



**THE STATE OF NEW HAMPSHIRE**  
DEPARTMENT OF TRANSPORTATION



*William Cass, P.E.*  
Assistant Commissioner

*Andre Briere*  
Deputy Commissioner

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, NH 03301

Bureau of Rail & Transit  
November 17, 2022

5K

**REQUESTED ACTION**

The Department of Transportation requests placing this item on the Consent Calendar.

Authorize the Department of Transportation to enter into a contract with the Plymouth & Lincoln Railroad (PLRR), Vendor 157711, Lincoln, New Hampshire, for the use of the state-owned Concord – Lincoln Railroad Corridor, from Tilton to Lincoln, for tourist excursion railroad service, effective on January 1, 2023, upon Governor and Council approval, through December 31, 2032, with a provision for renewal for an additional 10-year period, subject to Governor and Council approval, through December 31, 2042.

Income from the agreement will be credited as follows:

04-096-096-964010-2991  
Special Railroad Fund  
009-407323 Agency Income

**EXPLANATION**

The Department of Transportation owns the Concord-Lincoln Railroad Line, including the section that is utilized for tourist excursion railroad services between Tilton and Lincoln. This section has been included in Operating Agreements between the Department of Transportation and the Plymouth & Lincoln Railroad since March 11, 1987.

More recently, on September 28, 2011 the Governor and Council approved an Operating Agreement between the Department of Transportation and the Plymouth & Lincoln Railroad Corporation (PLRR) to provide tourist excursion railroad service on the state-owned Concord – Lincoln Railroad Corridor from Northfield to Lincoln for the period of January 1, 2012 through December 31, 2021.

Pursuant to Section 1.3 of the current Operating Agreement, PLRR notified the Department on January 7, 2020 that it wished to renew its operating agreement. The Department and PLRR began active negotiations for the terms of a new 10-year Operating Agreement and requested additional time; a 12-month extension, Amendment #1, approved by Governor and Council, as Item 5A, on November 22, 2021 and extended the completion date until December 31, 2022. The Department and PLRR have negotiated a renewed Operating Agreement for a ten-year period through December 31, 2032. As the railroad line is active and PLRR wishes to continue railroad operations, this Agreement allows PLRR to continue to use the line for, primarily, tourist excursion railroad services.

This Agreement has been reviewed and approved by the Office of the Attorney General for form and execution. Copies of the fully executed Agreement have been provided to the Secretary of State's Office and the Department of Administrative Services. Subsequent to the Governor and Council approval, a copy of the Agreement will be on file with the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,

A handwritten signature in cursive script that reads "William J. Cass".

William J. Cass  
Assistant Commissioner

Attachments

**OPERATING AGREEMENT**  
**ON THE**  
**STATE-OWNED PORTION OF THE CONCORD-LINCOLN RAILROAD LINE**

**BETWEEN**

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF TRANSPORTATION**

**AND**

**PLYMOUTH & LINCOLN RAILROAD CORPORATION**  
**LINCOLN, NH**

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (“Agreement”) is made and entered into this 5<sup>th</sup> day of December, 2022, between the State of New Hampshire, through the New Hampshire Department of Transportation, 7 Hazen Drive, P.O. Box 483, Concord, NH 03302-0483 (“the State”) and Plymouth & Lincoln Railroad Corporation, PO Box 9, Lincoln, NH 03251-0009 (“the Contractor”), collectively referred to as (“the Parties”).

WHEREAS, the State owns a portion of the Concord-Lincoln Railroad Line, as more particularly described in Section 2.1; and

WHEREAS, the Contractor provides Service on a segment defined of the Concord-Lincoln Railroad Line pursuant to the Operating Agreement between the State and Plymouth & Lincoln Railroad Corporation dated May 4, 2011;

WHEREAS, pursuant to Section 1.3 of the Operating Agreement dated May 4, 2011, the State and the Contractor desire to enter into a new Operating Agreement pursuant to the following terms and conditions:

### ARTICLE I - GENERAL CONDITIONS

1.1. DEFINITIONS – As used herein, the following terms have the meanings indicated:

- a. **“Completion Date”** means December 31, 2032, unless this Agreement is otherwise extended or renewed in accordance with Section 1.3.1 of this Agreement.
- b. **“Contracting Officer”** means the Commissioner of the New Hampshire Department of Transportation (NHDOT), or her successor or her duly authorized representatives, having an address of 7 Hazen Drive, P.O. Box 483, Concord, NH 03302-0483. The Contracting Officer shall be the representative of the State hereunder.
- c. **“Contractor”** means Plymouth & Lincoln Railroad Corporation PO Box 9, Lincoln, NH 03251.
- d. **“Contractor’s Representative”** means representative of the Contractor responsible for making contract decisions and will be the Contractor’s contact for the Contracting Officer.
- e. **“Effective Date”** means the date this Agreement is approved by the Governor and Council of the State of New Hampshire.
- f. **“Facilities”** – collectively means the state-owned real estate, track, culverts, bridges, signals, switches, structures, buildings, and related railroad transportation property over which Service is to be provided.

- g. **“Final Report”** – means a report containing all information required by the various reporting provisions of the Agreement, from the date of the last such reports through and including the Completion Date.
- h. **“FRA”** means the Federal Railroad Administration of the United States Department of Transportation.
- i. **“Line”** means the state-owned Concord to Lincoln Railroad Line beginning in Tilton MP C 21.90 (Station 1152+07) and heading Northerly to MP P 21.35 (Station 1115+75) in Lincoln, New Hampshire, as more particularly described in Section 2.1.
- j. **“Major Maintenance Expenditure”** means any expenditure to address a condition on the Line that interrupts or is likely to lead to the interruption of Service or a condition that results or could result in bridge weight capacity restrictions on the Line while the condition exists. Major Maintenance Expenditures include, but are not limited to, bridge failures/rehabilitation, slope failures, culvert failures, major washouts and bridge weight capacity upgrades.
- k. **“Gross Ticket Revenue”** means those revenues derived by the Contractor from providing Service on the Line.
- l. **“Operations Manager”** means the Contractor’s representative responsible for day-to-day operation and maintenance on the Line who will be the contact for the Bureau of Rail and Transit personnel.
- m. **“Operating Year”** means January 1 to December 31.
- n. **“Service”** means Passenger Excursion Service, also referred to as Tourist Railroad Service, on the Line.
- o. **“STB”** means the Surface Transportation Board.
- p. **“Subcontractor”** means an individual, partnership, firm, corporation, or any combination thereof, or joint venture, to whom the Contractor subcontracts any part of this Agreement.
- q. **“Termination Report”** means a report containing all information required by the various reporting provisions of the Agreement, from the date of the last such reports through and including the date of termination.
- r. **“User Fee”** means the fee to be paid by the Contractor to the State for use of the Line to provide Service, as more particularly defined in Article IV of this Agreement.

**1.2. EFFECTIVE DATE/COMPLETION OF SERVICES.**

- 1.2.1 Notwithstanding any provision of this Agreement to the contrary, this Agreement, and all obligations of the Parties hereunder, is subject to the approval of the Governor and Council of the State of New Hampshire. This Agreement shall become effective on the date the Governor and Council approve this Agreement.
- 1.2.2 Any Service 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 Service performed.

- 1.2.3 After termination of the Agreement the Parties shall be relieved of all obligations hereunder, except the Contractor shall at its own expense terminate its operations, relinquish the Facilities and submit the final User Fee payment and a Final Report in accordance with the format and schedule of reports described in **Exhibit A** attached hereto and incorporated herein by this reference (hereinafter “Report and Payment Schedule”). Further, the Contractor’s continuing duty to maintain financial records per Section 4.5.1, the Contractor’s duty to defend, indemnify and hold harmless the State per Section 1.12.1, and the Contractor’s hiring limitation in Section 1.6.2 shall survive termination of this Agreement.

### 1.3. RENEWAL OF AGREEMENT.

- 1.3.1 The Contractor shall notify the State by **certified mail** no earlier than 18 months before the Completion Date, but no later than one year prior to the Completion Date, that the Contractor wishes to enter into renegotiations for a new agreement for an additional ten (10) year period beginning January 1, 2033. If the Contractor and the State cannot agree upon a new operating agreement by June 30, 2032 or the State is not satisfied with the Contractor’s level of service during the term of this Agreement, the State may at that time solicit new Requests for Proposals to operate the Line and have no further obligations for renewal of this Agreement with the Contractor.

### 1.4. CONTRACTOR’S REPRESENTATION AND WARRANTIES.

- 1.4.1 The Contractor represents and warrants the following:
- a. The Contractor is a corporation duly organized, validly registered with the New Hampshire Secretary of State, and in good standing under the laws of New Hampshire, and is duly qualified to do business in each jurisdiction where its business or the ownership of its property requires such qualification;
  - b. The Contractor has the full power and authority to enter into this Agreement and to carry out the functions which it has undertaken in this Agreement;
  - c. All corporate and other proceedings required to be taken by or on the part of the Contractor to authorize it to enter into this Agreement and perform the Service have been duly taken; and
  - d. The execution of this Agreement and the operation of the Service will not violate any statute, rule, regulations, order, writ, injunction or decree of any court, administrative agency or governmental body.

1.6.2 Unless otherwise authorized in writing, during the term of this Agreement and for a period of six (6) months after the Completion Date, 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 Service to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement provided that the hiring of any such person as a result of a response to any general solicitation for employment through an untargeted advertisement made in the ordinary course of business shall not constitute a breach of this provision. This provision shall survive termination of this Agreement.

## **1.7. EVENT OF DEFAULT/REMEDIES.**

1.7.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- a. failure to perform the Service satisfactorily or on schedule as reasonably determined by the Contracting Officer;
- b. failure to submit any report required hereunder;
- c. failure of the Contractor to maintain the records required hereunder, or to permit access thereof;
- d. failure to pay the User Fee to the State as required hereunder; and/or
- e. failure to perform any other covenant, term or condition of this Agreement.

1.7.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

1.7.2.1 Give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor written notice of termination;

1.7.2.2 Treat this Agreement as breached and pursue any of its remedies at law or in equity, or both.

## **1.8. TERMINATION OF AGREEMENT.**

1.8.1 In the event this Agreement is terminated for any reason prior to the Completion Date, the Contractor shall comply with Section 1.2.3 and deliver to the Contracting

1.11.2 None of the Service shall be subcontracted by the Contractor without the prior written consent of the Contracting Officer. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which the State is not a party.

**1.12. INDEMNIFICATION.**

1.12.1 Unless otherwise exempted by law, the Contractor shall defend, indemnify and hold harmless the State, its agencies, officers and employees, from and against any and all claims, demands, losses, liabilities, penalties, fines, judgments, awards, and costs for any personal injury or property damages, or other claims asserted against the State, its agencies, officers or 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 Contractor, its employees, lessees, or Subcontractors, including but not limited to negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this Section 1.12.1. 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 shall survive the termination of this Agreement.

**1.13. INSURANCE.**

1.13.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any Subcontractor to obtain and maintain in force, the following insurance:

A. The Contractor shall obtain and maintain in force, throughout the term of this Agreement, Specialized Passenger Risk Liability Insurance, including Contractual Liability, with a claims made basis, naming the State as additionally insured, in the amount of five million (\$5,000,000.00) dollars with aggregate coverage of not less than ten million (\$10,000,000.00) dollars.

B. Commercial Automobile Liability Insurance covering all motor vehicles including owned, hired, borrowed, and non-owned vehicles. Limits of Liability: \$1,000,000 Combined Single Limit for bodily Injury & Property Damage.

C. In accordance with RSA 281-A, and subject to the exception for certain railroad employees described in RSA 281-A:2, VI(a), the 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 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

To the Contractor: Benjamin Clark, President and General Manager  
Plymouth & Lincoln Railroad Corporation  
PO Box 9  
Lincoln, NH 03251-0009

**1.16. AMENDMENT.**

1.16.1 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.

**1.17. CONSTRUCTION OF AGREEMENT AND TERMS.**

1.17.1 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.

**1.18. THIRD PARTIES.**

1.18.1 The Parties hereto do not intend to benefit any third parties other than the HOBO Corporation and this Agreement shall not be construed to confer any such benefit to others.

**1.19. HEADINGS.**

1.19.1 The headings throughout this 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.

**1.20. DISPUTE RESOLUTION.**

1.20.1 The Contracting Officer shall be the State's representative. In the event of any dispute concerning this Agreement, the interpretation of this Agreement and the resolution of any disputes by the Contracting Officer shall be final for the State.

**1.21. SEVERABILITY.**

1.21.1 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.

to utilize 0.6 acres of land, more or less, at Mountain Park Station in Woodstock and depicted more precisely on Exhibit G Mountain Park Station of this Agreement.

2.1.1.1 The Contractor shall have access to the Silver Lake Road at-grade crossing, which is included in the limits of an Operating Agreement between the State and the Merrimack & Grafton Railroad dba New England Southern Railroad, for entry onto the Concord – Lincoln Railroad Corridor north of the crossing for maintenance of way and inspection purposes. To maintain the integrity of the separation of operations of each railroad, the Contractor shall, at their sole expense, install and/or maintain bidirectional signage 20 feet north of Silver Lake Road, located at MP C 21.91. The signs shall be clearly marked “END NEGS/BEGIN P&L” and on the opposite side “END P&L/BEGIN NEGS”. The physical separation of the NEGS trackage will be provided by the lining and locking of the mainline switch at MP C 21.81 (Station 1146+78) to the reversed or diverting position with a NEGS lock. The operation of the switch shall be governed by NEGS.

2.2 Upon written agreement signed by the Contractor and the Contracting Officer, the Contracting Officer and the Contractor may at any time reduce the scope of Facilities subject to this Agreement.

2.3 As permitted by RSA 228:67 and other applicable state law, the State may sell portions of the Facilities, which, in the reasonable judgment of the Contracting Officer, are not needed for present or future railroad operations. If the State sells any portion of the Facilities during the term of this Agreement, such portion shall automatically be excluded from the Facilities described in Section 2.1 and shall not be subject to this Agreement.

2.4 Facilities

2.4.1 The Facilities remain the property of the State, which reserves to itself the right to grant easements, contracts, leases, and other rights therein which do not, in the reasonable judgment of the Contracting Officer, conflict with the operations described in Article III of this Agreement. The State reserves to itself all rents, fees and revenues derived from such grants.

2.4.2 To the extent permitted by law, the Contracting Officer expressly reserves the right to authorize public outdoor recreational activity, including but not limited to recreational trails and the activities set forth in RSA 212:34, I(c), on any portion of the Facilities during the term of this Agreement which do not, in the reasonable judgment of the Contracting Officer after consultation with the Contractor, conflict with the operations described in Article III of this Agreement. If the Contractor, after consultation with the Contracting Officer, believes that recreational use conflicts with the operations described in Article III of this Agreement, the Contractor shall provide written notice to the Contracting Officer describing with particularity the conflict between such operations and recreational use. By entering into this Agreement, the Contractor agrees to permit such recreational activity on the Facilities. In the event public recreational use is authorized by the Contracting Officer, the Contracting Officer shall provide written notice to the Contractor and the parties shall

- 2.7.2 Leases pursuant to Section 2.7 shall be subject to appropriate local taxes, and revenues from such leases shall be included in the Contractor's Gross Operating Revenue.
- 2.7.3 To obtain the Contracting Officer's approval, the Contractor shall provide to the Contracting Officer written notice of its desire to lease a portion of the Facilities and shall submit a copy of the proposed terms of the lease between the Contractor and the Contractor's lessee. Leases under this Section 2.7 shall be subject to this Agreement and this Agreement shall be incorporated by reference into any such lease.
- 2.7.4 In the event the Contractor seeks to lease a portion of the Facilities pursuant to this Section 2.7, the Contractor agrees to require the lessee to agree to the following terms:
- a. **INSPECTION.** The State has the right to enter the leased premises in the case of emergency, or to inspect it or make necessary repairs, alterations, improvements, or to exhibit the leased premises to others, or whenever necessary to determine the condition of the leased premises.
  - b. **INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor's lessee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all claims, demands, losses, liabilities, penalties, fines, judgments, awards, and costs for any personal injury or property damages, or other claims asserted against the State, its officers or 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 lessee, its employees, or subcontractors, including but not limited to negligence, reckless or intentional conduct. 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 shall survive the termination of the lease between the Contractor and the Contractor's lessee.
  - c. **MODIFICATIONS.** The Contractor's lessee shall submit to the Contracting Officer a plan showing any proposed changes to the leased premises and shall obtain approval and permission from the Contracting Office prior to performing any work or modifications to the leased premises or its operations. In the event the plan is approved by the Contracting Officer, the Contractor's lessee shall apply for and obtain all necessary State, federal, and local permits or approvals prior to performing any work or modifications to the leased premises.
  - d. **INSURANCE.** The Contractor's lessee shall, at its sole expense, maintain the following minimum insurance requirements:

Officer. Section 3.1.1.2 of said agreement requires Merrimack and Grafton Railroad to financially contribute to Maintenance of Way to the Plymouth & Lincoln Railroad Corporation. Any such financial contributions received by the Plymouth & Lincoln Railroad Corporation shall be used towards Maintenance of Way performed on the Facilities. Such contributions shall be independent from and in addition to the Contractor's Annual Maintenance Requirements set forth in Section 3.2.3.1. If the Contractor receives funds from Merrimack & Grafton Railroad or its successors and assigns that are in excess of any needed work or routine maintenance on the Facilities, the Contractor shall deposit the excess funds into the Special Railroad Fund.

- 3.1.2 The Contractor agrees to provide cars, locomotives and all other things as necessary to afford the degree and quality of Service to their patrons and customers and as customary in Contractor's industry. The Contractor shall be entitled to all revenue derived therefrom, provided, however, that any such revenue shall constitute Gross Operating Revenue and shall be subject to the User Fee as more particularly described in Article IV.
- 3.1.3 The Contractor will endeavor to provide Service on the Line and if at any time after the Effective Date the Contractor operates the Service fewer than sixty (60) days during any Operating Year, the State may terminate this Agreement.
- 3.1.4 Notwithstanding any other provisions of this Agreement, the Contractor agrees to allow temporary Service by others in the event that, after consultation with the Contractor, the Contracting Officer reasonably determines that the Contractor is unable to provide Service for reasons other than inability to reach agreement with shippers and/or the Contracting Officer regarding rates and terms of service on the Line. Notice of Service by others must be given to the Contractor in writing and such temporary Service shall cease when Contractor has shown to the reasonable satisfaction of the Contracting Officer that Contractor has regained the ability to provide Service.
- 3.1.5 The Contractor will conform to the State's "Guidelines Governing the Operation of On-Track Equipment on State-owned Railroad Lines," and will incorporate these Guidelines into its current Timetable.
- 3.1.6 The Contractor shall immediately report all incidents as required by RSA 367:56 and the "Rail Safety Section Notification Requirements" attached hereto as **Exhibit B** and incorporated herein.

### 3.2. MAINTENANCE.

- 3.2.1 The Contractor shall at all times during the term of this Agreement keep and maintain all Facilities in a reasonably safe condition for the use intended.

performance shall satisfy all obligations required on the owner of a railroad, set forth in Part 213 of the FRA Track Safety Standards (49 C.F.R §§ 213–213.369). Along with the Part 213 and Part 237, emphasis shall also be placed on track system drainage, unblocking culverts and ditch line routine maintenance to maintain storm flows. In the event the Contractor does not meet the Annual Maintenance Requirement for an Operating Year, the Contractor shall pay the remaining unspent portion of the Annual Maintenance Requirement to the State within sixty (60) days after the end of the Operating Year. The payment shall be made payable to “Treasurer, State of New Hampshire” and shall be sent in accordance with Section 4.1.1. Any amounts paid to the State under this section shall exclusively be deposited into the Special Railroad Fund established by RSA 228:68 and shall only be expended in accordance with RSA 228:69.

### 3.2.4 STRUCTURES (BRIDGES & CULVERTS)

3.2.4.1 The Contractor shall be responsible for routine maintenance of structures and shall assist the state in making needed repairs necessary to keep structures safe for their intended use in providing Service. Said routine maintenance shall include, but not be limited to, track, guard rails, bridge track timbers, OTM, the cleaning and removal of debris (bearings, flanges, bottom chords etc.), lubrication of bearing surfaces, scour and erosion protection and vegetation control within the general vicinity of the structures (brush and trees) and OTM.

3.2.4.2 The State as track and bridge owner and the Contractor as operator will be subject to the latest provisions of 49 CFR Part 237 - Bridge Safety Standards, and incorporated herein by reference. If the State is not able to pay the cost of performing the inspections required under 49 CFR Part 237 due to insufficient funds in the Special Railroad Fund established by RSA 228:68, the State shall provide written notice to the Contractor, and upon receipt of such notice, Contractor shall pay the cost of such inspections in order to operate Service and meet the requirements of 49 CFR Part 237. The Contractor shall have no right to recover from the State the costs of performing any such inspections. Notwithstanding any language in Section 3.4.3.1 to the contrary, Contractor’s cost for inspections under this Section 3.4.4.2 may be credited towards Contractor’s Annual Maintenance Requirement and at the sole discretion of the Contracting Officer such credit may carry forward to be applied to the next Operating Year’s Annual Maintenance Requirement. The Contractor shall comply with the State’s Bridge Management Program incorporated herein by reference and made a part hereof.

3.2.5 In the event a Major Maintenance Expenditure is required the Contractor shall assist in all necessary repairs and shall be responsible for 10% of each occurrence defined as a Major Maintenance Expenditure, but be limited in its direct financial contribution to ten thousand dollars (\$10,000.00) in the aggregate per Operating Year. However, the Contractor waives any claims to damages for any delays in repairing or reopening the Line after such an occurrence and the State reserves to itself the decision whether, when and how such repairs and reopening will be done, in the reasonable discretion of the Contracting Officer.

3.3.3.1 The purpose of such inspection shall be, but is not limited to:

- a. Ensure that work complies with the contract specifications.
- b. Verify quantitative measures of materials installed, such as tie counts.
- c. Verify labor and materials charges for contracts providing for payment on an actual cost basis ("Force Account Work").
- d. Verify the quantities of uninstalled state-owned materials and the security of same against damage, theft, or use other than for approved projects.
- e. Provide any other information requested by the Contracting Officer.

### **3.4. CONSTRUCTION AND MAINTENANCE PROJECTS.**

- 3.4.1 The Contracting Officer reserves the right to advertise and let construction rehabilitation projects within the confines of the Line, provided that such projects do not unreasonably interfere with the Contractor's ability to provide Service. The construction contractor to whom this work may be awarded shall have the right to perform the work so described in the construction contract. The Contracting Officer shall endeavor to work with the Contractor to minimize disruption to Service on the Line, but shall have the right to adjust trips not published in the regular railroad schedule to accommodate the construction schedule.
- 3.4.2 The Contracting Officer will from time to time allow utility projects to be constructed within the railroad right-of-way. Construction contractors for these projects will be required to enter into a license with the State, which will require certain conditions such as liability insurance, and to cooperate with the Contractor in assuring that the work be performed in such a manner that the tracks, operations and appurtenances of the Facilities will be safeguarded. The Contractor may require a flagger and/or railroad inspector at a construction site if the Contractor deems it necessary, the cost of said services to be paid by the constructing entity to the Contractor.
- 3.4.3 The Contractor may be called upon to construct sidings to new shippers and receivers on the Line. The construction of sidings and appurtenances thereto may be billed to the shipper or receiver after the Contracting Officer reviews the proposed plans, including, but not limited to location, alignment, materials, safety appliances, and the Contracting Officer issues her approvals.
- 3.4.4 Any expenditures by the State pursuant to this Section 3.4 shall not diminish the obligation of the Contractor pursuant to Section 3.2.3.1 or any other provision of this Agreement.

#### **4.3. USER FEE PAYMENT.**

- 4.3.1 The Contractor shall pay ten (10%) percent of its Monthly Gross Ticket Revenue as a User Fee to the State, payable to: "Treasurer, State of New Hampshire."
- 4.3.2 If combination tickets are sold, the rail fare portion of the ticket shall be stated and fairly represent the relative value of the rail fare in relation to the total value of the ticket.
- 4.3.3 The Contractor shall pay every month the sum of two hundred dollars (\$200.00) for the use of the Meredith Railroad Yard for railroad purposes. The Contractor shall pay every month the sum of forty dollars (\$40.00) for use of the Mountain Park Station for railroad purposes. These purposes shall include but not be limited to ticket and gift sales, tourist information, tourist events staging areas, general storage and repair facilities. The Contractor shall pay every month the sum of one hundred twenty-five dollars (\$125) for use of the Ticket Booth on the Weirs Beach Boardwalk for ticket and gift sales and tourist information purposes.
- 4.3.4 The Contractor may utilize certain State-owned railroad equipment if the State determines they are available. If the Contractor utilizes this state-owned railroad equipment for passenger/revenue service, for any day or fraction thereof, it shall pay on a monthly basis the following amounts:
- a. For the 100 ton ALCO diesel electric locomotive, Model S-1, Serial Number 77109, the sum of one thousand one hundred dollars (\$1,100.00) per month if used twenty-two (22) days or more during a calendar month, or sixty dollars (\$60.00) per day if used less than twenty-two (22) days per calendar month.
  - b. For the railroad kitchen car Model number 1773 USAX 89654, the sum of two hundred forty dollars (\$240.00) per year in twelve (12) monthly payments of twenty (\$20.00) dollars.
  - c. The three (3) ballast cars and one (1) side dump car shall only be used for Maintenance of Way and no fee shall be assessed.
- 4.3.5 The Contractor may, where directed in writing by the Contracting Officer, deduct from User Fee payments the cost of specific expenditures including but not limited to Major Maintenance Expenditures or repairs to state-owned infrastructure or equipment identified in Section 4.3.3 and 4.3.4.
- 4.3.6 Should any payment be received more than five (5) days after the due date, the State shall be entitled to a five (5%) percent late charge on that month's User Fee.

#### **4.4. ACCOUNTING AND AUDITS.**

- 4.4.1 The Contracting Officer shall have access, during regular working hours, for the purpose of audit and examination, to any books, documents, papers, and records of the Contractor that may be related or pertinent to this Agreement during the period

cannot agree among themselves, the State retains the power to determine the terms and conditions of occupation or use for disputes and matters outside of jurisdiction of the Surface Transportation Board (STB); the decision of the State is final in those instances.

IN WITNESS WHEREOF, we have hereunto set our hands on the 5 day of December, 2022.

PLYMOUTH & LINCOLN RAILROAD, INC.

BY: [Signature]  
TITLE: PRESIDENT

THE STATE OF NH, COUNTY OF Grafton

On this 5 day of December 2022, before me, Deanna Cormier the undersigned officer, personally appeared Benjamin Clark 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.



[Signature]  
NOTARY PUBLIC

THE STATE OF NEW HAMPSHIRE

BY: [Signature]  
TITLE: Assistant Commissioner

THE STATE OF NEW HAMPSHIRE, COUNTY OF MERRIMACK

On this 6<sup>th</sup> day of December, 2022, before me, Natasha Field the undersigned officer, personally appeared William Cass 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.

[Signature]  
NOTARY PUBLIC

NATASHA A. FIELD - Notary Public  
State of New Hampshire  
My Commission Expires May 1, 2024

Initial DC

This is to certify that the Operating Agreement shown above has been reviewed by this office, and is approved as to form and execution on December 6, 2022.

OFFICE OF ATTORNEY GENERAL

BY: Samuel Burgess  
Attorney

APPROVED by Governor and Executive Council on \_\_\_\_\_, 2022, ITEM # \_\_\_\_.

ATTEST: \_\_\_\_\_  
Secretary of State



# Exhibit A

| 2022 - 2032 REPORT TRACKING<br>PLYMOUTH & LINCOLN RAILROAD INC<br>REPORT & PAYMENT DUE DATES |  |                    |                      |                     |
|--|--|--------------------|----------------------|---------------------|
| <b>JANUARY</b>   |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> | <b>ACTION TAKEN</b> |
| Payment & Revenue  |  | March 1, 20__      |                      |                     |
| MOW (Jan-Mar)  |  | May 1, 20__        |                      |                     |
| Traffic Report   |  | February 28, 20__  |                      |                     |
| <b>FEBRUARY</b>  |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | April 1, 20__      |                      |                     |
| Marketing  |  | April 30, 20__     |                      |                     |
| Traffic Report   |  | March 30, 20__     |                      |                     |
| <b>MARCH</b>   |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | May 1, 20__        |                      |                     |
| Traffic Report   |  | April 30, 20__     |                      |                     |
| <b>APRIL</b>   |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | June 1, 20__       |                      |                     |
| MOW (Apr-June)   |  | August 1, 20__     |                      |                     |
| Traffic Report   |  | May 30, 20__       |                      |                     |
| <b>MAY</b>   |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | July 1, 20__       |                      |                     |
| Marketing (May-July)   |  | July 30, 20__      |                      |                     |
| Traffic Report   |  | June 30, 20__      |                      |                     |
| <b>JUNE</b>  |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | August 1, 20__     |                      |                     |
| Traffic Report   |  | July 30, 20__      |                      |                     |
| <b>JULY</b>  |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | September 1, 20__  |                      |                     |
| MOW (July-Sept)  |  | November 1, 20__   |                      |                     |
| Traffic Report   |  | August 30, 20__    |                      |                     |
| <b>AUGUST</b>  |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | October 1, 20__    |                      |                     |
| Marketing (Aug-Oct)  |  | October 30, 20__   |                      |                     |
| Traffic Report   |  | September 30, 20__ |                      |                     |
| <b>SEPTEMBER</b>   |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | November 1, 20__   |                      |                     |
| Traffic Report   |  | October 30, 20__   |                      |                     |
| <b>OCTOBER</b>   |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | December 1, 20__   |                      |                     |
| MOW (Oct-Dec)  |  | February 1, 20__   |                      |                     |
| Traffic Report   |  | November 30, 20__  |                      |                     |
| <b>NOVEMBER</b>  |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | January 2, 20+1    |                      |                     |
| Marketing (Nov-Jan)  |  | January 30, 20+1   |                      |                     |
| Traffic Report   |  | December 31, 20__  |                      |                     |
| <b>DECEMBER</b>  |  | <b>DUE DATE</b>    | <b>DATE RECEIVED</b> |                     |
| Payment & Revenue  |  | February 1, 20+1   |                      |                     |
| Traffic Report   |  | January 31, 20+1   |                      |                     |

Notes: October 18, 2022

Initial

**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION**  
**BUREAU OF RAIL & TRANSIT**  
**RAIL SAFETY SECTION**  
**NOTIFICATION REQUIREMENTS**

**INCIDENTS INVOLVING RAILROADS (RSA 367:56)**

NOTIFICATION **BY THE RAILROAD** IS REQUIRED FOR:

1. All incidents involving a fatality.
2. All grade crossing accidents.
3. All grade crossing signal system activation failures as defined in 49 CFR Part 234.5.
4. All incidents involving the leakage or spillage of material as a result of railroad operations or incidents.
5. All derailments involving cars containing commodities required to be placarded by 49 CFR Part 172
6. Derailments involving:  
    More than one (1) car, (include a power unit as a car), or  
    The car is not in the normal upright operating position, or  
    The car has traveled more than 200 feet derailed, or  
    The car has traveled through a grade crossing derailed.
7. Any incident involving the movement of on-track equipment, Motorcars, or Rail-Bikes that results in personal injury to a non-railroad employee.

**THE NOTIFICATION NUMBERS ARE:**

Monday – Friday  
0730 - 1600 hours

Railroad Inspector: (603) 271-2448 (office phone)  
Bureau of Rail & Transit: (603) 271-2468  
Bureau Administrator: (603) 271-3497

Nights, weekends and holidays

NH Transportation Systems Management & Operations Systems (TSMO) 603-271-6862

- TSMO will contact the Railroad Inspector, Bureau Administrator, and State Police as necessary and in accordance with written work instructions that include after-hours procedures.

Note: The Railroad Inspector must be contacted and/or a voicemail message left for him. If staff is unable to speak directly with Railroad Inspector, after leaving a message for the Inspector, proceed with contacting the Bureau Administrator. Current staff (as of 9/28/2021: Railroad Inspector—& Bureau Administrator—Shelley Winters)

**THE INFORMATION NEEDED WILL BE:**

1. Name of the railroad
2. Name of the caller and call back number
3. Location of the incident, town, street, station, etc.
4. Any fatalities or personal injuries
5. Any hazardous materials involved

**INCIDENTS THAT INVOLVE HAZARDOUS MATERIALS, PLEASE NOTIFY THE LOCAL FIRE DEPARTMENT. YOU ARE ALSO REQUIRED TO NOTIFY THE HAZARDOUS MATERIALS UNIT AT 1-800-346-4009 AND THE N.H. STATE POLICE DISPATCH AT 603-271-3636.**

October 18, 2022

Initial     *PD*

# Exhibit C

Concord to Lincoln  
Railroad Corridor

South End of  
"Line" MP C 21.90  
Sta 1152+07

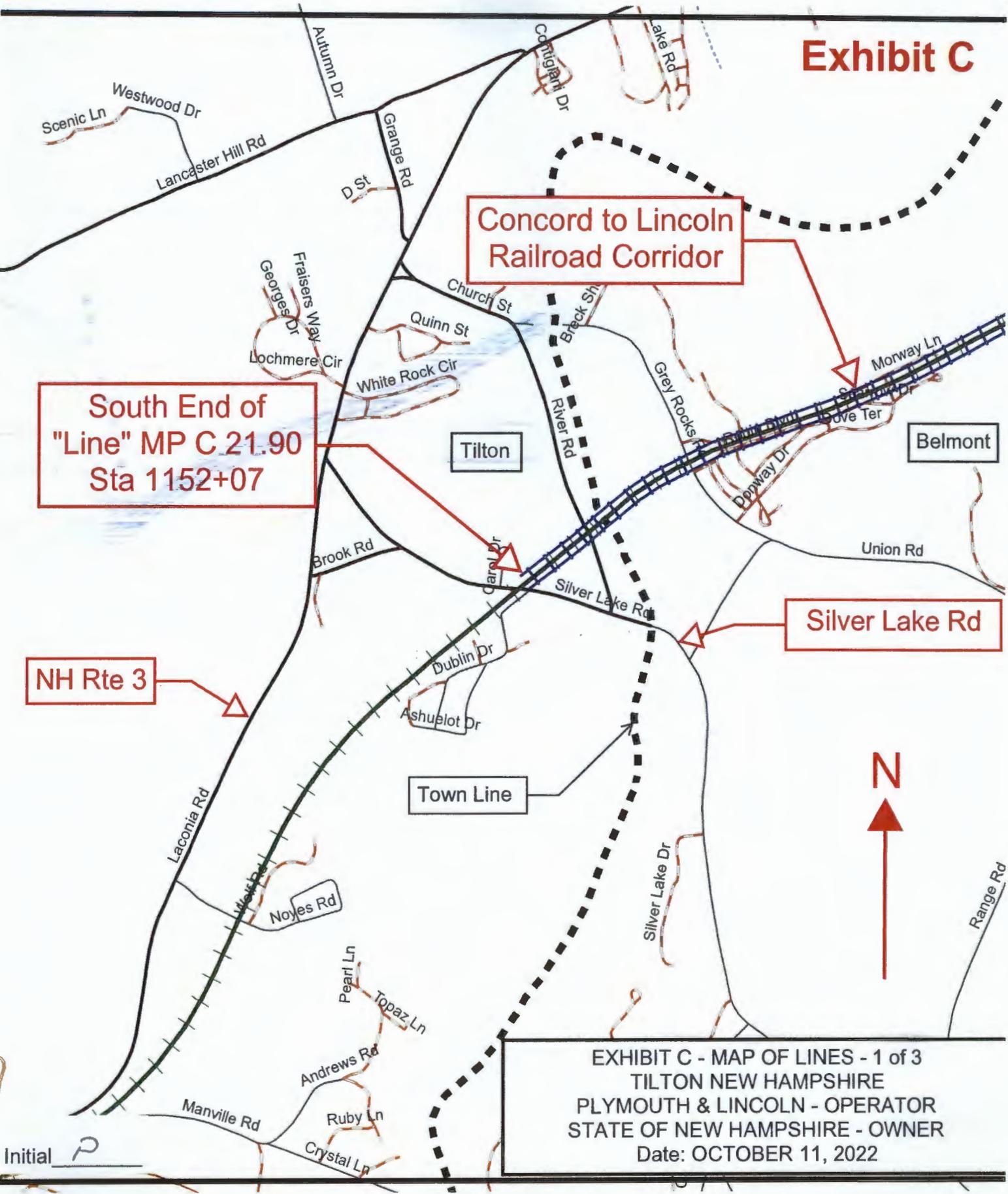
NH Rte 3

Silver Lake Rd

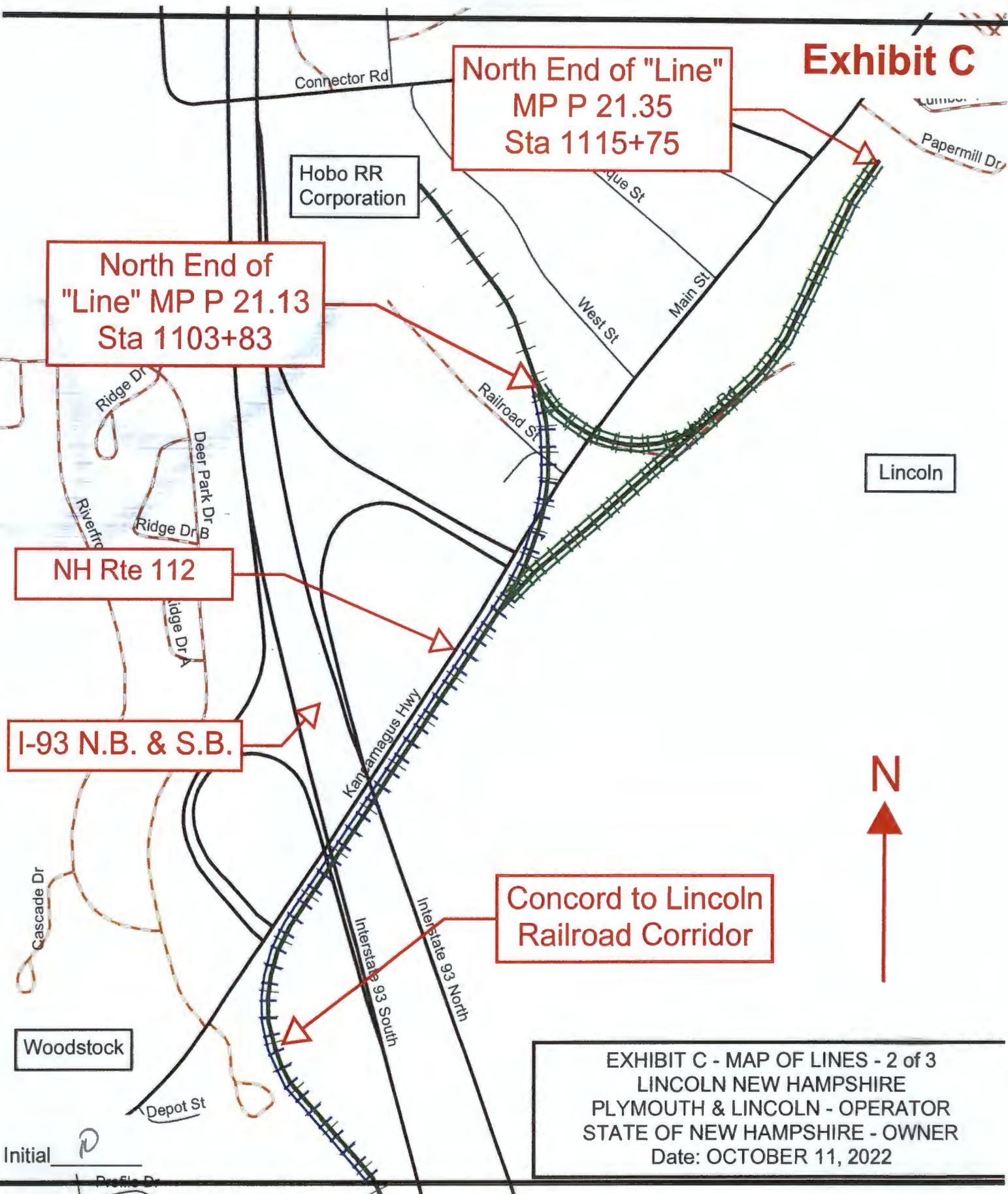


EXHIBIT C - MAP OF LINES - 1 of 3  
TILTON NEW HAMPSHIRE  
PLYMOUTH & LINCOLN - OPERATOR  
STATE OF NEW HAMPSHIRE - OWNER  
Date: OCTOBER 11, 2022

Initial P



# Exhibit C



# Exhibit C

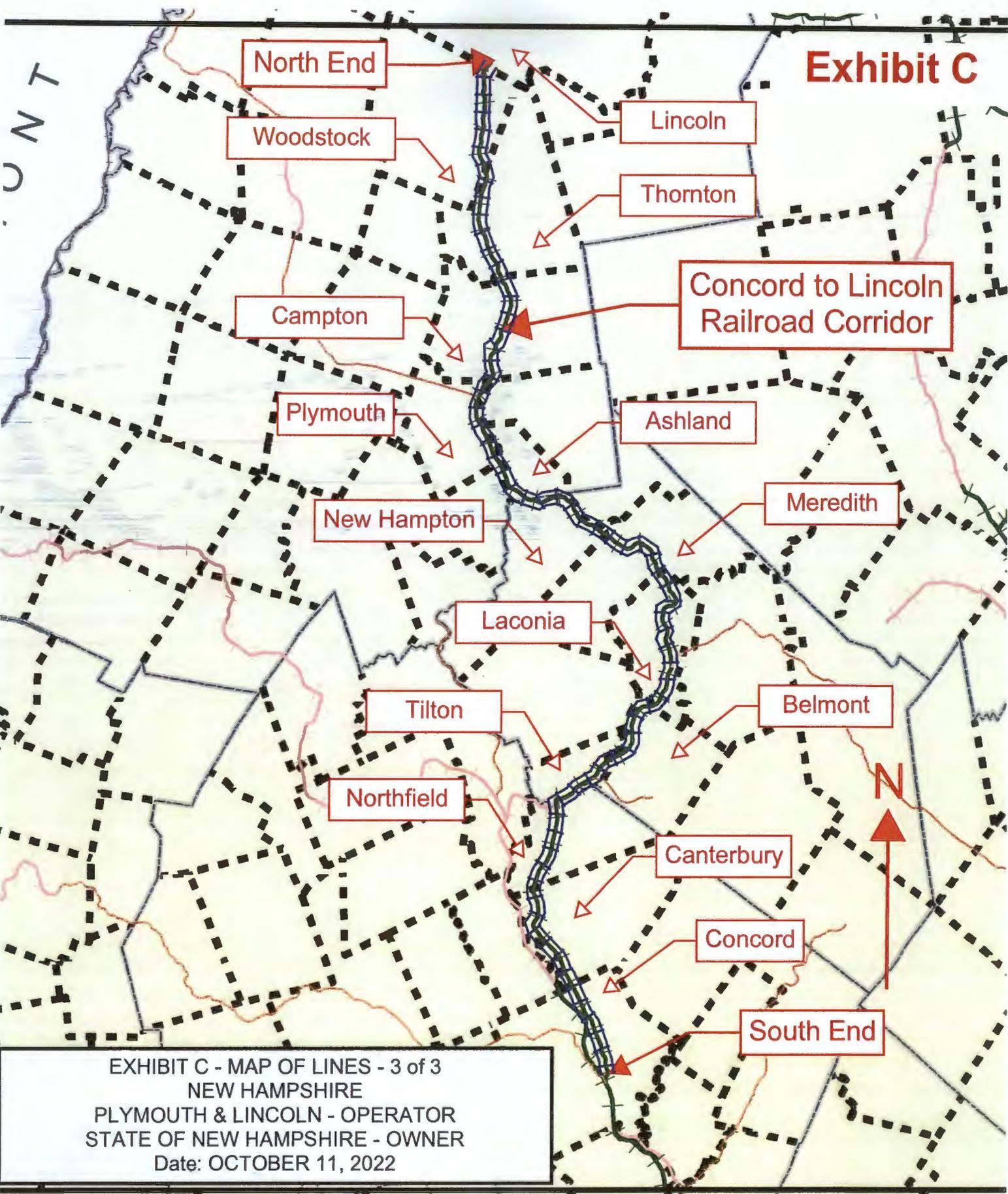


EXHIBIT C - MAP OF LINES - 3 of 3  
NEW HAMPSHIRE  
PLYMOUTH & LINCOLN - OPERATOR  
STATE OF NEW HAMPSHIRE - OWNER  
Date: OCTOBER 11, 2022

Initial *M*

MILFORD-BENNINGTON RR  
 STATE-OWNED HILLSBORO BRANCH  
 MP 16.36-MP 19.67 -MP 62

**Maintenance of Way (MOW)**  
**PLYMOUTH & LINCOLN RR (603) 745-2135**

**Daily Report**  
 Date:  
 Supervisors Name:

Identify equipment utilized and number of hours used.

| Equipment:      | Hours: | Rate | Total | Personnel Name: | Hours: | Rate | OT/Rate | Total |
|-----------------|--------|------|-------|-----------------|--------|------|---------|-------|
| Locomotives     |        |      |       |                 |        |      |         |       |
| MOW RR Cars     |        |      |       |                 |        |      |         |       |
| Track Equipment |        |      |       |                 |        |      |         |       |
| Vehicles        |        |      |       |                 |        |      |         |       |
| Pickup Truck    |        |      |       |                 |        |      |         |       |
| HiRail Truck    |        |      |       |                 |        |      |         |       |
| Dump Truck      |        |      |       |                 |        |      |         |       |

| Other Equipment: | Hours: | Materials: | Qty: | Rate | Total |
|------------------|--------|------------|------|------|-------|
| Rail Saw         |        |            |      |      |       |
| Chain Saws       |        |            |      |      |       |
| Rail Drill       |        |            |      |      |       |
|                  |        |            |      |      |       |
|                  |        |            |      |      |       |
|                  |        |            |      |      |       |
| Misc. Equipment  |        |            |      |      |       |

| Work Undertaken: | Contractors: | Total |
|------------------|--------------|-------|
| Location:        | Description  |       |
|                  |              |       |
|                  |              |       |
|                  |              |       |
|                  |              |       |
|                  |              |       |
|                  |              |       |
|                  |              |       |
|                  |              |       |

1/1/2023 - 12/31/2033

Updated 7/2022

4/30/2014 - 12/31/2023

### PLYMOUTH & LINCOLN RAILROAD

#### BRIDGE LIST

30 July 2021

#### Concord Subdivision

| BRIDGE | SPAN  | TYPE                   | LENGTH  | CROSSING                | BUILT |
|--------|-------|------------------------|---------|-------------------------|-------|
| 22.03  | 1     | TPG                    | 35'-9"  | River Road              | 1915  |
| 22.05  | 1     | DPT                    | 125'-0" | Lake Winnisquam         |       |
| 22.23  | OH    | Pony Truss             |         | Grey Rocks Road         |       |
| 22.92  | 1     | Timber Stringer        | 13'-6"  | Inlet – Lake Winnisquam |       |
| 23.98  | 1     | Concrete Slab          | 25'-0"  | Durgin Brook            |       |
| 26.89  | 1     | Timber Stringer        | 14'-10" | Durkee Brook            |       |
| 27.22  | 1-6   | DPG                    | 246'-6" | Winnepesaukee River     | 1921  |
| 28.02  | 1-6   | DPG                    | 226'-6" | Winnepesaukee River     | 1894  |
| 29.20  | 1-8   | Timber Stringer        | 720'-8" | Long Bay                |       |
| "      | 9     | Rolled Beams           | 29'-0"  | "                       |       |
| "      | 10    | Bascule Rolled Bms     | 25'-0"  | "                       |       |
| "      | 11    | Rolled Beams           | 17'-9"  | "                       |       |
| "      | 12-19 | Timber Stringers       | 758'-0" | "                       |       |
| 32.99  | 1     | I-Beams                | 12'-6"  | Cove Inlet              |       |
| 33.50  | OH    | Prestressed Conc.      |         | US Route 3              |       |
| 33.90  | OH    | Steel Frame Footbridge |         | Footbridge              |       |
| 33.95  | OH    | Timber Framed          | 117'-0" | Centenary Ave.          |       |
| 36.36  | 1     | Timber Stringers       | 12'-0"  | Stream                  |       |
| 37.55  | OH    | Reinforced Conc.       |         | US Route 3              |       |
| 38.99  | 1     | Timber Stringers       | 8'-0"   | Stream                  |       |
| 41.10  | 1     | I-Beams                | 23'-6"  | Winona Road             |       |
| 42.25  | 1     | Concrete Slab          | 6'-0"   | Stream                  |       |
| 42.32  | 1     | Timber Stringer        | 15'-0"  | Dry                     |       |
| 43.42  | 1     | Railtop Slab           | 5'-0"   | Cattle Pass             |       |
| 43.76  | OH    | Timber Framed          |         | Abandoned Road          |       |
| 44.75  | 1     | Stone Arch             | 8'-0"   | Brook                   |       |
| 44.98  | OH    | Prestressed Conc.      |         | Dana Hill Road          |       |
| 46.07  | 1     | DPG                    | 52'-6"  | Squam River             |       |
| "      | 2     | DRT                    | 121'-4" | "                       |       |
| "      | 3     | DPG                    | 45'-0"  | "                       |       |
| 46.49  | OH    |                        |         | I-93 NB and SB          |       |
| 46.51  | OH    |                        |         | I-93 NB and SB          |       |
| 47.35  | 1-3   | TRT                    | 410'-0" | Pemigewasset River      | 1903  |
| 47.61  | OH    |                        |         | US Route 3              |       |
| 48.76  | 1     | DPG                    | 40'-0"  | Halsey Brook            |       |

### Concord Subdivision (Cont.)

| BRIDGE                 | SPAN | TYPE    | LENGTH   | CROSSING           | BUILT |
|------------------------|------|---------|----------|--------------------|-------|
| 49.37                  | 1    | TPG     | 33'-0"   | Glove Hollow Brook |       |
| 49.51                  | 1    | I-Beams | 24'-0"   | Stream             |       |
| 49.75                  | 1    | I-Beams | 21'-0"   | Stream             |       |
| Count: 22 Rail Bridges |      |         | 4122'-4" |                    |       |

### Plymouth Subdivision

| BRIDGE | SPAN | TYPE              | LENGTH  | CROSSING           | BUILT |
|--------|------|-------------------|---------|--------------------|-------|
| 0.82   | 1    | TRT               | 135'-6" | Baker River        |       |
| 1.00   | 1    | Conc. Slab        | 6'-6"   | Stream             |       |
| 1.01   | OH   | Prestressed Conc. |         |                    |       |
| 1.02   | OH   | Prestressed Conc. |         |                    |       |
| 1.03   | OH   | Prestressed Conc. |         |                    |       |
| 1.47   | 1    | Timber Stringers  | 9'-0"   | Stream             |       |
| 3.07   | 1-2  | TRT               | 254'-0" | Pemigewasset River | 1928  |
| 5.32   | 1    | Conc. Slab        | 5'-0"   | Dry                |       |
| 5.46   | 1    | Pony Truss        | 77'-6"  | Beebe River        |       |
| 5.78   | 1    | Timber Stringers  |         | Dry                |       |
| 5.93   | 1    | Timber Stringers  | 11'-0"  | Cattle Pass        |       |
| 6.31   | 1-2  | TRT               | 268'-6" | Mad River          |       |
| 8.73   | 1-2  | TRT               | 259'-0" | Pemigewasset River |       |
| 11.47  | 1    | Timber Stringers  | 6'-0"   | Stream             |       |
| 11.60  | 1    | DPG               | 35'-0"  | Bagley Brook       |       |
| 12.49  | 1    | Timber Stringers  | 14'-8"  | Burleigh Brook     |       |
| 12.76  | 1-2  | TPT               | 30'-0"  | Dry                |       |
| 12.86  | 1    | Timber            | 10'-0"  | Hubbard Brook      |       |
| "      | 2    | TRT               | 99'-10" | "                  |       |
| 12.94  | 1    | Conc. Slab        | 15'-0"  | Stream             |       |
| 13.35  | 1-4  | TPT               |         | Dry                |       |
| 13.57  | 1    | Pony Truss        | 77'-6"  | Brook              |       |
| 13.79  | 1    | TPG               | 60'-0"  | Brook              |       |
| 14.17  | 1    | Conc. Slab        | 16'-0"  | Dry Brook          |       |
| 14.60  | 1    | DPG               | 43'-0"  | Leeman's Brook     |       |
| 17.18  | 1    | TPG               | 76'-6"  | Glover Brook       |       |
| 17.52  | 1-13 | TPT               | 195'-7" | Stream             |       |
| "      | 14   | Steel             | 20'-0"  | "                  |       |
| 18.09  | 1    | TRT               | 165'-0" | Pemigewasset River |       |

### Plymouth Subdivision (cont.)

| BRIDGE | SPAN | TYPE            | LENGTH  | CROSSING                     | BUILT |
|--------|------|-----------------|---------|------------------------------|-------|
| 18.14  | 1    | Rolled Sections | 28'-0"  | Overflow                     |       |
| 18.17  | 1-6  | TPT             |         | Overflow                     |       |
| 18.21  | 1    | Rolled Sections | 28'-0"  | Overflow                     |       |
| 18.24  | 1-9  | TPT             |         | Overflow                     |       |
| 19.18  | 1-3  | TPT             | 30'-0"  | Dry                          |       |
| 20.02  | 1    | Conc. Slab      | 15'-0"  | Stream                       |       |
| 20.13  | 1    | Rolled Sections | 29'-0"  | Homer Brook                  |       |
| 20.41  | 1-2  | 254'-0"         | 254'-0" | E. Branch Pemigewasset River | 1928  |

Count: 32 Rail Bridges



EXHIBIT F  
 MEREDITH YARD  
 U.S. ROUTE 3  
 LADD HILL ROAD  
 MAPLE STREET

FROM RAILROAD VALUATION MAP V21/74

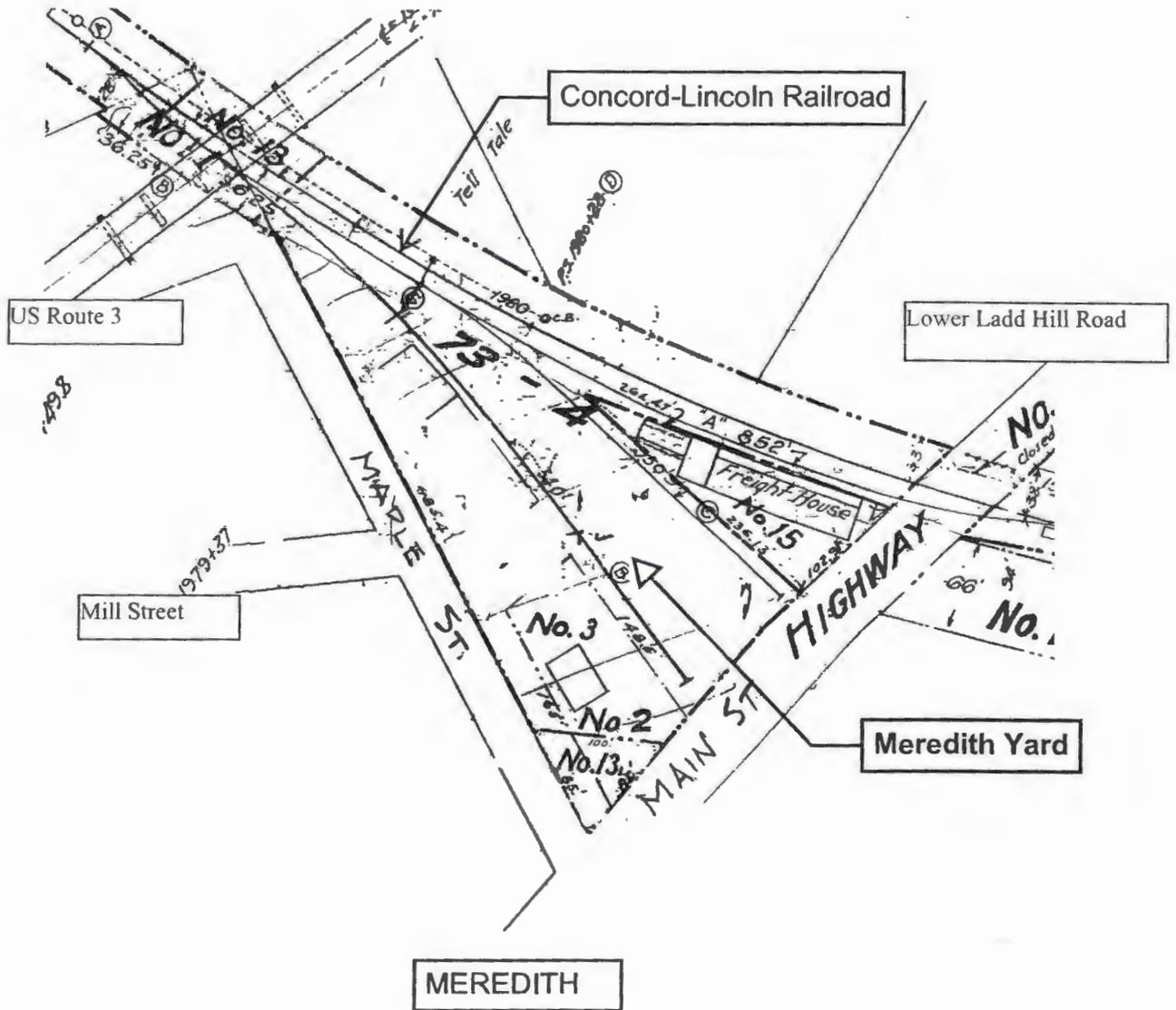


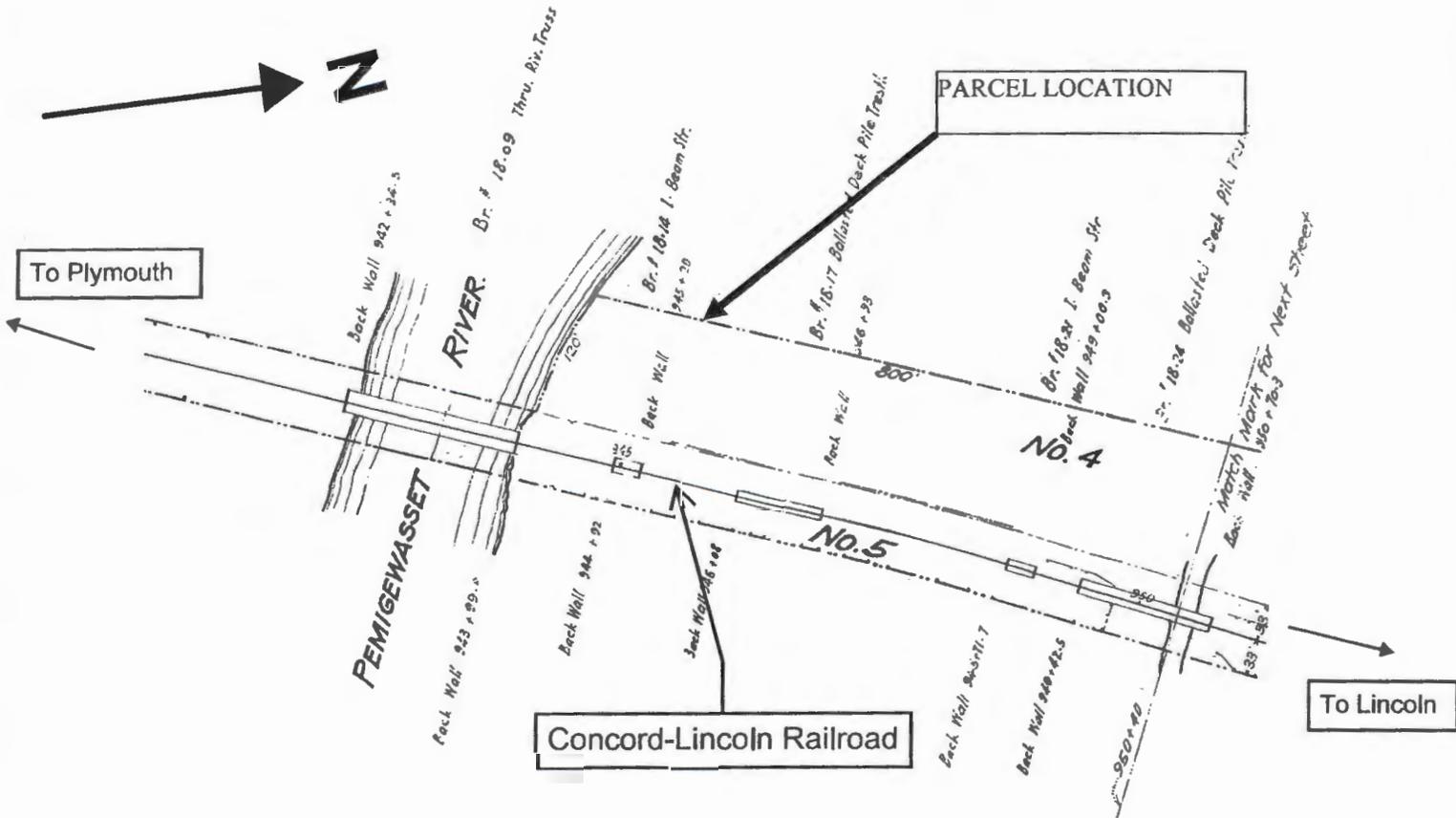
EXHIBIT G

MOUNTAIN PARK STATION, WOODSTOCK

209' +/-

Station 944+00 to 946+09+/-

FROM RAILROAD VALUATION MAP V30/18



# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that PLYMOUTH AND LINCOLN RAILROAD CORPORATION is a New Hampshire Profit Corporation registered to transact business in New Hampshire on January 27, 1987. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 108181

Certificate Number: 0005902286



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 30th day of November A.D. 2022.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan  
Secretary of State

PLYMOUTH & LINCOLN RAILROAD

Lincoln, New Hampshire

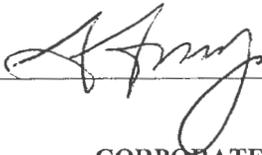
CERTIFICATE OF VOTE

I, Jennifer Franz, do hereby certify that I am duly elected clerk of Plymouth & Lincoln RR.

I hereby certify that Benjamin Clark is the President of the Plymouth & Lincoln Railroad and is empowered to enter into an Agreement to Amend Railroad Operating Agreement with the State of New Hampshire for operations on State-owned Concord-Lincoln Railroad Line.

I hereby certify that the above has not been amended or repealed and remains in full force and effect as of November 30/2022.

IN WITNESS WHEREOF, I have subscribed my name as Jennifer Franz, Clerk and have caused the Seal of the Corporation to be hereunto affixed this 30th day of November 2022.

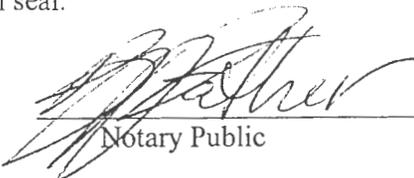
 Clerk  
CORPORATE SEAL

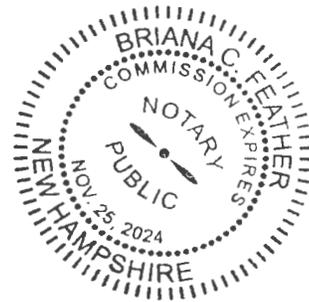
STATE OF NEW HAMPSHIRE  
COUNTY OF GRAFTON

On, 11/30/2022, before the undersigned officer personally appeared the person identified in the foregoing certificate, known to me (or satisfactorily proven) to be the Clerk of the corporation identified in the foregoing certificate, and acknowledged that she executed the foregoing certificate.

In witness whereof I hereunto set my hand and official seal.

11/25/2024 Date

  
Notary Public





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/7/2022

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><br>RogersGray, A Baldwin Risk Partner<br>3278 White Mountain Highway<br>North Conway NH 03860<br><br>License#: PC-514062<br>HOBOCOR-01 | <b>CONTACT NAME:</b> Gwen Vosburgh<br><b>PHONE (A/C, No, Ext):</b> _____ <b>FAX (A/C, No):</b> _____<br><b>E-MAIL ADDRESS:</b> _____  |                               |  |        |             |                                |       |             |                           |       |             |                            |       |             |  |  |             |  |  |             |  |
|--|---|-------------------------------|--|--------|-------------|--------------------------------|-------|-------------|---------------------------|-------|-------------|----------------------------|-------|-------------|--|--|-------------|--|--|-------------|--|
|  | <table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A :</td> <td>Indian Harbor Insurance Compan</td> <td>36940</td> </tr> <tr> <td>INSURER B :</td> <td>Federal Insurance Company</td> <td>20281</td> </tr> <tr> <td>INSURER C :</td> <td>Travelers Indemnity / Pool</td> <td>25658</td> </tr> <tr> <td>INSURER D :</td> <td></td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> <td></td> </tr> </tbody> </table> | INSURER(S) AFFORDING COVERAGE |  | NAIC # | INSURER A : | Indian Harbor Insurance Compan | 36940 | INSURER B : | Federal Insurance Company | 20281 | INSURER C : | Travelers Indemnity / Pool | 25658 | INSURER D : |  |  | INSURER E : |  |  | INSURER F : |  |
| INSURER(S) AFFORDING COVERAGE  |   | NAIC #                        |  |        |             |                                |       |             |                           |       |             |                            |       |             |  |  |             |  |  |             |  |
| INSURER A :  | Indian Harbor Insurance Compan  | 36940                         |  |        |             |                                |       |             |                           |       |             |                            |       |             |  |  |             |  |  |             |  |
| INSURER B :  | Federal Insurance Company   | 20281                         |  |        |             |                                |       |             |                           |       |             |                            |       |             |  |  |             |  |  |             |  |
| INSURER C :  | Travelers Indemnity / Pool  | 25658                         |  |        |             |                                |       |             |                           |       |             |                            |       |             |  |  |             |  |  |             |  |
| INSURER D :  |   |                               |  |        |             |                                |       |             |                           |       |             |                            |       |             |  |  |             |  |  |             |  |
| INSURER E :  |   |                               |  |        |             |                                |       |             |                           |       |             |                            |       |             |  |  |             |  |  |             |  |
| INSURER F :  |   |                               |  |        |             |                                |       |             |                           |       |             |                            |       |             |  |  |             |  |  |             |  |

**INSURED**  
Hobo Corporation  
PO Box 9  
Lincoln NH 03251-0009

**COVERAGES**                      **CERTIFICATE NUMBER:** 578414581                      **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  | ADDL INSD | SUBR WVD | POLICY NUMBER     | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS  |
|----------|--|-----------|----------|-------------------|-------------------------|-------------------------|---|
| A        | <b>COMMERCIAL GENERAL LIABILITY</b><br><input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: _____ |           |          | US00101592LI22A   | 7/22/2022               | 7/22/2023               | EACH OCCURRENCE \$ 5,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$<br>MED EXP (Any one person) \$ 1,000<br>PERSONAL & ADV INJURY \$<br>GENERAL AGGREGATE \$ 10,000,000<br>PRODUCTS - COMP/OP AGG \$<br>\$ |
|          | <b>AUTOMOBILE LIABILITY</b><br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY           |           |          | 99454582          | 7/22/2022               | 7/22/2023               | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$   |
|          | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br>DED    RETENTION \$  |           |          |                   |                         |                         | EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$  |
| C        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below  |           |          | 6JUB-0596N16-7-22 | 6/15/2022               | 6/15/2023               | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$ 500,000<br>E.L. DISEASE - EA EMPLOYEE \$ 500,000<br>E.L. DISEASE - POLICY LIMIT \$ 500,000                 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Benjamin Clark, Brenda Clark, Jennifer Clark-Franz are excluded from workers compensation coverage.

General Liability  
Additional Insured per form RRL 204 0911.

|  |   |
|--|---|
| <b>CERTIFICATE HOLDER</b><br><br>State of New Hampshire Dept of Transportation Bureau of Rail & Transit<br>Attn: Lou Barker<br>PO Box 483<br>Concord NH 03302-0483 | <b>CANCELLATION</b><br><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|  | <b>AUTHORIZED REPRESENTATIVE</b><br>  |



*Victoria F. Sheehan*  
Commissioner

**THE STATE OF NEW HAMPSHIRE**  
DEPARTMENT OF TRANSPORTATION



*William Cass, P.E.*  
Assistant Commissioner

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, NH 03301

Bureau of Rail & Transit  
October 1, 2021

**REQUESTED ACTION**

The Department of Transportation requests placing this item on the Consent Calendar.

Authorize the Department of Transportation to enter into a contract amendment with the Plymouth & Lincoln Railroad (PLRR), Vendor 15771, Lincoln, New Hampshire, to amend the completion date from December 31, 2021 to December 31, 2022 for the use of the state-owned Concord – Lincoln Railroad Corridor from Northfield to Lincoln for tourist excursion railroad service. This amendment is effective January 1, 2022, with Governor and Executive Council approval, through December 31, 2022. The current operating agreement was approved by Governor and Council on September 28, 2011, Item 129.

Income from the agreement will be credited as follows:

04-096-096-964010-2991  
Special Railroad Account  
009-407323 Agency Income

**EXPLANATION**

On September 28, 2011, the Governor and Council approved an Operating Agreement between the Department of Transportation and the Plymouth & Lincoln Railroad Corporation (PLRR) to provide tourist excursion railroad service on the state-owned Concord – Lincoln Railroad Corridor from Northfield to Lincoln for the period of January 1, 2012 through December 31, 2021.

Pursuant to Section 1.3 of the current Operating Agreement, PLRR notified the Department on January 7, 2020 that it wished to renew its operating agreement. The Department and the Attorney General's Office has been actively developing an updated railroad operating agreement template, but that has yet to be finalized. Upon completion, that template will be used to actively negotiate final terms and conditions with PLRR to result in a new 10-year Operating Agreement that will then be submitted to Governor and Council for approval. This subject Amendment will extend the current Operating Agreement for one (1) year to allow time for completion of the template and final negotiations to conclude.

Additionally, the state-owned Concord – Lincoln Railroad Corridor has another railroad operator, Merrimack & Grafton Railroad Corporation dba New England Southern Railroad (NESR) that operates

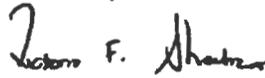
on the southern section of the corridor, from Concord to Northfield; the current NESR Operating Agreement expires on June 30, 2022. The PLRR and NESR utilize the same state-owned railroad corridor, are each responsible for different portions of it, are required to interchange and work cooperatively relative to the use of the line, and therefore should be subject to similar terms and conditions. As such, in an attempt to address holistic use of the state-owned Concord – Lincoln Railroad Corridor and align both railroads contract terms, time-only extensions will be pursued for both railroads in order that subsequent 10-year operating agreements will have common terms and conditions, including commencement and completion dates.

As the railroad line is active and PLRR has ongoing railroad operations, this Amendment allows PLRR to continue to use the line for, primarily, tourist excursion railroad services and, occasional, freight rail movements while negotiations conclude and the State aligns the agreements for both PLRR and NESR.

This Amendment has been reviewed and approved by the Office of the Attorney General for form and execution. Copies of the fully executed Amendment have been provided to the Secretary of State's Office and the Department of Administrative Services. Subsequent to the Governor and Council approval, a copy of the Amendment will be on file with the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,



Victoria F. Sheehan  
Commissioner

Attachments

## AMENDMENT TO OPERATING AGREEMENT

This AMENDMENT TO THE OPERATING AGREEMENT ("Amendment") is entered into this 7<sup>th</sup> day of August, 2021, by and between the State of New Hampshire, acting by and through the New Hampshire Department of Transportation, Bureau of Rail and Transit, PO Box 483, Concord, NH 03302-0483, (hereinafter referred to as "State") and Plymouth & Lincoln Railroad, PO Box 9, Lincoln, NH 03251-0009 (hereinafter referred to as "the Contractor"), collectively referred to as ("the Parties").

WHEREAS, the State and the Contractor, are parties to the Operating Agreement, entitled "Passenger Excursion Agreement on the Concord to Lincoln Railroad Line Between Northfield and Lincoln," dated May 4, 2011, approved by the New Hampshire Governor and Executive Council on September 28, 2011 ("Operating Agreement");

WHEREAS, pursuant to the Operating Agreement, the Contractor provides service on the Concord to Lincoln Railroad Line, as more particularly described in Section 2.1 of the Operating Agreement;

WHEREAS, pursuant to Section 1.1(k), the Completion Date of the Operating Agreement is December 31, 2021;

WHEREAS, pursuant to Section 1.3.1, the Parties are negotiating for a new operating agreement, but will not be able to finalize a new agreement and seek approval of the Governor and Council of New Hampshire before the current Operating Agreement expires on December 31, 2021; and

WHEREAS, the Parties desire for the Contractor to continue its use and operation of the Concord to Lincoln Railroad Line pursuant to the terms of the current Operating Agreement during negotiations.

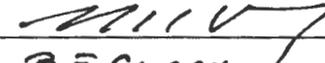
NOW THEREFORE, the Parties agree to amend the Operating Agreement as follows:

1. Section 1.1(k) of the Operating Agreement shall be amended to extend the Completion Date of December 31, 2021 for an additional twelve (12) months. The amended Completion Date shall be December 31, 2022. The Operating Agreement shall terminate on December 31, 2022, unless terminated sooner in accordance with Section 1.8 or Section 1.9 of the Operating Agreement.
2. If the Parties enter into a new operating agreement on or before December 31, 2022, the current Operating Agreement shall automatically terminate upon the effective date of the new agreement.
3. Section 1.3.1 of the Operating Agreement shall be replaced with the following: If the Contractor and the State cannot agree upon a new agreement by December 31, 2022, the State shall have no further obligations for renewal of the Operating Agreement with the Contractor.
4. The Parties agree that all other provisions of the Operating Agreement not amended herein shall remain in full force and effect.

5. This Amendment and all obligations of the parties hereunder shall become effective upon approval by the New Hampshire Governor and Executive Council.

IN WITNESS WHEREOF, the Parties hereto have set their hands the date first-written above.

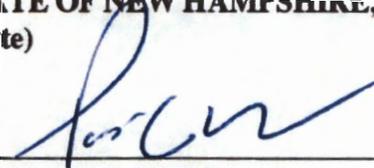
**Plymouth & Lincoln Railroad  
(Contractor)**

By:   
B.F. CLARK PRESIDENT

Date: 8-13-2021

Print Name and Title

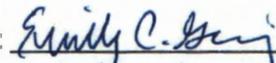
**STATE OF NEW HAMPSHIRE, DEPARTMENT OF TRANSPORTATION  
(State)**

By:   
Patrick Herlihy, Director  
Division of Aeronautics, Rail & Transit  
New Hampshire Department of Transportation

Date: 10/19/2021

The foregoing Amendment, having been reviewed by this office, is approved as to form and execution on 10/27, 2021.

OFFICE OF THE ATTORNEY GENERAL

By:   
Assistant Attorney General

Approved by Governor and Council on NOV 22 2021, 20  , Item #   .

ATTEST:   
Secretary of State  
**DEPUTY SECRETARY OF STATE**

**State of New Hampshire**  
**Department of State**

**CERTIFICATE**

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that PLYMOUTH AND LINCOLN RAILROAD CORPORATION is a New Hampshire Profit Corporation registered to transact business in New Hampshire on January 27, 1987. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 108181

Certificate Number: 0005419970



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 10th day of August A.D. 2021.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State

CERTIFICATE OF VOTE

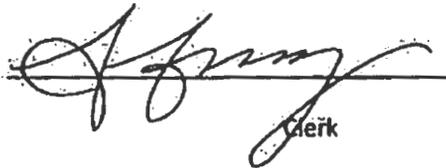
I, Jennifer Franz, hereby certify that I am duly elected Clerk of the Plymouth & Lincoln Railroad.

I hereby certify that Benjamin Clark is the President of the Plymouth & Lincoln Railroad and is empowered to enter into an Agreement to Amend Railroad Operating Agreement with the State of New Hampshire for operations on the State-owned Concord – Lincoln Railroad Line.

I hereby certify that the above has not been amended or repealed, and remains in full force and effect as of August 13, 2021.

Attested:

8/13/2021  
Date

  
Clerk

CORPORATE SEAL



HOBOCOR-01

DMEANEY

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
7/23/2021

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).

|   |   |
|---|---|
| PRODUCER<br>Armfield, Harrison & Thomas, LLC<br>PO Box 750<br>Intervale, NH 03845                     | CONTACT NAME: Judy Yeary  |
|   | PHONE (A/C, No. Ext): (781) 447-6531 FAX (A/C, No.): (781) 447-7230<br>EMAIL: jyeary@ahthna.com |
| INSURED<br><br>Hobo Corporation and Plymouth & Lincoln Railroad<br>PO Box 9<br>Lincoln, NH 03251-0009 | INSURER(S) AFFORDING COVERAGE   |
|   | INSURER A: Indian Harbor Insurance Co.  |
|   | INSURER B: Federal Insurance Company 20281  |
|   | INSURER C: Travelers Indemnity / Pool 11347   |
|   | INSURER D:  |
|   | INSURER E:  |

COVERAGES: CERTIFICATE NUMBER: 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.

| FORM LTR | TYPE OF INSURANCE  | ADD. SUBR. (REQ) (NO) | POLICY NUMBER   | POLICY EFF. (MM/DD/YYYY) | POLICY EXP. (MM/DD/YYYY) | LIMITS  |
|----------|--|-----------------------|-----------------|--------------------------|--------------------------|---|
| A        | COMMERCIAL GENERAL LIABILITY<br><input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR<br><input checked="" type="checkbox"/> Railroad Liability I<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER:            | X                     | US00101592L121A | 7/22/2021                | 7/22/2022                | EACH OCCURRENCE \$ 5,000,000<br>DAMAGE TO RENTED PREMISES (Per occurrence) \$ Included<br>MED EXP (Any one person) \$ 1,000<br>PERSONAL A&V INJURY \$<br>GENERAL AGGREGATE \$ 10,000,000<br>PRODUCTS - COMP/OP AGG \$<br>\$ |
| B        | AUTOMOBILE LIABILITY<br><input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY<br>UMBRELLA LIAB <input type="checkbox"/> OCCUR<br>EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br>DED. RETENTION \$ |                       | 99454582        | 7/22/2021                | 7/22/2022                | COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$<br>\$<br>EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$          |
| C        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below   | Y/N<br>N/A            | 6JUB0596N167    | 6/15/2021                | 6/15/2022                | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER<br>EL EACH ACCIDENT \$ 500,000<br>EL DISEASE - EA EMPLOYEE \$ 500,000<br>EL DISEASE - POLICY LIMIT \$ 500,000                                |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The State of New Hampshire Dept of Transportation Bureau of Rail and Transit is an Additional Insured as respects General Liability insurance for the operations of the insured on behalf of the additional insured.

|  |   |
|--|---|
| CERTIFICATE HOLDER<br><br>State of New Hampshire Dept of Transportation Bureau of Rail and Transit<br>Attn: Lou Barker<br>PO Box 483<br>Concord, NH 03302-0483 | CANCELLATION<br><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br> |
|--|---|

**PASSENGER EXCURSION AGREEMENT  
ON THE  
CONCORD TO LINCOLN RAILROAD LINE  
BETWEEN  
NORTHFIELD AND LINCOLN**

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
BUREAU OF RAIL AND TRANSIT**

**AND**

**PLYMOUTH AND LINCOLN RAILROAD CORPORATION  
P.O. BOX 9  
LINCOLN, NEW HAMPSHIRE 03251-0009**

**May 4, 2011**

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## ARTICLE I - GENERAL CONDITIONS

### 1.1 DEFINITIONS

As used herein, the following terms have the meanings indicated:

- a. "Contractor"- Plymouth & Lincoln Railroad Corporation, PO Box 9, Lincoln, NH 03251-0009.
- b. "State" - means the State of New Hampshire.
- c. "FRA" means the Federal Railroad Administration.
- d. "STB" means the Surface Transportation Board.
- e. "Service"- means Passenger Excursion Service.
- f. "Contracting Officer" - Commissioner, New Hampshire Department of Transportation (NHDOT), or his duly authorized representative. The Contracting Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of the Agreement and the resolution of any disputes by the Contracting Officer shall be final.
- g. "Agreement" - means the Passenger Excursion Agreement dated May 4, 2011.
- h. "Rail facility and rail facilities" collectively means the track, bridges, signals, switches, structures, buildings, and related railroad transportation property located on the one or more segments over which passenger excursion service is to be provided.
- i. "Effective Date" means the date the Agreement is approved by the Governor and Council of the State of New Hampshire.
- j. "Commencement Date" - January 1, 2012.
- k. "Completion Date" - December 31, 2021.
- l. "Operating Year" - January 1 to December 31.
- m. "User Fee" - Fee to be paid by the Contractor to State for the use of certain State-owned rail facilities.
- n. "Subcontractor" - An individual, partnership, firm, corporation, or any combination thereof, or joint venture, to whom the Contractor sublets any part of the Agreement.

### 1.2 EFFECTIVE DATE/COMPLETION OF SERVICES.

1.2.1 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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

1.2.2 Any Service 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 Service performed.

### **1.3 RENEWAL OF AGREEMENT.**

**1.3.1** The Contractor shall notify the State by certified mail no later than one year prior to the Completion Date, that the Contractor wishes to enter into renegotiations for a new Agreement for an additional ten (10) year period beginning January 1, 2022. If the Contractor and the State cannot agree upon a new Operating Agreement by July 1, 2021, the State may at that time solicit new Requests for Proposals to operate the Line and have no further obligations for renewal of this Agreement with the Contractor.

### **1.4 REQUEST TO PURCHASE**

**1.4.1** The Contractor shall notify the State by certified mail if the Contractor wishes to purchase the rail facilities. At its discretion and if permitted by State law, the State may sell the rail facilities to the Contractor to be maintained as an active railroad line, provided that the State and the Contractor obtain all necessary approvals. If the State and the Contractor cannot agree upon the terms of the purchase of the rail facilities within one (1) year from the date of the certified mail, the State will have no further obligations for sale of the rail facilities with the Contractor. This date, one (1) year from the date of the certified mail, may be extended with the approval of both the State and the Contractor.

### **1.5 CONTRACTOR'S REPRESENTATION AND WARRANTIES.**

**1.5.1** The Contractor represents and warrants the following:

**1.5.1.1** The Contractor is a corporation duly organized, validly registered with the Secretary of State, and in good standing under the laws of the State, and is duly qualified to do business in each jurisdiction where its business or the ownership of its property requires such qualification;

**1.5.1.2** The Contractor has the full power and authority to enter into this Agreement and to carry out the functions, which it has undertaken in this Agreement;

**1.5.1.3** All corporate and other proceedings required to be taken by or on the part of the Contractor to authorize it to enter into this Agreement and perform the Service have been duly taken; and

**1.5.1.4** The execution of this Agreement and the operation of the Service will not violate any statute, rule, regulations, order, writ, injunction or decree of any court, administrative agency or governmental body.

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

**1.6.1** In connection with the performance of the Service, the Contractor shall comply with all 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 opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

**1.6.2** 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.

**1.6.3** If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further 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.

## **1.7 PERSONNEL.**

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

**1.7.2** Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date, 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 Service 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.

**1.7.3** The Contracting Officer 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.

## **1.8 EVENT OF DEFAULT/REMEDIES.**

**1.8.1** Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

**1.8.1.1** failure to perform the Service satisfactorily or on schedule;

**1.8.1.2** failure to submit any report required hereunder;

**1.8.1.3** failure of the Contractor to maintain the records required hereunder, or to permit access thereof, and/or

1.8.1.4 failure to perform any other covenant, term or condition of this Agreement.

1.8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

1.8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

1.8.2.2 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

## 1.9. TERMINATION.

1.9.1 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") containing all information required by the various reporting provisions of the Agreement, from the date of the last such reports through and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any report described in the attached EXHIBIT A.

## 1.10. CONTRACTOR'S RELATION TO THE STATE.

1.10.1 In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

## 1.11 ASSIGNMENT/DELEGATION/SUBCONTRACTS.

1.11.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the Contracting Officer. None of the Service shall be subcontracted by the Contractor without the prior written consent of the State.

## 1.12. INDEMNIFICATION.

1.12.1 The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers 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 Contractor. 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 Section 1.11.1 shall survive the termination of this Agreement.

### **1.13 INSURANCE.**

**1.13.1** The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

**1.13.1.1** The Contractor shall obtain and maintain in force, throughout the term of this Agreement, Specialized Passenger Risk Liability Insurance, including Contractual Liability, with a claims made basis, naming the State as additionally insured, in the amount of five million (\$5,000,000.00) dollars with aggregate coverage of not less than ten million (\$10,000,000.00) dollars.

**1.13.2** The policies described in subparagraph 1.12.1 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.

**1.13.3** The Contractor shall furnish to the Contracting Officer, 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, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**1.13.4** Within ten (10) days prior to the start of operation and annually thereafter, the Contractor shall provide the Contracting Officer with a certificate evidencing the continual existence of required insurances.

### **1.14. WAIVER OF BREACH**

**1.14.1** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

## **1.15 NOTICE.**

**1.15.1** 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 above.

## **1.16. AMENDMENT.**

**1.16.1** 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.

## **1.17. CONSTRUCTION OF AGREEMENT AND TERMS.**

**1.17.1** This Agreement shall be 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.

## **1.18. LIMITED THIRD PARTY BENEFIT**

**1.18.1** The parties to this Agreement do not intend to benefit any third party other than the HOBO Corporation, Cafe Mt. Lafayette, Ltd and Lincoln RR Enterprises.

## **1.19 ENERGY EFFICIENCY**

**1.19.1** The Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

## **1.20 ENVIRONMENTAL PROTECTION**

**1.20.1** The Contractor shall agree that no facility or equipment acquired, constructed, or improved will knowingly violate any State or Federal Standard governing water and air pollution.

## **1.21 DISPUTE RESOLUTION**

**1.21.1** The Contracting Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement and the resolution of any dispute by the Contracting Officer shall be final.

## **1.22 ENTIRE AGREEMENT**

**1.22.1** This Agreement, which shall 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 related hereto.

## **1.23 FULL FORCE AND EFFECT**

**1.23.1** In the event any part of this Agreement is void or unenforceable, all other provisions shall continue in full force and effect.

## **ARTICLE II - PHYSICAL DESCRIPTION**

### **2.1 The Rail Facilities are described as follows:**

**2.1.1** The Contractor shall have the primary right to operate passenger excursion trains including special trains, work trains, and other operations approved by the Contracting Officer between Engineering Valuation Station 924+00 in Northfield and Station 1115+75 in Lincoln on the State-owned Concord to Lincoln Railroad Line. The Contractor has the primary right to utilize and shall be responsible for proper upkeep and maintenance including but not limited to the heating, electrical, water, security and structural systems of the storage facilities at the Lakeport Yard and Engine House and the Ticket Booth on the Weirs Beach Boardwalk. The Contractor for the purposes of tourist train operations has the primary right to utilize 1.2 acres of land, more or less, in Meredith and depicted more precisely on Attachment A of this Agreement. The Contractor for the purposes of tourist train operations has the primary right to utilize 0.6 acres of land, more or less, at Mountain Park Station in Woodstock and depicted more precisely on Attachment B of this Agreement.

**2.2** All rail facilities remain the property of the State which reserves to itself the right to grant further easements, contracts, leases, and other rights therein which do not, in the sole judgment of the State, unreasonably interfere with the performance of the services by the Contractor. The State reserves to itself all rents, fees and revenues derived from such grants.

**2.3** In all of its operations and use of the property enumerated herein, the Contractor will cooperate with State's railroad freight operator in the use of rail facilities. If the Contractor and the railroad freight operator cannot agree among themselves, the State retains the power to determine priority of occupation or use.

**2.4** The Contractor shall make no alterations to the State's property, both real and personal; or construct any building or make other improvements on the State's property beyond normal maintenance without the prior written consent of the State. All alterations, changes, and improvements built, constructed, or placed on the State's property by the Contractor, shall unless otherwise provided by written agreement between the State and the Contractor, be the property of the State and remain on the State's property at the expiration or sooner termination of this

agreement. Salvageable materials generated as a part of normal maintenance, shall become the property of the Contractor.

2.5 The parties contemplate that at least the following recreational uses will be made on the State-owned Concord to Lincoln Railroad Line during the term of this Agreement: (1) a year-round Recreational Trail, pursuant to one or more Rail-Trail agreements with the City of Laconia and the Towns of Belmont, Northfield and Tilton, provided the City or Town meets its indemnification and insurance responsibilities pursuant to an executed Rail-Trail Agreement, as amended from time to time; and (2) winter recreational use of the Line in locations other than the Recreational Trail, such use being managed by the Department of Resources and Economic Development (DRED). The State and the Contractor intend to avail themselves of any and all recreational use immunity to the fullest extent of the law, including but not limited to RSA 508:14 and RSA 212:34, as owner and occupant of the Line, respectively. To that end, the State hereby grants to the Contractor the concurrent right to grant access to the Line for recreational purposes. For any particular recreational use on the Line proposed by either the State or the Contractor, the Contractor may memorialize its assent to any proposed recreational use by directing such assent, in writing, to the Contracting Officer. Assent to any particular recreational use may be withdrawn by the State or the Contractor by sending such written withdrawal to the other party to this Agreement. Nothing herein is intended to create third party beneficiary rights in any party. Upon execution of this Agreement, the Contractor shall indicate in writing whether or not it assents to the Recreational Trail use pursuant to any existing Rail-Trail agreement with the City of Laconia or the Towns of Belmont, Northfield or Tilton. With respect to winter recreational use of the Line under DRED management, the Contractor shall inform the Contracting Officer that rail operations have ceased for any particular operating season and simultaneously communicate its position on allowing winter recreational use of the Line apart from the Recreational Trail. Neither the Contractor nor the Contracting Officer shall allow winter recreational use of the Line once rail operations have resumed, except on the Recreational Trail."

### ARTICLE III - OPERATIONS

#### 3.1 SERVICES

3.1.1 The Contractor shall, between the Commencement Date and the Completion Date, manage and operate Service upon the property above-mentioned in Article 2.1. The Contractor shall be solely responsible for all phases and requirements of its operation, including, but not limited to, scheduling, workforce, equipment, advertising, and ticket sales.

3.1.2 Notwithstanding any other provisions of the Agreement, the Contractor agrees to allow provision of temporary Service by others in the event of its inability to provide Service. Notice of Service by others must be given to the Contractor in writing.

3.1.3 The Contractor warrants that all personnel engaged in the Services shall be qualified to perform such Services, and shall be properly licensed and authorized to perform such Services under all applicable laws.

3.1.4 The Contractor will conform to the State's "Guidelines Governing the Operation of On-Track Equipment on State-owned Railroad Lines," and will incorporate these Guidelines into its current Time Table.

## 3.2 MAINTENANCE.

3.2.1 Equipment - The Contractor shall be responsible for proper upkeep and maintenance of all equipment it uses and shall insure that equipment is in compliance with all applicable current FRA regulations.

3.2.2 Track - The Contractor shall be responsible for the proper upkeep and maintenance of track facilities as stated in Article 2.1. Said upkeep and maintenance shall include but not be limited to:

- a. Surface and alignment
- b. Brush and vegetation control (all brush to be chipped)
- c. Drainage and ditches
- d. All operating signals to be kept in good operating condition
- e. Crossing and switches to be kept in good operating condition. The Contractor

shall provide a flagman during the passage of trains for the protection of any crossing protected by signals where the signal is not operating for any reason.

- f. Snow removal and winter maintenance when needed for passenger excursion service.

3.2.2.1 The Contractor shall be responsible to perform all work and routine maintenance necessary to maintain the track described in Article 2.1 at FRA Class I (Class II where track is so classified) Track Safety Standards and in any event will expend no less than ten (10%) percent of its Annual Gross Ticket Revenue on actual track maintenance exclusive of inspections. In the event that the Contractor expends in excess of ten (10%) percent of Annual Gross Ticket Revenue on track maintenance in an Operational Year, such excess will be credited towards future maintenance expense obligations hereunder. The Contractor's performance will satisfy all obligations required of the owner of a railroad, as set forth in Part 213 of the FRA Track Safety Standards (49 CFR 213).

## 3.2.3 STRUCTURES (BRIDGES & CULVERTS)

3.2.3.1 The Contractor shall be responsible for maintaining structures and shall make needed repairs necessary to keep structures safe for the convenience of the railroad and the State. Said maintenance shall include but not be limited to the cleaning and removal of debris, lubrication of bearing surfaces, scour and erosion protection.

3.2.3.2 In the event a major maintenance expenditure is required, such as but not limited to, a bridge failure or major washout, the Contractor shall assist in all necessary repairs, but be limited in its direct financial contribution to the first five thousand (\$5000.00) dollars per operating year in the aggregate for both the Contractor's HOB0 Railroad and Winnepesaukee

Scenic Railroad operations. However, the Contractor waives any claims to damages for any delays in repairing or reopening the line after such an occurrence and the State reserves to itself the decision whether, when and how such repairs and reopening will be done.

### **3.3 INSPECTION.**

3.3.1 The Contractor shall patrol the area of service and inspect the track when operating as per FRA Track Safety Standards Subpart F (49 CFR 213.233) at least twice weekly from MP C29.20 to 37.67 and from MP P 12.36 to P 21.00 and at least twice monthly with at least one calendar week interval between inspections from MP C 17.61 to MP C 29.20 and MP 37.67 to MP P 12.36. The Contractor shall submit an inspection report in a timely manner but no more than one (1) week after each inspection. Should any defects be found, the Contractor shall take the appropriate remedial action and notify the Contracting Officer in writing of said remedial action.

3.3.2 The Contracting Officer has the right to monitor the Contractor to ensure that the Contractor complies with the conditions of the Agreement. The Contracting Officer shall be granted full access to the operations and shall have the authority to direct the Contractor through its General Manager or his designee to remedy deficiencies as per FRA Class I under this Agreement.

3.3.3 The Contracting Officer may take any action, including the field inspection of any project site and the inspection of the rail facilities, equipment, and all books and records of Contractor and of any contractor or subcontractor relating to any project or task accomplished under this Agreement.

3.3.3.1 Such inspection shall include, but not be limited to:

- a. Ensure that work complies with the contract specification.
- b. Verify quantitative measures of materials installed, such as tie counts.
- c. Verify labor and materials charges for contracts providing for payment on an actual cost basis ("force account work").
- d. Verify the quantities of uninstalled State-owned materials and the security of the same against damage, theft, or use other than for approved projects.
- e. Provide any other information requested by the Contracting Officer.

### **3.4 CONSTRUCTION PROJECTS.**

3.4.1 The Contracting Officer reserves the right to advertise and let construction rehabilitation projects within the confines of the line. The construction contractor to whom this work may be awarded shall have the right to perform the work so described in the contract. The Contracting Officer shall have the right to adjust trips not published in the regular railroad schedule to accommodate the construction schedule.

3.4.2 The Contracting Officer will from time to time allow Water Pollution Abatement and other utility projects to be constructed within the railroad right-of-way. Construction

contractors for these projects will be required to enter into a license with the State, which will require certain conditions such as liability insurance, and to cooperate with the Contractor in assuring that the work be performed in such a manner that the tracks, operations and appurtenances of the rail facility will be safeguarded. The Contractor may require a flagman and/or railroad inspector at a construction site if he deems it necessary.

### **3.5 FORCE MAJEURE**

3.5.1 The parties hereto will be excused from performance of any of their respective obligations hereunder occasioned by any event beyond their respective control, including, without limitation, any action of any federal, state or local agency or instrumentality; by government authorities including compliance with environmental quality, energy conservation and occupational safety requirements adopted or effected after the date of this Agreement; by acts of God; by strikes or other labor trouble; by explosions, fires, or vandalism until such events are remedied.

## **ARTICLE IV - USER FEE PAYMENTS, ACCOUNTING AND AUDITS**

### **4.1 RECEIPT OF PAYMENTS**

4.1.1 The Contractor shall make User Fee payments required under this article directly to the State of New Hampshire, Department of Transportation, Bureau of Rail and Transit.

### **4.2 SCHEDULE OF PAYMENTS**

4.2.1 Payments shall be paid monthly, based upon the level of operation, as explained below. Payments shall be made no later than thirty (30) days after the last day of each calendar month and will include a breakdown of the number and type of tickets sold during the reporting period.

### **4.3 USER FEE PAYMENTS**

4.3.1 The Contractor shall pay ten (10%) percent of gross ticket sale revenues for tickets sold.

4.3.2 If combination tickets are sold, the rail fare portion of the ticket shall be stated and fairly represent the relative value of the rail fare in relation to the total value of the ticket.

4.3.3 The Contractor shall pay every month the sum of one hundred (\$100.00) dollars for the use of the Meredith Railroad Yard for railroad purposes. The Contractor shall pay every month the sum of twenty (\$20.00) dollars for use of the Mountain Park Station for railroad purposes. These purposes shall include but not be limited to ticket and gift sales, tourist information, tourist events staging areas, general storage and repair facilities. The Contractor shall pay every month the sum of sixty-two dollars and fifty cents (\$62.50) for use of the Ticket Booth on the Weirs Beach Boardwalk for ticket and gift sales and tourist information purposes.

**4.3.4** The Contractor may utilize certain State-owned railroad equipment if the State determines they are available. If the Contractor utilizes this State-owned railroad equipment for passenger/revenue service, for any day or fraction thereof, it shall pay on a monthly basis the following amounts:

- a. For the 100 ton ALCO diesel electric locomotive, Model S-1, Serial Number 77109, the sum of one thousand one hundred (\$1,100.00) dollars per month is used twenty-two (22) days or more during a calendar month, or fifty (\$50.00) per day if used less than twenty-two (22) days per calendar month.
- b. For the railroad kitchen car Model number 1773 USAX 89654, the sum of two hundred forty (\$240.00) dollars per year in twelve (12) monthly payments of twenty (\$20.00) dollars.
- c. For the railroad kitchen car Model number 1773 USAX 89620, the sum of six hundred forty (\$600.00) dollars per year in twelve (12) monthly payments of fifty (\$50.00) dollars.
- d. For the three (3) ballast cars and one (1) side dump car, no monthly payment if used for maintenance-of-way purposes.

**4.3.5** The Contractor may, where directed in writing by the Contracting Officer, deduct from payments the cost of specific expenditures including but not limited to major maintenance projects in track work, structure repair, engine house repair, and State-owned rolling stock.

#### **4.4 LATE PAYMENT**

**4.4.1** Should any payment be received more than five (5) days after the due date, the Contracting Officer shall be entitled to a five (5%) percent late charge on that month's User Fee.

#### **4.5 ACCOUNTING AND AUDITS**

**4.5.1** The Contracting Officer shall have access, during regular working hours, for the purpose of audit and examination, to any books, documents, papers, and records of the Contractor that may be related or pertinent to this Agreement during the period of this Agreement and for a period of five (5) years after the termination of this Agreement. The Contractor shall impose this requirement of each of its subcontractors.

**4.5.2** The Contracting Officer shall have the right to audit all books, records and accounts of the Contractor, which pertain to this Agreement annually. Throughout the term of this Agreement and for a period of five (5) years following, the Contractor shall maintain detailed records and accounts of all passenger revenues and any records required for the Contractor to show compliance with the terms of this Agreement.

**4.5.3** If, as a result of any audit, the Contracting Officer determines that the amount paid to State is less than the amount owed, the Contractor shall pay the difference to State within thirty (30) days of the determination.

4.5.4 If, as a result of any audit, the Contracting Officer determines that the amount paid to State is more than the amount owed, State will make repayment or credit the Contractor accordingly, so far as appropriations allow, the overpayment to NHDOT.

## **ARTICLE V - MARKETING EFFORT**

### **5.1 BUSINESS PRACTICES**

5.1.1 The Contractor will make every effort to market the line in order to make it a profitable and to maintain good business and working relationships with local businesses, State and local government officials, employees, and other railroads.

### **5.2 ADVERTISING DEVICES**

5.2.1 All advertising devices including signs, banners, fixed and portable displays or anything else placed in the railroad right-of-way to attract attention to the railroad shall conform with local, State and Federal ordinances that apply to the abutting highway right-of-way or private property. All permanent advertising to be placed in the railroad right-of-way shall have prior written approval of the State.

## **ARTICLE VI - OTHER OPERATORS**

### **6.1 COOPERATION WITH OTHER OPERATIONS**

6.1.1 In all of its operations and use of the property enumerated herein, the Contractor will cooperate with the State's railroad freight operator and other passenger excursion operators in the use of rail facilities and not infringe upon their contractual rights. If the Contractor and the railroad freight operator and other passenger excursion operators cannot agree among themselves, the State retains the power to determine priority of occupation or use. The decision of the State is final.

### **6.2 STATE'S RIGHT TO NEGOTIATE**

6.2.1 The parties agree that the State is free to negotiate with others concerning the right to operate a Service on the State-owned Concord to Lincoln Railroad Line in locations other than the segment of line upon which this Agreement grants the Contractor's rights. However, before the State enters into any contract concerning regular frequent Service with any other operator, the State will first offer the Contractor the option of performing such Service upon the same terms and conditions as the State may have negotiated with another operator. Once notified by the State of such an opportunity, the Contractor shall have fourteen (14) days to respond to the State, and after that time the State shall be free to enter into an agreement with such other operator.

**ARTICLE VII - TERMINATION OF AGREEMENT**

**7.1 OBLIGATIONS**

7.1.1 The parties will be excused from the performance of any of their obligation under this Agreement if performance becomes impossible due to any event beyond their control, including acts of God, explosions, fires and vandalism.

7.1.2 If at any time after the Commencement Date the Contractor operates the Service fewer than sixty (60) days during any Operational Year, this Agreement will automatically terminate and the parties will be relieved of all obligations hereunder, except the Contractor's continuing duty to maintain financial records and to continue to defend and hold harmless the State for any claims arising during the period of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the 6 day of June, 20 11.

PLYMOUTH & LINCOLN RAILROAD CORP.

Marie Spencer  
WITNESS

BY: [Signature]  
BENJAMIN E. CLARK, President

THE STATE OF NEW HAMPSHIRE  
COUNTY OF Grafton

On this 6 day of June, 20 11, before me, Marie Spencer the undersigned officer, personally appeared Benjamin E. Clark 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.

Marie Spencer  
NOTARY PUBLIC  
Justice of the Peace

THE STATE OF NEW HAMPSHIRE

\_\_\_\_\_  
WITNESS

BY: \_\_\_\_\_

*George N. Campbell, Jr.*  
George N. Campbell, Jr.  
Commissioner, Department of Transportation

THE STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_ the undersigned officer, personally appeared George N. Campbell, Jr. 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.

\_\_\_\_\_  
NOTARY PUBLIC

) This is to certify that the Passenger Excursion Agreement shown above has been reviewed by this office, and is approved as to form and execution.

OFFICE OF ATTORNEY GENERAL

DATE: \_\_\_\_\_

*9/6*, 20 *11*

BY: \_\_\_\_\_

*David M. Hilly*  
Assistant Attorney General  
David M. Hilly

APPROVED by Governor and Executive Council or \_\_\_\_\_

SEP 28 2011

, 20\_\_\_\_

ITEM # \_\_\_\_\_

ATTEST: \_\_\_\_\_

*[Signature]*  
DEPUTY SECRETARY OF STATE

**EXHIBIT A**

**PLYMOUTH & LINCOLN RAILROAD, INC.  
REPORT AND PAYMENT DUE DATES**

| JANUARY   | FEBRUARY   | MARCH  | APRIL   |
|---|--|--|---|
| 1st - NOVEMBER PAYMENT,<br>REVENUE REPORT &<br>TRAFFIC REPORT | 1st - DECEMBER PAYMENT,<br>REVENUE &<br>TRAFFIC REPORT | 1st - JANUARY PAYMENT &<br>REVENUE & TRAFFIC<br>REPORT | 1st - FEBRUARY PAYMENT,<br>REVENUE & TRAFFIC<br>REPORT    |
| 1st - MARKETING REPORT  | 1st - JULY - DECEMBER<br>MAINTENANCE COST<br>REPORT    |  |   |
|   |  |  |   |
| MAY   | JUNE   | JULY   | AUGUST  |
| 1st - MARCH PAYMENT<br>REVENUE & TRAFFIC<br>REPORT            | 1st - APRIL PAYMENT,<br>REVENUE & TRAFFIC<br>REPORT    | 1st - MAY PAYMENT,<br>REVENUE & TRAFFIC<br>REPORT      | 1st - JUNE PAYMENT,<br>REVENUE REPORT &<br>TRAFFIC REPORT |
|   |  |  | 1st - JANUARY - JUNE<br>MAINTENANCE COST<br>REPORT        |
|   |  |  |   |
| SEPTEMBER   | OCTOBER  | NOVEMBER   | DECEMBER  |
| 1st - JULY PAYMENT &<br>REVENUE & TRAFFIC<br>REPORT           | 1st - AUGUST PAYMENT &<br>REVENUE & TRAFFIC<br>REPORT  | 1st - SEPTEMBER PAYMENT &<br>REVENUE REPORT<br>REPORT  | 1st - OCTOBER PAYMENT<br>REVENUE & TRAFFIC<br>REPORT      |
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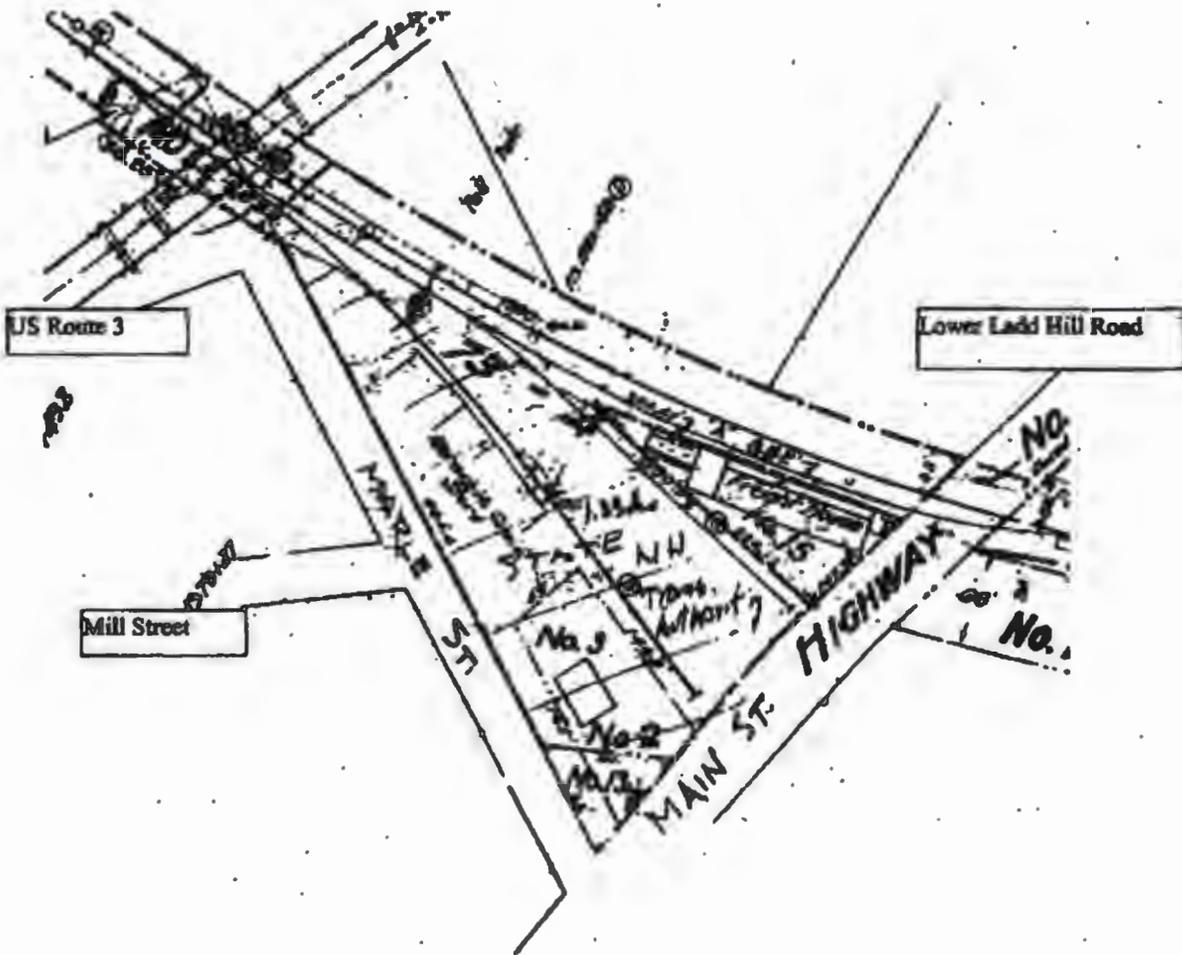
ATTACHMENT A

U.S. ROUTE 3

LADD HILL ROAD

MAPLE STREET

FROM RAILROAD VALUATION MAP V21/74



ATTACHMENT B

MOUNTAIN PARK STATION, WOODSTOCK

209' +/-

Station 944+00 to 946+09+/-

FROM RAILROAD VALUATION MAP V30/18

