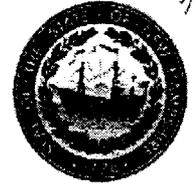




THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

Bureau of Rail and Transit
May 12, 2014

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 228:57 and RSA 228:65, authorize the Department of Transportation to enter into a Sole Source contract with the Cafe Mt. Lafayette Ltd., Route 112, North Woodstock, NH 03262, in the amount of \$18,750 for a Special Trackage Rights Agreement to be effective upon Governor and Council approval through on March 31, 2029.

Source of Funds Revenue:

04-96-96-960010-2991
Special Railroad Fund
009-407323 Railroad License Fees \$ 18,750.00

Special Railroad Account 010-096-2991-009, Revenue Source 7323:

Table with 2 columns: Years, Annual Fee. Rows: 1-5 (\$ 1,000), 6-10 (\$ 1,250), 11-15 (\$ 1,500)

EXPLANATION

The Cafe Mt. Lafayette Ltd. Dinner Train purchased a parcel of land in North Woodstock next to the Concord to Lincoln railroad line for its business location and the Department entered into a Special Trackage Rights Agreement with the Cafe Mt. Lafayette Ltd. Dinner Train, which included the right to construct a sidetrack on the Concord to Lincoln railroad line adjacent to their property. This Special Trackage Rights Agreement was approved by Governor & Council on September 16, 1998 (Item #145).

Subsequently, the Cafe Mt. Lafayette Ltd. Dinner Train built the sidetrack to load and unload patrons as well as store its railroad equipment. This sidetrack was completed and accepted by the Department, on or before October 1, 1999 and as the sidetrack is located within the State-owned railroad corridor, it will remain the property of the Department upon termination of the agreement.

Based on the aforementioned, the Dinner Train has been operating out of this site in North Woodstock since September 1998. The Cafe Mt. Lafayette Ltd. has continued to invest in site improvements to strengthen proposed long term operation of the Dinner Train from this location. The 1998 agreement expired on August 31, 2008 and the Cafe Mt. Lafayette Ltd. has continued as a tenant-at-will.

The proposed agreement re-establishes the agreement and details the conditions under which the Dinner Train may continue to use the state-owned property. Additionally this includes, for an annual fee, the provision that the Cafe Mt. Lafayette Ltd. may utilize state-owned railroad kitchen car #2210 (Model number 1773 USAX 89620) and will be responsible for all costs, labor, and materials for the reconstruction, repairs and maintenance of the car. It should be noted that the Cafe Mt. Lafayette Ltd. has been utilizing this kitchen car, under the same terms, through a sublease arrangement with the Plymouth & Lincoln Railroad. This agreement will directly lease the kitchen car to the Cafe Mt. Lafayette Ltd. instead of placing a burden on the Plymouth & Lincoln Railroad to sublease it.

Your approval of this resolution is respectfully requested.

Sincerely,


for Christopher D. Clement, Sr.
Commissioner

Attachments

**SPECIAL TRACKAGE RIGHTS AGREEMENT,
CAFE LAFAYETTE DINNER TRAIN**

This Special Trackage Rights Agreement (referred to as "Agreement") made and entered into this 24th day of March, 2014, by and between the Cafe Mt. Lafayette Ltd., d/b/a Cafe Lafayette Dinner Train (referred to as "Cafe Lafayette"), a New Hampshire corporation with a principal place of business at Route 112, North Woodstock, NH 03262 and the State of New Hampshire by and through its Department of Transportation (referred to as "Department"), PO Box 483, Concord, NH 03302. The Cafe Lafayette and the Department do hereby contract and agree:

**ARTICLE I
PROJECT DESCRIPTION**

1.1 The Department will allow the Cafe Lafayette to use, at its own expense, a sidetrack at Station 1070+00, Valuation Section 30/21 utilizing Department owned rail materials, said materials to include but not limited to switches, rail and other track materials. The Cafe Lafayette agrees that all rail material shall remain the property of the Department.

1.2 This project shall consist of the use and maintenance of a sidetrack (facility) on the State-owned Concord to Lincoln Railroad Line near MP 20.50 in North Woodstock. The facility shall be maintained in accordance with the specifications of the Department and subject to the approval of its Railroad Inspector/Investigator. The Department shall have the final decision on all track maintenance matters. The Cafe Lafayette shall not be reimbursed by the Department for any expenses for any reconstruction and maintenance of the sidetrack during or after the termination of the Agreement.

1.3 It is agreed that the Cafe Lafayette shall be responsible for the removal and transportation of all State-owned rail materials, all site preparation, all necessary materials for any reconstruction and maintenance of the sidetrack.

1.4 This facility is to be use only by the Café Lafayette as the origination and termination of the Dinner Train and storage of the consist between trains.

1.5 Cafe Lafayette may utilize State-owned Railroad kitchen car #2210, Model number 1773 USAX 89620. The Café Lafayette is responsible for all costs, labor and materials for any reconstruction, repairs and maintenance of car #2210.

1.6 The Cafe Lafayette agrees that the Department may regularly and randomly inspect the facility for the purpose of insuring the compliance with the terms of this Agreement.

Initial 

**ARTICLE II
TERM AND RENT**

2.1 The term of this Agreement shall begin upon approval by Governor & Council, and shall end on the 31st day of March 2029, unless terminated sooner or unless extended by the Cafe Lafayette pursuant to Section 2.3. The schedule of payment will be as follows:

Years 1-5 (one through five): \$ 1,000.00 per year.
Years 6-10 (six through ten): \$ 1,250.00 per year.
Years 11-15 (eleven through fifteen): \$ 1,500.00 per year.

2.2 The Contractor may utilize State-owned Railroad kitchen car Model number 1773 USAX 89620 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 as follows:

Railroad kitchen car Model number 1773 USAX 89620, the sum of six hundred (\$600.00) dollars per year.

All payments are due in advance, due upon the 1st day of April each year to the Department at the following address:

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
BUREAU OF FINANCE AND CONTRACTS
JOHN O. MORTON BUILDING
PO BOX 483
CONCORD, NH 03302-0483

2.3 The Cafe Lafayette shall notify the Department within Ninety (90) days of the ending date of March 31, 2029, that the Café Lafayette wishes to enter negotiations for a new Agreement for an additional ten (10) years in two (2), five (5) year segments. If the Cafe Lafayette and the Department, having negotiated in good faith the conditions and terms (payments based on comparable operations), cannot agree upon the terms of a new Agreement by January, 31, 2029, the Cafe Lafayette shall peacefully quit and surrender to the Department the premises together with all improvements, alterations or additions made by the Cafe Lafayette.

2.4 All real and personal property taxes assessed by the Town of Woodstock as a result of this Agreement will be paid by the Cafe Lafayette. Failure of the Cafe Lafayette to pay any assessed real or personal taxes when due shall be cause to terminate this Agreement.

**ARTICLE III
OTHER PROVISIONS**

3.1 The Cafe Lafayette and the Department agree to comply with all applicable Federal, State and local laws and regulations.

Initial 

3.2 The Cafe Lafayette shall defend, indemnify and hold harmless the State of New Hampshire and the Department, including their officers and employees, from all suits, actions or claims of any character, name or description brought for, or on account of any injuries or damage arising out of this Agreement. Nothing contained herein shall constitute a waiver or release of any claims the Cafe Lafayette may have against any third person arising out of or related in any way to the project. The Cafe Lafayette and the Department specifically agree that nothing contained herein shall waive any claim the Cafe Lafayette may have for breach of warranty or breach of contract against the Contractor, its agents, employees, officers, directors, sub-contractors or other related persons of any type, name or description, nor shall anything contained herein constitute a waiver or release of any claim the Cafe Lafayette may have against any third party on account of any act or omission, neglect, misconduct, malfeasance or misfeasance relating to the work to be performed under this Agreement.

3.3 During the term of this Agreement, the Cafe Lafayette, at its own expense, shall maintain general commercial liability coverage in the amount of One Million Dollars (\$1,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The Cafe Lafayette shall provide to the Department a certificate of insurance demonstrating that the required coverage has been obtained and designating the State of New Hampshire and the railroad(s) under contract to operate on the Concord-Lincoln line as additional insured.

3.3.1 During the term of this Agreement, the Cafe Lafayette, at its own expense, shall maintain Worker's Compensation Insurance in the amount as required by current State Statute

3.4 It is agreed between the Cafe Lafayette and the Department that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary, other than the railroad(s) under contract to operate on the Concord-Lincoln line, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The duties, obligations and responsibilities of the Cafe Lafayette and the Department to the Agreement with respect to third parties shall remain as imposed by law.

3.5 Nothing contained in this Agreement shall be construed as or be deemed to be, a waiver of sovereign immunity of the State of New Hampshire.

3.6 All real or personal property taxes assessed by the Town of Woodstock as a result of this AGREEMENT are not included in the rent and will be paid by the Café Lafayette. In accordance with RSA 72:23, I(b), "failure of the lessee to pay any duly assessed personal and real estate taxes when due shall be cause to terminate said lease or agreement by the lessor."

3.7 This Agreement is construed in accordance with the laws of the State of New Hampshire and is binding upon and inures to the benefit of the Cafe Lafayette and the Department and their respective successors and assigns. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the Cafe Lafayette and the Department hereto.

Initial 

3.8 With the prior written consent of the Department, the Cafe Lafayette may assign this Agreement, or sublet or grant any concession or license to use the premises or any part thereof. A consent by the Department to one assignment, subletting, concession, or license shall not be deemed to be a consent to any subsequent assignment, subletting, concession or license. An assignment, subletting, concession, or license without the prior written consent of the Department or an assignment or subletting or operation of law, shall be void and shall, at the Department's option, terminate this Agreement.

3.9 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 Cafe Lafayette and the Department and supersedes all prior agreements and understanding related thereto.

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

3.11 This Agreement and all obligations shall become effective on the date of the Agreement's approval by the Governor and Executive Council.

Initial 

IN WITNESS WHEREOF, the Cafe Lafayette and the Department hereto have caused this Agreement to be executed by their duly authorized agents on the 24th day of March, 2014.

CAFE MT. LAFAYETTE LTD.
d/b/a CAFE LAFAYETTE DINNER TRAIN

By: [Signature] President
T Lance Burak
Print Name and Title

STATE OF NH
COUNTY OF Grafton

On, 3/24/14, before the undersigned officer personally appeared T. Lance Burak known to me (or satisfactorily proven) to be the President of the corporation identified in the foregoing document, and acknowledged that he executed the foregoing document.

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

3/24/14
Date

[Signature]
Notary Public

JOAN M. PARKER
NOTARY PUBLIC - NEW HAMPSHIRE
My Commission Expires
September 22, 2015

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
By: [Signature]
Patrick Herlihy, Director
Division of Aeronautics, Rail & Transit

Approved by the Office of the Attorney General this 19 day of May, 2014, as to form and execution.

By: [Signature]
Assistant Attorney General

Approved by the Governor and Council on _____, 20____, Item # _____

ATTEST: _____
Secretary of State

Initial ZB

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 CAFE LAFAYETTE DINNER TRAIN is a New Hampshire trade name registered on May 12, 1994 and that CAFE MT. LAFAYETTE, LTD. presently own(s) this trade name. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 3rd day of April, A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

CAFÉ MT. LAFAYETTE, LTD

Consent of Directors to Action In Lieu of Meeting

The undersigned, being all of the directors of Café Mt. Lafayette, LTD, a corporation organized and existing under the New Hampshire Business Corporation Act (NH RSA 293-A)(the "Corporation"), do hereby consent pursuant to New Hampshire RSA 293-A: 8.21, that the following actions be taken:

RESOLVED: That the Corporation is hereby authorized to enter into a Special Trackage Rights Agreement with the State of New Hampshire, through the Department of Transportation, Bureau of Rail & Transit, specifically for Café Lafayette Dinner Train on the Concord Lincoln Railroad corridor.

FURTHER RESOLVED: To authorize Lance Burak, duly elected President to sign and execute on behalf of the corporation all documents necessary to effectuate said Special Trackage Rights Agreement and to do any and all things, which in his discretion are necessary and proper in order to carry out the foregoing resolution.

This Consent may be executed in any number of counterparts, all of which when taken together shall constitute a single original consent.


Theodore Lance Burak – Director


Leslie Allen Holloway – Director

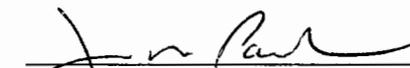
DATED: March 24, 2014

STATE OF NEW HAMPSHIRE
COUNTY OF

On, 3/24/14, before the undersigned officer personally appeared the persons identified in the foregoing certificate, known to me (or satisfactorily proven) to be the Directors of the corporation identified in the foregoing certificate, and acknowledged that they executed the foregoing certificate.

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

3/24/14
Date


Notary Public
JOAN M. PARKER
NOTARY PUBLIC - NEW HAMPSHIRE
My Commission Expires
September 22, 2015



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/25/2014

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 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 M&M Assurance Group, Inc. PO Box 750 Intervale, NH 03845	CONTACT NAME: PHONE (A/C, No, Ext): (603) 356-3392		FAX (A/C, No): (603) 356-9290	
	E-MAIL ADDRESS:			
INSURED Cafe Mt. Lafayette LTD Cafe Mt. Lafayette Dinner Train P.O. Box 8 North Woodstock, NH 032620008	INSURER(S) AFFORDING COVERAGE		NAIC #	
	INSURER A : Citizens Ins. Co. Of America		31534	
	INSURER B :			
	INSURER C :			
	INSURER D :			
	INSURER E :			
INSURER F :				

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.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR		POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
		INSD	WVD					
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			ZBV879552503	08/13/2013	08/13/2014	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
								\$
								\$
								\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The State of New Hampshire Department 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**CANCELLATION**

New Hampshire Department Transportation Bureau of Rail and Transit
Attn: Lou Barker
John O Mortin Building
7 Hazen Drive
Concord, NH 03302

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE