



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



Victoria F. Sheehan
Commissioner

William Cass, P.E.
Assistant Commissioner

January 17, 2019

Commissioner Sarah L. Stewart
NH Department of Natural & Cultural Resources
172 Pembroke Road
Concord, NH

Dear Commissioner Stewart:

On behalf of the New Hampshire Department of Transportation (NHDOT) Commissioner we are forwarding to you a signed copy of the fully executed Use and Occupancy Agreement for your records. A permanent signed record will be held at the NHDOT Bureau of Highway Maintenance Office in Concord.

Please do not hesitate to contact Daver Rodrigue or myself at the NHDOT JO Morton Building in Concord if you have any further questions.

Yours truly,

Caleb B. Dobbins
NHDOT – State Maintenance Engineer

cc: Commissioner Victoria Sheehan
Dave Rodrigue, Director of Operations

Enc: Signed Agreement

Statewide OHRV

USE AND OCCUPANCY AGREEMENT

1. The following entities shall be parties to this Agreement made in duplicate this 9th day of January, 2020, and shall be bound by its provisions:
 - A. The New Hampshire Department of Natural and Cultural Resources, hereinafter called the "NHDNCR" acting by and through the Commissioner, New Hampshire Department of Natural and Cultural Resources, 172 Pembroke Road, Concord, NH, 03301.
 - B. The New Hampshire Department of Transportation, hereinafter called the "NHDOT", acting by and through the Commissioner, New Hampshire Department of Transportation (NHDOT), 7 Hazen Drive, PO Box 483, Concord, NH, 03302-0483.
2. The NHDNCR, through its Bureau of Trails, has submitted a sets of plans to the NHDOT to be incorporated in the OHRV Crossing/Connector Permits, pursuant to the process identified in RSA 215-A:3, VI, for installation of OHRV crossings/connectors within the highway right-of-way; and the NHDOT has reviewed and approved these plans.
3. This Agreement covers the Use and Occupancy of the Limited/Controlled Access Right-of-Way (LAROW/CAROW) of all NHDOT Right of Way as shown on the plans attached to all issued OHRV permits. Such occupancy having been granted by execution of this document and issuance of an OHRV Crossing/Connector Permit which covers the installation of OHRV facilities at the location described in the approved OHRV Connector/Crossing permit.
4. The NHDNCR shall submit any proposed alterations to said plans in writing to the NHDOT for review and approval by the NHDOT.
5. The NHDNCR shall submit proof of Bonding and Insurance, if required, for the Excavation/Encroachment Permit.
6. All materials supplied and work performed by the NHDNCR or its contractor in the installation of the OHRV Crossing/Connector facilities shall be subject to the inspection of a representative of the NHDOT. Any deficiencies in materials, methods of construction, or workmanship shall be promptly corrected to the satisfaction of the NHDOT.
7. During construction, the NHDNCR shall reimburse the NHDOT for construction inspection services of all work that is conducted within the NHDOT's Right-of-Way, if

required by the OHRV Crossing/Connector permit. The NHDOT shall provide to NHDNCR a schedule of potential costs that would be associated with this section.

8. The NHDNCR shall submit its written maintenance policies and procedures which are to be used for the inspection, repair, and maintenance of said facilities to the NHDOT for review and approval. Such procedures shall be approved by the NHDOT prior to initial operation of the constructed facilities.
9. The NHDNCR shall give the NHDOT a minimum of two (2) business days' notice of scheduled or nonscheduled maintenance of the OHRV Crossing/Connector facilities except emergency repairs, for which the NHDNCR shall contact the NHDOT while such emergency repairs are being done. Regular maintenance, inspection, and updating by the NHDNCR shall not be conducted without prior notification to the NHDOT.
10. The costs and expenses for the installation and maintenance of the OHRV Crossing/Connector facilities shall be the responsibility of the NHDNCR.
11. The NHDNCR or their contractor is solely responsible for the presence of their equipment along the NHDOT's LAROW/CAROW. The NHDNCR agrees the installation shall be consistent with the NHDOT's right to access if necessary.
12. The NHDNCR agrees that access to the OHRV Crossing/Connector facilities for or for any purpose other than general maintenance shall be made in accordance with the following procedure:
 - a) Prior to working on the NHDOT LAROW/CAROW, the appropriate NHDOT Bureau of Highway Maintenance District/Turnpikes shall be notified and work will be scheduled with them.
 - b) At all times when working on or near the travel way, traffic control devices shall be provided by the NHDNCR as required by the NHDOT.
 - c) Any and all work done by the NHDNCR at these locations shall conform to standards set by the NHDOT.
 - d) Additional requirements or modifications of the above may be further negotiated with and approved by the appropriate NHDOT Bureau of Highway Maintenance District /Turnpikes and incorporated by reference.
13. The Use and Occupancy of the {LAROW/CAROW} by the NHDNCR shall be at the sufferance of the NHDOT. The NHDOT may terminate this Agreement upon thirty (30) days' notice in writing to the NHDNCR at the above address. Upon the termination of this

Agreement pursuant to this paragraph, the NHDNCR shall have ninety (180) days to remove said OHRV Crossing/Connector facilities and all appurtenances from the LAROW/CAROW.

14. The NHDNCR shall promptly and at its sole expense make such relocations and adjustments, including removal of facilities if required by the NHDOT, as may be necessary to accommodate highway or bridge construction, reconstruction, repair, or maintenance. Such relocation and adjustment shall be at the sole expense of the NHDNCR.
15. The NHDNCR agrees that the NHDOT, its bureaus and their employees, agents, and representatives shall not incur any legal liability whatsoever to the NHDNCR for any damage to the OHRV Crossing/Connector facilities or to any other property or employee of the NHDNCR or to any other person or entity hired by or affiliated with the NHDNCR resulting from or arising out of any ownership and use of and operations within the LAROW/CAROW, including but not limited to inspection, maintenance, cleaning, snow removal, construction, reconstruction, rehabilitation, and repair.
16. The NHDNCR shall require any club, its agents or any other third party entity acting on behalf of such club, to indemnify, defend, and hold harmless the State of New Hampshire, including NHDNCR and NHDOT and their employees, agents, and representatives against any and all claims, actions, causes of action, demands, liabilities, losses, penalties, damage of any kind, and failure to comply with any permitting, regulations, and guidelines, including all actions for indemnity and/or contribution, and including reasonable attorneys' fees, resulting from or arising out of any NHDNCR or NHDOT ownership, use of, and operations within the LAROW/CAROW, including but not limited to inspection, maintenance, cleaning, snow removal, construction, reconstruction, rehabilitation, and repair of either the OHRV Crossing/Connector or the highway facilities. NHDNCR shall require any such club, its agent or any other third party acting on behalf of such club to obtain insurance in accordance with [insert standard insurance limits and specifications of NHDOT or NHDNCR, whichever is higher] and shall require the State of New Hampshire to be named as an "additional insured." The indemnification provided under this paragraph shall include, but not be limited to, any and all claims or demands for loss of revenue, income, business or economic opportunity, customers, profits, presence of and occupation of, and service resulting from or arising out of any inability or failure of the OHRV Crossing/Connector facilities to provide service as intended by the NHDNCR.
17. The NHDNCR shall, at the request of the NHDOT and at the expense of the NHDNCR, provide whatever protection is deemed necessary by the NHDNCR or by the NHDOT in the event the NHDOT performs any work on the highway, including but not limited to inspection, maintenance, cleaning, snow removal, construction, reconstruction, rehabilitation, and repair of the highway facilities.

- 18. Any damage to the LAROW/CAROW and the highway facilities contained therein which, as determined by the NHDOT, is caused by, results from, or arises out of the installation, maintenance, or presence of the OHRV Crossing/Connector facilities shall be repaired by the NHDOT. The NHDNCR shall fully compensate the NHDOT for all costs associated with the repair of any such damage. NHDOT shall be required to notify NHDNCR of needed repair work and shall request NHDNCR to complete the work, however in NHDNCR is not able to complete the work in a reasonable timeframe the NHDOT shall make such repairs and may invoice NHDNCR for actual costs of repair.

- 19. Notwithstanding any provision of this Agreement, nothing herein contained shall be deemed to constitute a waiver of the recreational immunity or sovereign immunity of the State, which immunity is hereby reserved to the State and its agencies. This covenant shall survive the termination of this Agreement.

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

THE STATE OF NEW HAMPSHIRE
Department of Transportation

BY: 
Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
Department of Natural and Cultural Resources

BY: 
Sarah L. Stewart
Commissioner