

April 21, 2015

Secretary  
Surface Transportation Board  
395 E Street, S.W.,  
Washington, DC 20423

**Re: Docket: AB-1120X and 1120 (Sub-No. 1X) - Trail Use Agreement in  
Lebanon, Grafton County, NH**



Dear Secretary:

Please find enclosed the Trail Use Agreement reached between the State of New Hampshire and the City of Lebanon for the abandoned section between Railroad Milepost B140, Station 3515+69 on map v32.1-68 and ending at Railroad Milepost B141, Station 3568+49 on map v32.1-69 which traverses through United States Postal Service ZIP Code 03766 in Lebanon, Grafton County, New Hampshire, a distance of approximately 0.97 miles.

238306  
238310

Respectfully submitted,

  
\_\_\_\_\_  
City of Lebanon

ENTERED  
Office of Proceedings  
May 3, 2015  
Part of  
Public Record

## RAIL-TRAIL AGREEMENT

This Rail-Trail Agreement ("Agreement") is 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"), and the City of Lebanon, a municipal corporation, 51 N. Park Street, Lebanon, NH 03766 (the "City").

WHEREAS, the State is the owner of the Northern Railroad corridor in the City of Lebanon, County of Grafton, State of New Hampshire, identified in a Release Deed from Boston and Maine Corporation to the State of New Hampshire, dated July 30, 1999, and recorded in the Grafton County Registry of Deeds at Book 2409, Page 865.

WHEREAS, the City proposes to plan, design, construct, manage and maintain a public trail in accordance with RSA chapter 231-A, for non-motorized transportation and recreational purposes, along and across the State-owned Northern Railroad corridor between Spencer Street and a point approximately one hundred (100) feet west of the bridge over the Mascoma River and under Route 4 in Lebanon, New Hampshire, and more particularly described as follows:

A strip of land running along the Northern Railroad Corridor from a point designated approximately as Engineering Station 3424+50± on Federal Valuation Plan 32.1, Map 66 (Milepost B138.30) to a point designated approximately as Engineering Station 3568+49± on Federal Valuation Plan 32.1, Map 69 (Milepost B141), hereinafter referred to as the "Trail."

NOW THEREFORE, subject to and conditioned upon the performance by the City of all the covenants as set forth below, the State grants to the City a license to plan, design, construct, manage, maintain and occupy said Trail on the above-described section of railroad corridor.

### 1. General Overview

1.1 The City agrees that all work on planning, design and construction of said Trail shall be performed at a time and under conditions acceptable to the Bureau, including construction plans to be submitted for approval to the State prior to construction, and a Prosecution of Trail Work to be prepared by the State following approval of construction plans (the "Prosecution of Work"), for this project. The City agrees that all work on maintenance, repair, and reconstruction of said Trail shall be performed at a time and under conditions acceptable to the Bureau. At no time shall any work interfere with railroad operations or other uses of the property by the State, its lessees or assigns. The City is solely responsible for its own equipment, contractors, and personnel along the State-owned Railroad corridor.

1.2 The City agrees that it shall be responsible for the cost of all work required to plan, design, construct, manage, maintain, repair and reconstruct said Trail. Such responsibility 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 City'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 5 prior to beginning any work on this project. This fee is to defray the Bureau's administrative cost of reviewing the Contractor's work in accordance with this License Agreement.

1.4 The City will assume the cost of removal, restoration, relocation and adjustment of the Trail in the event the State determines that the rail corridor is needed for railroad purposes.

1.5 Pursuant to the provisions of this Agreement, and the provisions of RSA 231-A:4 and RSA 231-A:7, the City shall be a legal occupant of the Trail with concurrent authority with the State to control access to the Trail.

1.6 If construction of the trail requires the removal of rail, the City agrees to assist with preparation of abandonment and discontinuance documents for submission to the U.S. Surface Transportation Board, and pay filing fees as required by the Board.

## 2. Trail Design

2.1 The Trail designer hired by the City will meet with representatives of the Bureau prior to beginning work on the design so the Parties can discuss the State's design requirements. A site walk along the Trail may be appropriate.

2.2 The Trail designer shall provide plans to the Bureau for its review at the 30% and 90% plan design stages so the Bureau can provide comments prior to the final plan stage to avoid additional redesign of the plans.

2.3 The Trail designer will provide detailed plans for guardrail and safety protection of the three Mascoma River bridges, the Slayton Hill Road bridge and the I-89 bridge. No structural changes should be made to the bridges without the approval of the Bureau.

2.4 Prior to the construction of any portion of the Trail west of the railroad bridge under Route 4 and over the Mascoma River, chain link fencing shall be installed along the side of the Trail to the intersection with Glen Road. The fence shall be located a minimum of 15 ft from the centerline of the track that is to remain west of Milepost B141.

2.5 Signage shall be attached to the fencing described in Section 2.4 at the end of the track and every 200' along the fence stating "Active Rail Line - Do Not Enter Track Area."

## 3. Trail Construction

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

3.2 The City shall notify the NHDOT Bureau of Rail and Transit at (603) 271-2468 a minimum of seven days in advance of commencement of work on the State railroad corridor. The City shall notify the Claremont Concord Railroad ("Railroad Operator") at (603) 298-6018 in advance of commencing any work westerly of the railroad bridge over the Mascoma River and under NH Route 4. If the Bureau or the Railroad Operator at its sole and exclusive discretion determines that the presence of a railroad flagman is required in this area, the City shall be required to contact the Railroad Operator to obtain a railroad flagman at the City's expense.

3.3 The City 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 9.

3.4 The City shall obtain and install at its expense all signage along the Trail to the specifications shown on the Final Plans and included in the Prosecution of Work.

3.5 The City shall construct, at its expense, all improvements made necessary by the City's construction or operation of the Trail 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 by the

Final Plans and Prosecution of Work for the existing rail crossing. The City shall not interfere with the use of any existing crossings during construction of the Trail.

3.6 The City and its Contractor shall protect and leave undisturbed all underground or overhead utilities on the State railroad corridor during Trail construction.

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

3.8 The City shall retain the Railroad Operator, or, if not available, a contractor approved by the State, to perform all railroad related trackwork (such as removing and transporting the rail or other track materials to be salvaged to the State) during the construction or whenever the track structure is disturbed, distorted or altered due to the existence of said facility. The Railroad Operator's current fee and wage structure will be used for all services rendered by the Railroad Operator at the City's expense.

3.9 The Railroad Operator will need to make track modifications and install a bumper post at the new track termination at Milepost B141. This work will be performed by the Operating Railroad or its contractor at the City's expense.

3.10 The City or its Trail contractor shall pay the Railroad Operator 50% of its estimated track work costs prior to the Railroad Operator beginning any work. A final bill will be submitted to the City by the Railroad Operator upon completion of all track work.

3.11 The City will be responsible for the removal and disposal of all track materials that are not salvaged by the State, including all old railroad ties.

#### 4. Trail Maintenance

4.1 The City shall be responsible for the management and operation of the Trail, including enforcement of rules governing its use, and for ensuring that operation of the Trail does not interfere with railroad operations. The City shall furnish a copy of its trail use rules and any amendments to the Bureau.

4.2 The City shall protect and leave undisturbed all underground or overhead utilities on the State railroad corridor after Trail construction.

4.3 The City 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.

4.4 The City shall be responsible for maintaining clean ditches and culverts located within the railroad corridor, so drainage will work properly and not damage the State railroad corridor.

4.5 If drainage, runoff or any other problems caused by the presence of the Trail are encountered after the Trail is complete, the City shall at its expense (including all Bureau costs) make all repairs and alterations required by the Bureau to remedy said problems.

#### 5. Indemnification and Insurance

5.1 The City is requesting this License Agreement so that the City may expand non-motorized recreational opportunities in the City, and this License Agreement does not create any duties to be performed by the State or Railroad Operator other than those required by statute or specifically stated herein.

RSA Ch. 231-A, RSA 508:14, RSA 212:34, and RSA Ch. 507-B, as amended, significantly limit the liability of owners, occupants, and lessees of land who allow the use of their lands for recreational purposes. To whatever extent that RSA Ch. 231-A, RSA 508:14, RSA 212:34, and RSA Ch. 507-B, as amended, may be inapplicable to the State or Railroad Operator, the City agrees to hold harmless the State and Railroad Operator in the event of injury to or death of any of the City's agents, or loss or destruction of or damage to the City's property, while the City or its agents are constructing or maintaining the Trail.

The City further agrees, to whatever extent that RSA Ch. 231-A, RSA 508:14, RSA 212:34, and RSA Ch. 507-B, as amended, may be inapplicable to the State or Railroad Operator, its officers, agents and employees, to indemnify, defend, and hold harmless the State and Railroad Operator, their officers, agents, and employees from any and all claims, suits, or penalties (and for any losses arising therefrom) alleged or asserted by a third party on account of, based or resulting from, arising out of (or which are claimed to arise out of) the acts or omissions of the City or from the construction, use, maintenance, installation, removal, or existence of this Trail.

However, the City shall have no obligation to indemnify, defend, or hold harmless the State or Railroad Operator or their officers, agents, and employees for their: (i) intentionally caused injury or damage; (ii) gross negligence or willful or wanton misconduct; or, (iii) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

The City's obligations under this section shall exist only with regard to those sections of this Trail where the City has commenced construction or operation of the Trail, as listed in Appendix A of this License Agreement. This obligation is further conditioned on the City receiving from the State and/or Railroad Operator prompt written notification of any such claim and the State and/or Railroad Operator cooperating fully with the indemnifying party in the defense of any such action.

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.

5.2 The City or its Contractor shall pay the premiums on a policy or policies of insurance covering the following during the construction of said Trail:

5.2.1 Commercial General Liability or Pooled Risk Management Coverage:  
\$2,000,000.00 each occurrence, designating the State of NH and the Railroad as an additional insured

5.2.2 Worker's Compensation Insurance or Pooled Risk Management Coverage in the amount as required by current State Statute

5.2.3 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.

5.3 The City further agrees to obtain and keep in force after construction, for the life of the Trail, a policy or policies of insurance or pooled risk management coverage covering said 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 State of NH and the Operating Railroad as an additional insured.

5.4 The City shall provide to the State annually and maintain in force a certificate of insurance or coverage respectively demonstrating that its required coverage has been obtained and containing the following wording. "The State of NH and the Claremont Concord Railroad are named as 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 shall constitute an Event of Default as provided in Section 9.

6. Bonding

6.1 The City shall post with the Bureau proof of a Performance Bond for the total cost of any 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 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. This requirement shall apply to each individual contract in the event separate contracts are issued for segments of the Trail.

6.2 If invoices from the Operating Railroad or the State are not paid within 60 days of the invoice being issued, then the State may at its sole discretion require payment from the bond for the unpaid Party.

7. Preparation Fee

7.1 N/A

8. Effective Date and Term

8.1 This License Agreement shall have an effective date of October 5, 2012 and shall continue until surrendered by the City or revoked in writing by the State as specified in Section 9 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 9.3.

9. Default, Revocation, and Surrender

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

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

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

9.4 In the event of the City's breach of any of the provisions of the Agreement, the City 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.

9.5 If the City does not provide the required notice of work within the State-owned Railroad Corridor to the State or the Railroad Operator, or does not obtain a railroad flagman or pay the cost of its service when required, the State may after fourteen (14) calendar days written notice to City, cancel this Agreement.

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

10.1 This 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.

10.2 This Agreement and any addenda constitute the entire understanding between the parties, and as of its effective date supersedes all prior or independent agreements between the parties covering the subject matter hereof. 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.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate, on this 5<sup>th</sup> day of October 2012.

Witness

Premie

CITY OF LEBANON

[Signature]

City Manager  
Duly Authorized

Witness

Louise Kewter

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

[Signature]

Commissioner  
Director

This License Agreement has been reviewed by this Office and has been approved as to form and execution on October 5, 2012, 2012.

OFFICE OF THE ATTORNEY GENERAL

By: [Signature]  
Assistant Attorney General

# City Clerk's Office

51 North Park Street  
Lebanon, NH 03766



# City of Lebanon

New Hampshire

## CERTIFICATE OF VOTE

I, Sandra L. Allard, City Clerk for the City of Lebanon, do hereby certify that:

At a Lebanon City Council meeting held on August 15, 2012, the Council agreed to enter into an Agreement with the State of New Hampshire for conversion of the State owned Northern Railroad Corridor between Spencer Street, Lebanon, and Glen Road, West Lebanon into a Rail Trail (known as the Mascoma River Greenway Project) by adoption of the following motion:

**"Moved that the Lebanon City Council hereby authorizes the City Manager to enter into a Rail-Trail Agreement with the New Hampshire Department of Transportation for the development of the Mascoma River Greenway, a public non-motorized recreational trail and critical transportation link to be located within the Northern Railroad Corridor between Spencer Street, Lebanon and Glen Road, West Lebanon."**

This agreement remains in full force and effect as of September 12, 2012.

During the August 15, 2012 City Council meeting, City Manager Lewis said there has been a lot of scrutiny of this document, and he complimented the Council on their leadership and thanked Mr. Coats. Councilor Hill said she is pleased to move this forward, but it is more than a recreational trail. It is a critical transportation link between Lebanon and West Lebanon.

Sandra L. Allard, City Clerk

On this, the 12 of September 2012, before me, Kristin M. Kenniston, the undersigned officer personally appeared Sandra Allard, City Clerk, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Kristin M. Kenniston, Notary Public

KRISTIN M. KENNISTON  
Notary Public - New Hampshire  
My Commission Expires March 26, 2013

## CERTIFICATE OF COVERAGE

This certificate evidences the limits of liability in effect at the inception of the Member Agreement(s) described below. This certificate is issued as a matter of information only and confers no rights on the certificate holder and does not amend, extend or alter the coverage afforded by the Member Agreement(s); except to the extent provided in the additional covered party box or loss payee box below, if checked.

THIS IS TO CERTIFY THAT THE MEMBER NAMED BELOW IS A PARTICIPATING MEMBER OF COMPANY A AND THAT A MEMBER AGREEMENT(S) HAS BEEN ISSUED TO THE MEMBER FOR THE AGREEMENT TERM(S) 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 COVERAGE AFFORDED BY THE MEMBER AGREEMENT(S) IS SUBJECT TO ALL THE EXCLUSIONS, EXTENSIONS, TERMS AND CONDITIONS OF SUCH MEMBER AGREEMENT(S). AGGREGATE LIMITS MAY HAVE BEEN REDUCED BY PAID CLAIMS.

<b>Participating Member:</b> City of Lebanon <b>Member Number:</b> 055-070195 - 13		<b>Company Affording Coverage (the "Company"):</b> Local Government Center Property-Liability Trust, LLC P.O. Box 617, Concord, NH 03302-0617		
Coverage (Occurrence basis only)	Effective Date (mm/dd/yy)	Expiration Date (mm/dd/yy)	Limits (subject to applicable NH statutory limits)	
<input checked="" type="checkbox"/> <b>General Liability</b> (Member Agreement Section III.A)	7/1/2012	6/30/2013	Each Occurrence	\$ 5,000,000
			General Aggregate	\$
			Personal & Adv Injury	\$
			Med Exp (any one person)	\$
			Products - Comp/Op Agg	\$
			Fire Damage (each fire)	\$
<input checked="" type="checkbox"/> <b>Automobile Liability</b> (Member Agreement Section III.A) <input type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos <input type="checkbox"/> Other _____	7/1/2012	6/30/2013	Each Occurrence	\$ 5,000,000
			Bodily Injury (per person)	\$
			Bodily Injury (per accident)	\$
			Property Damage (per accident)	\$
<input type="checkbox"/> <b>Excess Liability</b>			Each Occurrence	\$ N/A
			Aggregate	\$ N/A
<input checked="" type="checkbox"/> <b>Property (All Risk including Theft)</b> (Member Agreement Section I) Deductible: \$1,000	7/1/2012	6/30/2013	\$Per scheduled limits and Member Agreement	
<input checked="" type="checkbox"/> <b>Workers' Compensation (Coverage A)</b> <b>Employers' Liability (Coverage B)</b>	7/1/2012	6/30/2013	Coverage A:	Statutory
			Cov. B: Each Accident	\$ 2,000,000
			Disease - Each Employee	\$ 2,000,000
			Disease - Policy Limit	\$ 2,000,000
<b>Description:</b> The State of New Hampshire & the Claremont Railroad is named as Additional Covered Party relative to the use &/or occupation of State owned premises.				

**CANCELLATION:** If any of the above coverages under the Member Agreement are cancelled before the expiration date, the Company will endeavor to mail 30 days written notice to the Certificate Holder named below, but failure to mail such notice shall impose no obligation or liability of any kind upon the Company.

<input checked="" type="checkbox"/> <b>Additional Covered Party</b> <input type="checkbox"/> <b>Loss Payee, as his, her or its interests appear</b>		
<i>Coverage for the Additional Covered Party is limited to "bodily injury" or "property damage" caused by, and only to the extent of, the sole negligence of the "Member," and no protection is available for the negligence of others, including the Additional Covered Party and its directors, officers, employees or agents. Available limits of coverage are shared between the "Member" and the Additional Covered Party.*</i>		
<b>Certificate Holder:</b> State of New Hampshire NHDOT Bureau of Rails & Transit NHDOT Bureau of Rails & Transit PO Box 483 Concord NH 03302-0483	<b>Companies</b> By: <u>Debra A. Lewis</u> Authorized Representative Date Issued: <u>9/4/2012</u>	Please direct inquiries to: Debra A. Lewis 603.224.7447 x3332

\*Terms in quotes are defined in the Member Agreement.