

Original to City Clerk 6/17/09

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



GEORGE N. CAMPBELL, JR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

May 29, 2009

RECEIVED

JUN - 1 2009

MANAGER'S OFFICE
LACONIA, N.H.

Eileen Cabanel
City of Laconia
45 Beacon Street East
Laconia, NH 03246

Re: State-owned Concord Lincoln Railroad Corridor, Laconia
Rail-Trail Agreement, Laconia

Dear Ms. Cabanel,

Enclosed is City of Laconia's copy of the executed Rail-Trail Agreement between the State of New Hampshire and City of Laconia for the construction, use and maintenance of a recreational trail in the railroad corridor from Valuation Station 1455+15 to Valuation Station 1525+25. Please, inform all City construction and maintenance personnel and contractors on this project to contact the Plymouth & Lincoln Railroad and this office regarding any construction and or maintenance of the facility per the terms of the agreement.

Feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Louis A. Barker".

Louis A. Barker
Railroad Planner

Enc

Cc: Plymouth & Lincoln RR

RAIL - TRAIL AGREEMENT

This Rail-Trail Agreement (this "Agreement") between the State of New Hampshire, by and through the New Hampshire Department of Transportation (the "State" or the "Department"), Bureau of Rail and Transit ("Bureau"), hereinafter referred to as the State, and the City of Laconia, a municipal corporation, 45 Beacon Street East, Laconia, NH 03246, hereinafter referred to as the "Permittee," and both collectively referred to as the "Parties".

WHEREAS, the State is the owner of a railroad corridor in the City of Laconia, County of Belknap, State of New Hampshire, operated by the Plymouth & Lincoln Railroad ("Railroad").

WHEREAS, the Permittee proposes to construct and manage a Recreational Trail for non-motorized recreational purposes and snowmobiles, along and across active portions of the State-owned Concord-Lincoln railroad line, from approximate Valuation Station 1455+15, Map 21/63 (Main Street), to approximate Valuation Station 1525+25, Map 21/65 (Elm Street), hereinafter referred to as the "Recreational Trail", as per the approved Final Plans, and the Prosecution of Trail Work both as defined in Section 1.1.

NOW THEREFORE, subject to and conditioned upon the performance by the Permittee of all the covenants set forth below, the State grants to the Permittee permission to construct, use, maintain, repair, and reconstruct said Recreational Trail on the above-described section of railroad corridor.

1. General Overview

1.1 The Permittee agrees that all work on construction, maintenance, repair, and reconstruction of said Recreational Trail shall be performed at a time and under conditions acceptable to the Bureau, as described in the Final Plans entitled Design Drawings for W.O.W. Trail - Phase I prepared for the City of Laconia, Belknap County, New Hampshire State Project No. 14409, Federal Project No. X-A000 (349), Issued January 11, 2008, revised May 30, 2008, revised February 12, 2009," prepared by H.E. Bergeron Engineers, Inc. (the "Final Plans") and the attached Prosecution of Trail Work dated March 10, 2008 (the "Prosecution of Work"), for this project. The Final Plans and the Prosecution of Work are hereby incorporated and made a part of this Agreement. At no time shall any work interfere with railroad operations or other uses of the property by the State, its lessees or assigns. The Permittee is solely responsible for its equipment, contractors, and personnel along the State-owned railroad corridor. All trail construction work must be completed from the trail and not from any portion of the railroad track structure.

1.2 The Permittee agrees that it is liable for the cost of all work required to construct, use, maintain, repair, and reconstruct said Recreational Trail. Such liability will include, but not be limited to, the cost of all on-site inspectors or other representatives of the State to monitor construction and maintenance when such individuals are necessary in the sole judgment of the Bureau.

1.3 The Permittee's Contractor selected to construct this project must obtain a Temporary Use Agreement from the Bureau at a cost of \$400, and must provide evidence of required insurance coverage as specified in Section 4 prior to beginning any work on this project.

1.4 The Permittee will assume the cost of temporary removal, restoration, relocation and adjustment of the Recreational Trail in the event track repairs or additional track installations require such modifications.

1.5 The Permittee shall be the legal occupant of the Recreational Trail with concurrent authority with the State to control access to the Recreational Trail.

2. Trail Construction

2.1 The Permittee is required to obtain, before construction may begin, any and all other permissions, permits, easements and licenses required for said Recreational Trail by any federal, state, county, or local governments, and their agencies or boards, or any other political subdivision thereof.

2.2 The Permittee shall notify the NHDOT Bureau of Rail and Transit at (603) 271-2468 and the Plymouth & Lincoln Railroad at (603) 745-2135 a minimum of seven days in advance of commencement of work on the State railroad corridor. If the Bureau or the Plymouth & Lincoln Railroad at its sole and exclusive discretion determines that the presence of a railroad flagman is required, the Permittee shall be required to contact the Plymouth and Lincoln Railroad to obtain a railroad flagman at the Permittee's expense.

2.3 The Permittee and its Contractor must abide by the Prosecution of Work during all phases of the trail construction. Failure to do so will be considered an Event of Default under the terms of Section 8.

2.4 The Permittee shall obtain, install and maintain at its expense all signage along the Recreational Trail to the specifications shown on the final plans and included in the Prosecution of Work, including agreed upon signage warning the Recreational Trail users that the Trail is on an active railroad corridor.

2.5 The Permittee shall construct and maintain, at its expense, all improvements required at existing private or vehicular grade crossings for abutting landowners licensed by the Bureau. These may include drainage, ditching, curbing, paving, fencing, gates, signage, retaining walls and any other work required to maintain the existing rail crossing. The Permittee shall not interfere with the use of any existing crossings during construction of the Trail.

2.6 The Permittee and its Contractors shall protect and maintain all underground and overhead utilities on the State railroad corridor during and after Trail construction.

2.7 Upon completion of construction, the Permittee shall provide the Bureau with a complete set of as-built plans.

3. Trail Maintenance

3.1 The Permittee shall be responsible for the management and operation of the Recreational Trail, including enforcement of rules governing its use, and for ensuring that operation of the Recreational Trail does not interfere with railroad operations.

3.2 The Permittee shall be responsible for notifying the public and enforcing temporary closure of the Recreational Trail should it be necessary during

maintenance or repair of the railroad line that could compromise the safety of the Trail users in the judgment of the Bureau. Such maintenance operations include, but are not limited to, brush cutting, weed spraying, snow removal, ballast regulating, ditching and any other railroad maintenance work.

3.3 The Permittee shall make regular inspections of the Trail and maintain the Trail in conformance with the Final Plans and the Scope of Work. Without limiting the foregoing, Permittee shall maintain the fencing separating the Trail and the track in good condition at all times, and shall make repairs to the fencing as soon as damage is noted.

3.4 The Permittee shall be responsible for the clearing of all downed trees across the Trail or fencing. All cleared trees shall be removed from the State property and disposed of off site. At no time shall trees, brush, leaves or other waste materials from the Trail be deposited on the track side of the fence.

3.5 The Permittee shall be responsible for maintaining clean ditches and culverts so drainage will work properly and not flow on to the track structure.

3.6 If drainage, runoff or any other problems caused by the presence of the Recreational Trail are encountered after the Trail is complete that adversely affects the track structure or railroad operations, the Permittee shall at its expense (including all Railroad Operator and Bureau costs) make all repairs and alterations required by the Bureau. The Bureau will provide the Permittee with the required Scope of Work, insurance coverage, the need for flagmen and inspectors, and all other requirements to perform the needed work.

3.7 If maintenance work is required on the trackside of the fence because of damaged caused by the presence of the Recreational Trail, then the Permittee shall coordinate all cleanup work with the Bureau and the Railroad before performing any work. If it becomes necessary for the Railroad to perform the work, then the cost of the repairs will be billed to the Permittee.

3.8 Any snow removed from or around the Recreational Trail by the Permittee shall not be deposited on the trackside of the fence if it could impede railroad operations.

4. Indemnification and Insurance

4.1 The Permittee acknowledges that the Recreational Trail is being requested for the Permittee's advantage and does not involve the State's or Railroad's performance of its duties to the public. The Permittee further acknowledges that the installation and use of the Recreational Trail by the Permittee will expose the State and Railroad to additional liability to which they would not otherwise be exposed. Accordingly, the Permittee agrees that it shall not hold the State or the Railroad liable for injury or death of the Permittee or agent of Permittee or for loss or destruction of or damage to any property of the Permittee or any agent of the Permittee while upon, or about, or in the use of the Recreational Trail. The Permittee and its employees, contractors and agents agree to defend, indemnify, and hold harmless the Railroad, its officers, agents and employees, from and against any and all losses suffered by the Railroad, its successors and assigns, officers, agents, and employees, from any and all claims, liabilities or penalties asserted against the Railroad, its successors and assigns, officers, agents 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 Permittee or from the

construction, use, maintenance, installation, removal or existence of this Recreational Trail. Without limiting the foregoing, it is agreed that this covenant of indemnification shall apply to all cases of loss, damage, injury, death, cost or expense for which the Railroad may or shall be liable. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement. In addition the Permittee or its Contractor shall pay the premiums on a policy or policies of insurance covering the following during the construction of said Recreational Trail, designating the Plymouth & Lincoln Railroad as an additional insured:

4.1.1 Commercial General Liability or Pooled Risk Management Coverage:
\$2,000,000.00 each occurrence

4.1.2 Railroad Protective Public and Property Damage Liability:
\$1,000,000.00 each occurrence/\$2,000,000.00 in the aggregate

4.1.3 Worker's Compensation Insurance or Pooled Risk Management Coverage:
In the amount as required by current State Statute

4.1.4 Comprehensive automobile liability insurance or pooled risk management coverage covering all motor vehicles, including owned, hired, borrowed and non-owned vehicles, for all claims of bodily injury, death or property damage:
\$500,000.00 combined single limit.

4.2 The Permittee further agrees to obtain and keep in force after construction, for the life of the Recreational Trail, a policy or policies of insurance or pooled risk management coverage covering said Recreational Trail, providing Comprehensive General Liability or Comprehensive Personal Liability with a minimum of two million (\$2,000,000.00) dollars per occurrence limit covering bodily injury and property damage designating the Plymouth & Lincoln Railroad as an additional insured.

4.3 The Permittee shall provide to the State annually and maintain in force a certificate of insurance or coverage demonstrating that the required coverage has been obtained and containing the following wording. "The Plymouth & Lincoln Railroad is named as an additional insured with respect to liability arising from the use and/or occupation of State-owned premises under this Agreement between the State and the Named Insured." Such insurance or coverage is a condition precedent to the effectiveness of this Agreement. Nothing contained herein shall be construed as a waiver of sovereign immunity. Failure to comply with the terms of this Section 4 shall constitute an Event of Default as provided in Section 8.

5. Bonding

5.1 The Permittee shall post with the Bureau, proof of a Performance Bond for the total cost of the trail construction contract prior to the beginning of any construction work. The Bond must be held in force for a period of 12 months after the City of Laconia receives written notification from the Bureau of the acceptable completion of the work contemplated in the Final Plans and the Scope of Work, in the judgment of the Bureau.

6 Fee

6.1 In consideration of this Rail-Trail Agreement, the Permittee shall pay to the State an initial preparation fee of three hundred fifty dollars (\$350.00).

7. Term

7.1 There is no expiration date for this Agreement. However, the Parties may terminate this Agreement as specified in Section 8 for default. If the area occupied by the Trail is needed by the State for additional rail lines or services, or for other future transportation needs, then this Agreement may be cancelled as per Section 8.3.

8. Default and Removal

8.1 Failure of the Permittee or its Contractor to abide by all construction requirements in this Agreement shall result in the Bureau issuing a notice to the Permittee to suspend all construction work immediately until the Event of Default is resolved.

8.2 Failure of the Permittee to comply with any of the above-specified covenants shall authorize the State to close the Recreational Trail after fourteen (14) days written notice to Permittee. The Recreational Trail will remain closed until all provisions of this Agreement are met and Event of Default is resolved.

8.3 The State has the right to revoke this Rail-Trail Agreement at any time upon one hundred eighty (180) days' written notice to the Permittee to cease use of the Recreational Trail.

8.4 In the event of the Permittee's breach of any of the provisions of the Agreement, the Permittee shall compensate the State for its damages, including all consequential damages which arise out of the breach, and attorney's fees and costs incurred in connection with undertaking such an action.

8.5 If the Permittee does not provide the required notice of work within the State railroad corridor to the State or the Plymouth & Lincoln Railroad, or does not obtain a railroad flagman or pay the cost of their service when required, the State may after fourteen (14) calendar days written notice to Permittee, cancel this Rail-Trail Agreement.

9. Non-Assignment and Amendment; No Third Party Beneficiaries

9.1 This Rail-Trail Agreement may not be assigned or transferred. Until terminated, this Agreement shall inure to the sole benefit of and be binding upon the parties hereto.

9.2 This Agreement may be amended only by an instrument in writing, signed by the parties hereto, and only after approval of such Amendment by the State.

9.3 Nothing herein is intended to create any third party beneficiaries of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Rail-Trail Agreement in duplicate, the day and year first written above.

Witness
Marie M. Bradley

CITY OF LACONIA
Eileen Cabanel
Name: Eileen Cabanel
Title: City Manager

Witness
Deane Hartford

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
Jack W. Ferns Jack W. Ferns, Director
Aeronautics, Rail, and Transit
Commissioner NHDOT
for

This Rail-Trail Agreement has been reviewed by this Office and has been approved as to form and execution on May 28, 2009.

OFFICE OF THE ATTORNEY GENERAL
By: *Dr. [Signature]*
Assistant Attorney General

March 10, 2008

PROSECUTION OF TRAIL WORK ON NH DOT RAILROAD PROPERTY

DESCRIPTION OF WORK

The work on this project entails the construction of a trail within the State of NH active Railroad Corridor as per the plans entitled "Design Drawings for W.O.W. Trail - Phase I prepared for the City of Laconia, Belknap County, New Hampshire State Project No. 14409, Federal Project No. X-A000 (349), prepared by HEB Engineers and dated January 11, 2008, revised May 30, 2008, revised February 12, 2009". The term "Recreational Trail" in this document shall mean any portion of the work required to construct a completed trail including excavation, embankment construction, drainage, ditching, retaining walls, rip-rap, landscaping, fencing, signage and all other trail related work. The Permittee and their contractors and agents shall only perform their work from the trail location and shall not cross or use any portion of the rail or track structure to construct the trail other than at legal public crossings. The State of New Hampshire Bureau of Rail & Transit ("Bureau") must meet with the Permittee and their Contractor on site to discuss the planned work prior to the beginning of any construction work on the trail.

RAILROAD OWNER AND OPERATOR

The Contractor shall coordinate their work on this project with the Railroad Owner and the Railroad Operator. The railroad corridor is owned by the State of New Hampshire.

State of New Hampshire Department of Transportation (Railroad Owner)

Mr. Brian Lombard, PE
Bureau of Rail & Transit
PO Box 483
Concord, New Hampshire 03302
Tel. (603) 271-3465

Plymouth & Lincoln Railroad Corporation (Railroad Operator)

Mr. Benjamin Clark
PO Box 9
Lincoln, New Hampshire 03251-0009
Tel. (603) 745-2135

RAILROAD COORDINATION

All work performed by the Permittee on NH DOT Railroad property directly or indirectly affecting the Railroad Owner and the Railroad Operator shall be coordinated with the State of New Hampshire Bureau of Rail & Transit and the Railroad Operator. The Permittee shall furnish to the Bureau the name of a designated contact person responsible for handling this project and Railroad related issues. The Permittee must contact the Bureau and the Railroad Operator a minimum of seven (7) days before entering onto railroad property to perform work on the trail.

This project is located on active railroad tracks that have both scheduled and unscheduled train traffic. A railroad flagman will be required on this project whenever rail traffic will be passing through the area and construction work is being performed or equipment is located within 15' of the tracks. The Contractor shall suspend work 10 minutes prior to the passage of a train and can resume work once the train passes. The area within 15' of the track shall be cleared of equipment, materials and personnel a minimum of 10 minutes prior to the passage of a train. A railroad inspector will be required on site whenever work is being performed within 15' of the tracks. The cost of the railroad flagman/inspector will be borne by the Permittee or the Contractor.

RIGHT-OF-WAY AND PROTECTION OF PROPERTY

The Contractor shall not modify the Railroad property in any way other than as shown on the project plans and as specified in this Prosecution of Work and authorized by the State of NH DOT Bureau of Rail & Transit. The Permittee and the Contractor must obtain the approval of the Bureau prior to making any changes to the approved trail plan or specifications.

CONSTRUCTION REQUIREMENTS

Prior to beginning any work on the Project, the Permittee shall notify the Bureau (Tel. 271-2468) of their proposed schedule of work on the railroad portion of the project.

Specifically, the following shall apply:

1. Prior to beginning work, the Contractor shall notify the Railroad Owner (Tel. 271-2468) of their proposed schedule of work on the railroad portion of the project, to coordinate for a NHDOT inspector and to provide the name of the Contact Person for the Project. The Contractor shall contact the Railroad Operator (Tel. 745-2135) to coordinate for a railroad flagman.
2. The Contractor shall be responsible for contacting Dig Safe (1-888-344-7233) prior to beginning any excavation work on NH DOT Railroad property.
3. The Contractor shall submit a construction schedule to the Bureau of Rail & Transit prior to the Contractor beginning any work on the railroad corridor.
4. The specifications in this Prosecution of Trail Work supersede any conflicting specifications in the Trail Plans or Contract.
5. The City shall hire the trail design engineering firm or other inspector acceptable to the Bureau to inspect the trail construction work at a minimum of twice per week to monitor the construction work, test materials incorporated in the trail and ensure adherence to the plans and specifications. The engineering firm shall submit weekly reports of the construction progress, material testing and construction issues to the Bureau within one week following the report dates. The cost of these inspection services shall be borne by the City.
6. The Railroad Operator will provide a railroad flagman/inspector whenever work on the trail is within the 15' foul zone. The cost of the railroad flagman/inspector will be billed to the Contractor. If prompt payment is not received from the Contractor, then the amount due will be billed to the City or deducted from the project Performance Bond.
7. The Bureau will inspect the work several times per week throughout the project until final completion and acceptance. Additional inspections will be performed when retaining walls or other structural work is being performed, or when work within 15' of the tracks is being performed. The City shall be responsible for paying all of the Bureau's inspection costs for this project, unless the City notifies the Bureau in writing prior to the beginning of construction that the Contractor will be

responsible for paying the Bureau's inspection bills. If prompt payment is not received from the Contractor or the City, then the amount due will be deducted from the project Performance Bond.

8. No work shall be performed within the State railroad corridor other than the trail construction work. All materials, supplies, storage containers, office trailers, equipment and waste materials shall be stored and stockpiled off of NH DOT railroad property.
9. All trees removed for the proposed trail construction shall be disposed of off of State property. No trees shall be replaced on State property. All tall spindly trees left between the trail and the tracks and any other trees that could fall onto the tracks as determined by the Bureau shall be removed by the Contractor.
10. The Contractor shall install and maintain adequate siltation and erosion controls for the trail construction so that runoff and siltation do not flow onto the track structure or into ditches. If siltation or drainage problems occur within 15' of the tracks, the Contractor will be responsible for cleaning up and stabilizing all disturbed areas to the satisfaction of the Bureau.
11. The Contractor shall leave their work in a stable condition at the end of every work day and over the weekends to ensure that the track structure is not affected by any of the trail construction, especially during adverse weather events.
12. All areas disturbed by the Contractor between the trail and the tracks shall be covered with 6" of erosion stone 12" deep. No loam or seed shall be used within 15' of the tracks. All other areas shall be stabilized with rock, loam and seed or other means shown on the plans.
13. At no time shall the Contractor's equipment enter onto or cross the railroad tracks, ties or ballast, other than at existing legal crossings.
14. The Contractor shall not disturb or alter any portion of the railroad property, track, ballast or ties during the performance of their work. The Contractor will be billed for the cost of repairing or replacing any railroad track damaged or disturbed by them during the construction. The cost of the track repairs and any other costs related to this work on State property will be deducted from the Bond if not paid by the Contractor in a timely manner.
15. The Contractor shall clean up their work area and return it to its original condition upon completion of their work, including all necessary seeding and ground restoration. The Contractor shall ensure that all ditches on the railroad corridor are restored to their original condition after the work is complete.
16. The Contractor shall coordinate their work operations with the Railroad Operator whenever they have to perform maintenance work on the track structure.