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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) 271-2411 Fax: (603) 271-3553 E-Mail: [nhparks@dncr.nh.gov](mailto:nhparks@dncr.nh.gov)  
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November 22, 2022

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

**REQUESTED ACTION**

Authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation, Cannon Mountain Ski Area to enter into a contract with Durham School Services, L.P. (VC#286818), Brentwood, NH, in the amount of \$52,072 for the transport of international groups to and from Cannon Mountain Ski Area for daily skiing during the 2022/2023 and 2023/2024 ski seasons effective upon Governor and Executive Council approval through April 30, 2024. 100% Other Funds (Agency Income).

Funds are available in the following account for Fiscal Year 2023 and are anticipated to be available in Fiscal Year 2024, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified.

03-035-035-351510-37040000 - Cannon Retail and Concession

	<u>FY 2023</u>	<u>FY 2024</u>
103-502664 – Contracts for Op Services	\$26,036	\$26,036


**EXPLANATION**

The Cannon Mountain Ski Area has a great deal of groups that visit annually from overseas. The cost of transporting these groups to and from local hotels and inns is included in their overall pricing. Payment is credited to the Cannon Mountain Ski School which many international students benefit from.

On July 15, 2022, a Request for Bids for 2022/2023 and 2023/2024 International Group Transportation was posted on the Department of Administrative Services' website seeking bidders for the transport of international groups to and from Cannon Mountain for daily skiing during the 2022/2023 and 2023/2024 ski seasons. The last day for bid questions and requests to change bids was August 4, 2022. Bid closing was August 19, 2022 at 2:00 PM (EST). Durham School Services, L.P. was the only bid received, and whereas Durham School Services has performed this service to the satisfaction of the Department in the past, was selected as the vendor for this service.

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

Respectfully submitted,

  
Sarah L. Stewart  
Commissioner

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES  
Division of Parks and Recreation  
Cannon Mountain Ski Area**

**Request for Bids**

**RFP DNCR 2023-02  
2022/2023 and 2023/2024 International Group Transportation**

<b>Contractor Name and Address</b>	<b>Bid Amt. (2 Ski Seasons)</b>
Durham School Services, L.P. 2601 Navistar Drive Lisle, IL 60532	\$52,072

DNCR posted Cannon Mountain's 2022/2023 and 2023/2024 International Group Transportation Request for Bids on 7/15/2022 with a closing date of 8/19/2022. DNCR received one bid offer by closing which was Durham School Services, L.P. Since Durham School Services, L.P. has performed this service to the satisfaction of the Department in the past, they were selected as the vendor for this service.

**FORM NUMBER P-37 (version 12/11/2019)**

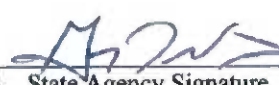
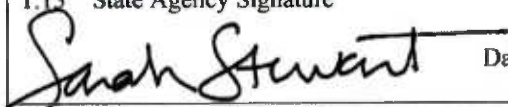
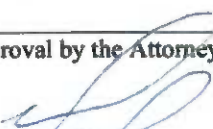
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name DNCR Division of Parks and Recreation Cannon Mountain		1.2 State Agency Address 172 Pembroke Road, Concord, NH 03301	
1.3 Contractor Name Durham School Services, L.P.		1.4 Contractor Address 2601 Navistar Drive , Lisle, IL 60532	
1.5 Contractor Phone Number 603-726-2033	1.6 Account Number 37040000-103-502664	1.7 Completion Date April 30, 2024	1.8 Price Limitation \$52,072
1.9 Contracting Officer for State Agency Sarah L. Stewart; Commissioner		1.10 State Agency Telephone Number 603-271-4135	
1.11 Contractor Signature  Date: 11.20.2022		1.11 Name and Title of Contractor Signatory Gary L. Waits Jr. President and CEO	
1.13 State Agency Signature  Date: 11/30/2022		1.14 Name and Title of State Agency Signatory Sarah L. Stewart, Commissioner	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: N/A Director, On:			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 12/02/2022			
1.17 Approval by the Governor and Executive Council (if applicable) 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 as indicated in block 1.17, 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. 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 affected 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. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to 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 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all 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. 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 race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. 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 all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.



the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. 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 sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

#### 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and 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 his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. 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 his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire

Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. 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.

**17. 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.

**18. CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**19. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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

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

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

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

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.



**EXHIBIT C**

**Contract Price**

Cost of service based on an estimated 105 trips for each season billed at \$247.97 per trip.

**FY2023**

Total contract shall not exceed:       \$26,036

**FY2024**

Total contract shall not exceed:       \$26,036  
**Total:                           \$52,072**

**Method of Payment**

Payments shall be made within 30 days after receipt of progress-based invoices and inspections by Cannon’s project manager.

**Term**

This contract shall commence upon approval of the Governor and Executive Council with a completion date of April 30, 2024.



# State of New Hampshire

## Department of State

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CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that DURHAM SCHOOL SERVICES, L.P. a Delaware Limited Partnership formed to transact business in New Hampshire on November 08, 2016. I further certify that it has paid the fees required by law and has not dissolved.

Business ID: 759541

Certificate Number: 0005892578



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 3rd day of November A.D. 2022.

A handwritten signature in black ink, appearing to read "David M. Scanlan", is written over a faint circular stamp.

David M. Scanlan  
Secretary of State

**Limited Partnership or LLC Certificate of Authority**

**I, Steve Schmuck – Vice President of Operations, hereby certify that I am a  
Partner, Member or Manager**

*(Name)*

of Durham School Services, L.P a limited liability partnership under RSA 304-B, a  
limited liability professional partnership under RSA 304-D, or a limited liability  
company under RSA 304-C.

I certify that Gary L. Waits Jr.- President and CEO is authorized to bind the partnership  
or LLC. I

*(P-37 Signatory)\**

further certify that it is understood that the State of New Hampshire will rely on this  
certificate as evidence that the person listed above currently occupies the position indicated  
and that they have full authority to bind the partnership or LLC and that this authorization  
shall remain valid for thirty (30) days from the date of this Corporate Resolution

DATE: 11/17/2022

ATTEST:



*(Stephen Schmuck)*

Vice President of Operations

*(Title)*

**\* Note:** The signatory to this Certificate of Authority and the signatory to the P-37 may not be  
the same individual.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/31/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


<b>PRODUCER</b> Willis Towers Watson Northeast, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191-USA	<b>CONTACT NAME:</b> Willis Towers Watson Certificate Center <b>PHONE (A/C No. Ext):</b> 1-877-945-7378 <b>FAX (A/C No.):</b> 1-888-467-2378 <b>E-MAIL ADDRESS:</b> certificates@willis.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> National Express LLC 2601 Navistar Drive Lisle, IL 60532	<b>INSURER A:</b> ACE American Insurance Company	<b>NAIC #</b> 22667
	<b>INSURER B:</b> Old Republic Insurance Company	<b>NAIC #</b> 24147
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES:** CERTIFICATE NUMBER: W26563076 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBR (INSR) WORD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT, <input type="checkbox"/> LOC OTHER:	Y	HDO 072954889	11/01/2022	11/01/2023	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 5,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COM/PROP AGG \$ 5,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	ISA H25574436	11/01/2022	11/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <b>DED</b> <input type="checkbox"/> <b>RETENTION \$</b>					EACH OCCURRENCE \$ AGGREGATE \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N NO	MPC 314263 22	11/01/2022	11/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 3,000,000 E.L. DISEASE - EA EMPLOYEE \$ 3,000,000 E.L. DISEASE - POLICY LIMIT \$ 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Certificate Holder is included as an Additional Insured as respects to General Liability and Auto Liability where required by written contract.

<b>CERTIFICATE HOLDER</b>  State of New Hampshire Dept. of Natural and Cultural Resources Cannon Mountain/Franconia Notch State Park 260 Tramway Drive Franconia, NH 03380	<b>CANCELLATION:</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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