTE	<u>yes</u>
TRUSTEE RYAN	<u>yes</u>
TRUSTEE SCOLLIN	<u>absent</u>
TRUSTEE WHITE	<u>yes</u>

AGREEMENT

THIS AGREEMENT made as of the _____ Day of January, _____.

BETWEEN: **VILLAGE OF SARANAC LAKE, INC.**, a municipal corporation organized and existing under the laws of the State of New York, with its office at 39 Main Street, Saranac Lake, New York (Hereinafter referred to as the "Village");

and

FRIENDS OF MOUNT PISGAH, INC., a not-for-profit corporation duly organized and existing under the laws of the State of New York, with its office and principal place of business at Saranac Lake, New York (hereinafter referred to as "FOMP")

WITNESSETH;

WHEREAS, the Village desires to retain the services of a qualified person or entity to operate, manage and maintain the Mt. Pisgah Lodge located at the Village's Mt. Pisgah Ski Center in the Village of Saranac Lake, Town of St. Armand, Essex County, New York: and

WHEREAS, FOMP is willing to manage, promote, operate and maintain the Mt. Pisgah Lodge.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. The term of this agreement will be for sixty (60) months, commencing on _____, _____ and terminating on _____, _____.

2. In consideration of the promises, covenants and agreements of FOMP under this agreement, during the term of this agreement the Village hereby:
 - (a) retains FOMP to manage, promote, operate, maintain and repair the Mt. Pisgah Ski Lodge Building; and

 - (b) agrees to insure the Mt. Pisgah Ski Lodge building against fire and multi-peril casualty for full replacement value, less deductible (\$1000); and

 - (c) agrees to pay all utility expenses, except propane.

3. In consideration of the rights granted by the Village to FOMP under this agreement,
FOMP agrees, at its sole cost and expense to:
 - (a) manage, promote, operate, maintain and repair the Mt. Pisgah Ski Lodge building for and on behalf of the Village, including but not limited to the establishment and operation of food service and/or a snack bar, using its best efforts to obtain maximum public use of the said building; and

 - (b) furnish all personnel, materials, supplies, equipment, services and utilities, and perform all work, and take all action as shall be necessary to operate,

protect, maintain and repair the Mt. Pisgah Ski Lodge building, including all signs and improvements therein and thereon, so that at all times during the term of this agreement all of the Mt. Pisgah Ski Lodge building will be (1) in good physical and operating condition, (2) available and equipped for the uses contemplated, including but not limited to food service and/or a snack bar, and (3) clean, attractive and safe;

- (c) keep an accurate account of all monies received through its operations of the building, and of all monies expended in connection therewith, and provide the same to the Village upon the Village's request;
- (d) be responsible and pay for all loss and/or damage to the building and /or to the contents therein arising either directly or indirectly out of FOMP's use, operation and maintenance of the building.

4. It is understood and agreed by the parties that all revenues generated from the operation of the Lodge shall be used to pay the costs of operating the Mt. Pisgah Ski Center as well as the Lodge itself, such costs to include but not be limited to insurance and utility expenses, maintenance and repair of the lifts and trails, snowmaking, and other expenses related to the operation of the Ski Center,

5. The parties each acknowledge, covenant and agree that the relationship of FOMP to the Village shall be that of an independent contractor. FOMP, in accordance with its status as an independent contractor, further covenants and agrees that

FOMP:

- (a) will conduct itself in accordance with its status as an independent contractor;
- (b) will neither hold itself out as nor claim to be an officer or employee of the Village; and
- (c) will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the Village, including but not limited to Workers' Compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

6. FOMP shall at all times comply with all applicable state and federal laws, rules and regulations governing the performance and rendition of the services to be furnished under this agreement.

7. FOMP shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by FOMP under this agreement.

8. This agreement may be terminated without cause by either party upon thirty (30) days prior written notice. Upon such termination neither party shall have any claim nor cause of action against the other, except for breach of this agreement arising or occurring prior to such termination.

9. FOMP shall at all times during the term of this agreement, at FOMP's sole

expense, procure and maintain from insurance companies authorized to write such insurance in the State of New York the following insurance coverages:

- (a) comprehensive general liability insurance, containing a contractual liability indorsement in favor of the Village, in an amount of not less than \$2,000,000 per occurrence single limit for bodily injury, death, and property damage;
 - (b) workers' compensation and disability insurance as required by law, if any; and
 - (c) fire and multi-peril insurance insuring FOMP's property.
10. FOMP shall provide written proof of such insurance to the Village Manager at the time of the execution of this agreement, and whenever such insurance coverages are renewed during the term of this agreement. This contract shall be void and of no force and effect unless FOMP provides and maintains the required insurance coverages during the life of this contract and/or for the benefit of such employees as are required to be covered. All policies of insurance shall provide that the same may not be canceled except upon fourteen (14) days prior written notice to the Village.
11. FOMP shall indemnify and hold harmless the Village from and against any and all liability, suits, causes of action, and claims, including but not limited to those for bodily injury, property damage, death, and reasonable attorney's fees, arising out of or in connection with FOMP's negligence and/or its performance or failure to perform this agreement.
12. FOMP will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, since this is a building service contract and/or a contract for the repair of a public building, and to the extent that this contract shall be performed within the State of New York, FOMP agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:
- (a) discriminate in hiring against any citizen who is qualified and available to perform the work; or
 - (b) discriminate against or intimidate any employee hired for the performance of work under this contract.

- FOMP agrees that it is subject to fines of \$50.00 per person per day for any violation of this paragraph, as well as possible termination of this contract and forfeiture of all rights under this agreement for a second or subsequent violation.
13. FOMP shall promptly advise the Village Manager of all damages to property of the Village or of others, or of injuries incurred by persons other than employees of FOMP, in any manner relating, either directly or indirectly, to the performance of this agreement or the use of the Mt. Pisgah Ski Lodge building.
 14. FOMP shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The Village Auditor, State Comptroller, the Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of FOMP within the State of New York, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Village shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) FOMP shall timely inform an appropriate Village official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Village's right to discovery in any pending or future litigation.
 15. In fulfilling its obligations to manage, operate, promote, maintain and repair the Mt. Pisgah Ski Lodge building, FOMP agrees that any "public work" contracts which are covered by Article 8 of the Labor Law, or any building service contract covered by Article 9 thereof, shall provide that no employees of any contractor or subcontractor may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, any contractor and subcontractor must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
 16. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction within the State of New York.
 17. This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by FOMP, without the prior written consent of the Village, and any attempts to assign the contract without the Village's written consent are null and void.
 18. The Village shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Village's option to

withhold for the purposes of set-off any moneys due FOMP under this agreement up to any amounts due and owing to the Village with regard to this contract, any other contract with any Village department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Village for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Village shall exercise its set-off rights in accordance with normal Village practices, including, in cases of set-off pursuant to an audit, the acceptance of such audit by the Village acknowledges that there are no amounts due by FOMP to the Village as of the date of this agreement.

19. Whenever the term "FOMP" is used in this agreement, such term shall include and apply to all employees, volunteers, members, officers, directors and agents, if any, of FOMP.
20. This agreement may not be amended, modified or renewed except by written agreement signed by FOMP and the Village.
21. This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.
22. The Village shall have the right to inspect the Mt. Pisgah Ski Lodge building upon reasonable notice to FOMP.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

VILLAGE OF SARANAC LAKE, INC.

By _____
Jimmy Williams, Mayor

FRIENDS OF MOUNT PISGAH, INC.

By _____
Katie Fischer, President