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STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL AND CULTURAL RESOURCES
DIVISION of PARKS and RECREATION
BUREAU OF TRAILS

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March 25, 2019

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

REQUESTED ACTION

1. Pursuant to RSA 215-A:3, III and RSA 215-C:2, III, authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation, Bureau of Trails, to enter into a **RETROACTIVE** Lease Agreement with Twitchell Heirs c/o Thomas Carney (VC #153303), Brunswick, ME for snowmobile and all-terrain vehicle trail access in the Towns of Millsfield, Errol, Dummer, Cambridge and Milan, NH for a five (5) year period upon Governor and Executive Council approval from February 16, 2019 to February 15, 2024.
2. Further authorize the Department to make yearly payments of \$1,000, for a total payment amount of \$5,000, over the 5-year period to Twitchell Heirs c/o Thomas Carney (VC #153303), Brunswick, ME, in accordance with the terms of the Lease Agreement. **100% Agency Income**

Funding is available as follows pending budget approval for Fiscal Years 2020, 2021, 2022, 2023:

	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
03-35-35-351510-35580000					
Trails Administration	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
022-500248 Rents-Lease OTS					

EXPLANATION

The Bureau of Trails (Bureau) has held a lease agreement on this property for the last 35 years. Through this Lease Agreement, the Bureau retains the right to use, maintain, and construct public snowmobile and all-terrain vehicle trails on lands owned by Twitchell Heirs in the Towns of Millsfield, Errol, Dummer, Cambridge and Milan, NH. Without this corridor system, vital access to trails in the Berlin and Errol areas will be lost. This request to enter into the Lease Agreement is retroactive due to delays in coordinating signatures between the vendor and agency representatives despite the Bureau's best efforts to initiate an agreement in a timely fashion.

The Attorney General's Office has approved this agreement as to form, substance and execution.

Respectfully submitted,

Sarah L. Stewart
Commissioner

(19)



Department of Natural and Cultural Resources
Division of Parks and Recreation
Bureau of Trails

LEASE AGREEMENT

AGREEMENT made as of the 16 day of FEB, 2019 pursuant to authority contained under New Hampshire RSA 215-A (Supp.) and by and between, **Twitchell Heirs, c/o Thomas Carney, PO Box 544, Brunswick, ME, 04011**, its successors and assigns, the "Lessor" and the State of New Hampshire, by its Commissioner, Department of Natural and Cultural Resources, through the Supervisor of the Trails Bureau, the "Lessee."

1. Term:

The term of this lease shall be five (5) years starting from the date first written above.

2. Description of Property:

In consideration of the rental and covenants herein contained, the Lessor hereby leases and rents to the Lessee the right to construct and maintain a public trail for use of snowmobiles and all-terrain vehicles over and across property of the Lessor described as follows:

The lands owned by Twitchell Heirs in the Towns of Millsfield, Errol, Dummer, Cambridge and Milan in the State of New Hampshire. Exact trail location will be reviewed and approved by the Lessor yearly.

3. Payment:

The Lessee shall pay a fee of **\$5,000.00** for the public use of the trail. Payments shall be made in annual installments of **\$1,000.00** on or before November 1 of each year.

Notwithstanding anything to the contrary contained herein, it is understood and agreed that all payments of all sums by the Lessee hereunder are contingent upon availability and continued appropriation of State funds, and if for any reason whatsoever, such funds shall be terminated or reduced or otherwise become unavailable, the Lessee may terminate this lease in whole or in part immediately.

4. Lessor's Obligations:

4.1 The Lessor hereby permits the Lessee to cut and remove trees, brush and other obstacles from the trail to a width of 20 feet maximum . All hazardous trees, brush leaning into the trail may be cut. The Lessee agrees to pay standard compensation for clearing.

4.2 The Lessor hereby permits the Lessee to install gates and construct passways through fences and stone walls. The Lessee agrees to construct gates and replace fences where requested by Lessor.

4.3 The Lessor agrees to allow the Lessee to cut and remove standing trees for bridge construction where needed. The Lessee shall pay for the timber at the current rates per standard board feet.

4.4 The Lessor agrees not to obstruct the trail. Minor relocations may be made by mutual agreement, and a reasonable effort will be made to accommodate the Lessor in this regard.

5. Lessee's Obligations:

5.1 The Lessee shall maintain the trail in good and usable condition and shall be responsible for placing and maintaining necessary signs.

5.2 The Lessee agrees to regularly patrol the entire trail during the term of this Lease, and to pick up and dispose of all trash and debris resulting from the use of the trail.

6. Liability Provisions; Sovereign Immunity:

It is expressly understood that the parties intend this conveyance to be subject to the limitations of liability provisions set forth in New Hampshire RSA 212:34 (Supp.), RSA 215-C:55 and RSA 508:14.

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State. This covenant shall survive the termination of this agreement.

7. Termination for Cause

7.1 In the event that the Lessee shall fail to perform any of its obligations hereunder in a timely or satisfactory manner, the Lessor may serve upon the Lessee written notice specifying the nature of the default or breach. If upon the expiration of

fifteen (15) days from the delivery of such notice, the default is not remedied, the Lessor may terminate the lease in whole or in part upon two (2) days notice of such termination. Upon the expiration of the two (2) days, notice of termination period, the lease shall terminate.

7.2 If at any time during the term of this Lease, the Lessor or Lessee chooses to terminate the Lease, then that party shall notify the other party of said termination in writing at least 90-days prior to the effective date of termination.

8. Assignments and Sublease:

The Lessor agrees not to assign, sublet or otherwise transfer any interest in this lease without the written consent of the Lessee.

9. Amendment:

This lease may be modified, waived or discharged only by a written instrument signed by the parties.

10. Special Provisions:

The State of New Hampshire shall provide the Lessor with a certificate of \$2,000,000.00 liability insurance coverage annually by November 1 of each year.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed on the date and year above written.

LESSOR

Eli Carney 2-16-19
Witness / Date

Thomas O. Carney
Duly Authorized
Thomas Carney

LESSEE

State of New Hampshire
Department of Natural and Cultural
Resources

Lea M. Rowan 3/18/19
Witness / Date

Sarah L. Stewart
Sarah L. Stewart
Commissioner, Dept. of Natural
and Cultural Resources

Margaret Morrison 3/5/19
Witness / Date

Chris Gamache
Chris Gamache,
Trails Bureau Chief Supervisor

Approved as form, substance and execution:

OFFICE OF THE ATTORNEY GENERAL

Gill Belton
Attorney General

Date: 3/18/19

Approved by Governor and Council
at the _____ meeting, Item # _____.