



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
August 29, 2018

REQUESTED ACTION

Authorize the Department of Transportation to enter into a contract amendment with Profile Mountain Holdings, Corporation dba Conway Scenic Railroad, (Vendor # 289704), North Conway, NH, to extend the operating limits for railroad tourist excursion service on the state-owned Mountain Division Railroad Line 0.63 miles easterly from Conway to Center Conway. This amendment is effective upon Governor and Council approval. The original agreement was approved by Governor and Council on November 12, 2014, Item 21, through December 31, 2024 with a provision for renewal for an additional 10-year period, subject to Governor and Council approval, through December 31, 2034 . 100% Agency Income (Railroad Crossing License Fees).

Income from the agreement will be credited as follows:

Special Railroad Fund 04-96-96-964010-2991-009-407323 Railroad Crossing License Fees

EXPLANATION

The Department entered into a 10-year agreement with the Conway Scenic Railroad Corporation, covering the period of January 1, 2015 – December 31, 2024 with a provision for renewal for an additional 10-year period, subject to Governor and Council approval through December 31, 2034, for the operation of seasonal railroad tourist excursion service over the state-owned Mountain Division Railroad Line. In the original agreement the easterly limit of excursion train operation was established at Milepost 56 North Conway. Conway Scenic Railroad subsequently requested to modify the easterly operating limits to extend service approximately 0.63 miles from Milepost 56 in North Conway to Milepost 55.37 in Center Conway (Redstone), which is the location of the west abutment of the Saco River railroad bridge. If approved, this amendment would require the Conway Scenic Railroad to pay 10% of its gross revenue to the State and invest 10% of its revenue in the maintenance of this state-owned railroad line, including the additional mileage.

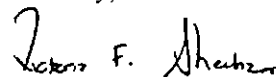
In reviewing Conway Scenic's request, the Department determined this additional mileage is a logical extension of Conway Scenic's use of the state-owned Mountain Division Railroad Line and that changing the status of this section of rail line from inactive to active rail use would be the highest and best use of the Department's property. Additionally, Conway Scenic has been providing tourist excursion train service on the state-owned Mountain Division Railroad Line since the 1990s, has proven to be a good steward of state-owned railroad property, continues to be an economic engine in the Mount Washington Valley and NH, and this amendment will support their evolving operations.

All other provisions of the agreement shall remain in effect.

The amendment has been approved by the Attorney General as to form and execution and the Department has verified that the necessary funds are available. Copies of the fully executed amendment are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to the Governor and Council approval will be on file at the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,

A handwritten signature in black ink that reads "Victoria F. Sheehan". The signature is written in a cursive style with a large initial 'V'.

Victoria F. Sheehan
Commissioner

Attachments

AMENDMENT I

TOURIST EXCURSION AGREEMENT ON THE MOUNTAIN DIVISION RAILROAD LINE BETWEEN CONWAY AND WHITEFIELD

WHEREAS, the Governor and Council approved a Tourist Excursion Agreement for the Mountain Division Railroad Line between the New Hampshire Department of Transportation (hereinafter "the State") and the Conway Scenic Railroad Corporation (hereinafter "the Contractor") on November 14, 2014, Item 21. The commencement date for this agreement is 1/1/2015 and completion date is 12/31/2024 and this agreement remains in effect;

WHEREAS, **ARTICLE I – GENERAL CONDITIONS** of the agreement reads,

1.1 Definitions

- j. "Line" –means the State owned railroad line beginning in Conway at MP 56 Station 2570+08.5 and heading west to MP 101.0, Station 4946+15 in Whitefield as more particularly described in Section 2.1.

WHEREAS, **ARTICLE II - PHYSICAL DESCRIPTION** of the agreement reads,

2.1 Rail Facilities

The Contractor shall have the exclusive right to operate tourist excursion trains including special trains, work trains, and other operations approved by the Contracting Officer on the rail facilities. The rail facilities consist of the railroad corridor between Engineering Valuation Station 2570+08.5, MP P56 in Conway and Engineering Valuation Station 4946+15, MP P101.0 in Whitefield on the State-owned Mountain Division Railroad Corridor.

2.1.1 The Contractor and the State agree that there may be a demand for freight service on portions of this railroad corridor during the period this Agreement is in effect. Should that occur, the operating service area defined in Article 2.1 may, at the State's discretion, be revised to the railroad corridor between Engineering Valuation Station 2570+08.5 MP P56 in Conway and Engineering Station 4746+19 MP 97.23 in Carroll.

WHEREAS, the State and the Conway Scenic Railroad have agreed to an extension of the Operating Limits on the State-owned Mountain Division;

WHEREAS, the parties intend to incorporate these recitals into this amendment;

RESOLVED, that the agreement be amended as follows:

ARTICLE I – GENERAL CONDITIONS

1.1 Definitions

- j. "Line" –means the State owned railroad line beginning in Conway at MP 55.37 Station 2545+75 and heading west to MP 101.0, Station 4946+15 in Whitefield as more particularly described in Section 2.1.

IN WITNESS WHEREOF, we have hereunto set our hands on the 17TH day of AUGUST, 2018.

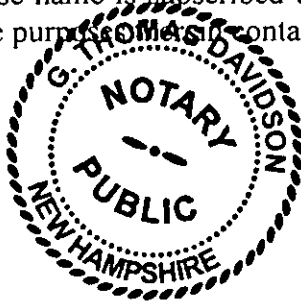
PROFILE MOUNTAIN HOLDINGS CORP
dba CONWAY SCENIC RAILROAD

Rexda Roberts
Witness

BY: David Swirk PRESIDENT
David Swirk, President

THE STATE OF NEW HAMPSHIRE
COUNTY OF CARROLL

On this 17 day of AUGUST, 2018, before me, DAVID SWIRK the undersigned officer, personally appeared David Swirk, 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 contained.



G. Thomas Davidson
Justice of the Peace / Notary Public

G. Thomas Davidson
Notary Public, New Hampshire
My Commission Expires January 15, 2019

THE STATE OF NEW HAMPSHIRE

John A. [Signature]
Witness

BY: Patrick Herlihy
Patrick Herlihy, Director
Division of Aeronautics, Rail and Transit

THE STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this 28th day of AUGUST, 2018, before me, DAWN M. DOSSETT the undersigned officer, personally appeared Patrick Herlihy, 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.

Dawn M. Dossett
Justice of the Peace / Notary Public

Dawn M. Dossett
Notary Public-New Hampshire
My Commission Expires Oct. 26, 2021

AMENDMENT 1

Approved by Attorney General this 8 day of October, 2018, as to form and execution.

By: Allison B Greenstein
Assistant Attorney General

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

ATTEST: _____
Secretary of State

ASSIGNMENT, CONSENT AND ASSUMPTION AGREEMENT

ASSIGNMENT, CONSENT AND ASSUMPTION AGREEMENT (this "Agreement"), dated as of the 17 day of JANUARY, 2018, entered into by and between CONWAY SCENIC RAILROAD INC. a New Hampshire corporation ("Assignor") and PROFILE MOUNTAIN HOLDINGS CORP., a New Hampshire corporation ("Assignee").

WHEREAS, Assignor and Assignee have entered into an Asset Purchase Agreement dated as of DECEMBER 4, 2017 (as may have been amended, the "APA"), pursuant to which Assignor is selling, transferring, assigning, conveying and delivering to Assignee substantially all of its assets, including its rights under certain contracts;

WHEREAS, Assignor has complied with the requirements set forth in Section 228:06-b of the New Hampshire Administration of Transportation Laws in respect of its Conway Branch Railroad Line and other railroad property, and New Hampshire Department of Transportation ("NHDOT") has delivered written notice to Assignor of NHDOT's rejection of its rights thereunder;

WHEREAS, NHDOT and Assignor are parties to a Tourist Excursion Agreement on the Mountain Division Railroad Line Between Conway and Whitefield, dated January 1, 2015, pursuant to which Assignor operates on portions of the Mountain Division Railroad Line between Conway and Whitefield (the "Tourist Excursion Agreement"), a copy of which is attached hereto as Appendix A;

WHEREAS, the consent of NHDOT to the assignment of the Tourist Excursion Agreement is required pursuant to Section 1.11.1 of the Tourist Excursion Agreement;

WHEREAS, Assignor desires to assign the Tourist Excursion Agreement to Assignee, and Assignee desires to accept such assignment, both in accordance with the terms of the APA, effective as of the Closing Date (as defined in the APA) (the "Effective Date"), which the parties acknowledge may not occur until such time as NHDOT delivers its written consent to such assignment; and

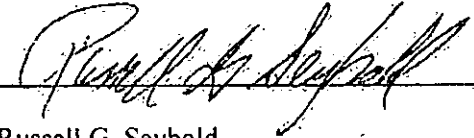
WHEREAS, Assignor and Assignee are hereby requesting that NHDOT grant such consent to the assignment of the Tourist Excursion Agreement pursuant hereto;

NOW, THEREFORE, the parties agree as follows:

1. Assignment. As of the Effective Date, Assignor hereby transfers and assigns to Assignee all of its rights and interests in, to and under the Tourist Excursion Agreement.
2. Assumption. As of the Effective Date, Assignee hereby agrees to comply with the terms and conditions of, and accepts and assumes and undertakes to perform all of Assignor's rights, title, interests, duties and obligations in, to and under, the Tourist Excursion Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

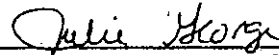
(Assignor)
CONWAY SCENIC RAILROAD, INCORPORATED

By: 

Name: Russell G. Seybold
Title: President and Treasurer, duly authorized

STATE OF NEW HAMPSHIRE
COUNTY OF CARROLL

On this 17th day of January, 2018, before the undersigned officer personally appeared Russell G. Seybold, known to me (or satisfactorily proven), and acknowledged that he executed the foregoing document on behalf of and as President/Treasurer of CONWAY SCENIC RAILROAD, INC. In witness whereof I hereunto set my hand and official seal.


Notary Public/Justice of the Peace
JULIE L. GEORGE
Commissioner of Deeds - New Hampshire
Commission expires: My Commission Expires October 26, 2021

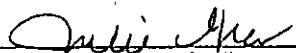
(Assignee)
PROFILE MOUNTAIN HOLDINGS CORP.

By: 

Name: David A. Swirk
Title: President, duly authorized

STATE OF New Hampshire
COUNTY OF Carroll

On this 17th day of January, 2018, before the undersigned officer personally appeared David A. Swirk, known to me (or satisfactorily proven), and acknowledged that he executed the foregoing document on behalf of and as President of PROFILE MOUNTAIN HOLDINGS CORP. In witness whereof I hereunto set my hand and official seal.


Notary Public/Justice of the Peace
JULIE L. GEORGE
Commissioner of Deeds - New Hampshire
Commission expires: My Commission Expires October 26, 2021

State of New Hampshire

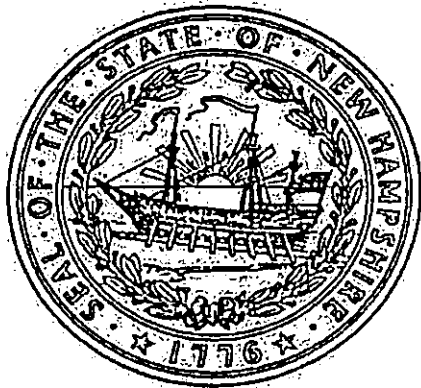
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that PROFILE MOUNTAIN HOLDINGS CORP. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on January 10, 2017. 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: 762629

Certificate Number: 0004165116



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 15th day of August A.D. 2018.

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

William M. Gardner
Secretary of State

CERTIFICATE
PROFILE MOUNTAIN HOLDINGS CORP. dba Conway Scenic Railroad

I, William F. Sullivan, Jr., Director of Profile Mountain Holdings Corp., a New Hampshire Corporation with a principal place of business at 3014 Thorndike Street, Bondsville, MA 01009, certify that at a meeting held on August 1, 2018, of which all members were duly notified and present, the following votes were unanimously passed, all of which appears in the official records in my custody:

VOTED: To accept this Resolution to allow, ratify and confirm the execution and delivery of an Amendment I to the Passenger Excursion Agreement between the State of New Hampshire and the Conway Scenic Railroad.

VOTED: That the forms, terms and provisions of the Amendment, and all of the various instruments, agreements and documents to be executed and/or delivered in connection with the foregoing, and any exhibits and schedules attached thereto or referenced therein, all substantially in the forms reviewed by the undersigned be, and they hereby are, approved, with such changes thereto as the President of the Corporation may determine to be desirable, necessary or appropriate.

VOTED: To authorize David Swirk, President to sign the Amendment and all other documents regarding the Amendment.


VOTED: That the actions of David Swirk, President and the counsel of the Corporation prior to the date hereof in negotiating and effecting the transaction referred to above, be, and they hereby are, ratified, approved, confirmed and adopted.

VOTED: That David Swirk, President of the Corporation be, and are hereby authorized and empowered, in the name and on behalf of the Corporation, to execute, deliver and perform, all documents, instruments, and certificates, and to take any action, which he, in his discretion, deem necessary or appropriate to effectuate the agreements and transactions contemplated by the foregoing resolutions, and the documents referred to therein, the execution and delivery of such documents to be conclusive evidence that the same have been approved by the President of the Corporation.

I hereby certify that said vote has not been amended or repealed and was in full force and effect as of August 17, 2018, and that David Swirk is the duly elected President of the Profile Mountain Holdings Corp.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and executed this written consent on the date first above written.

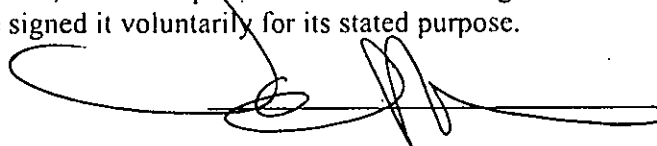
Dated: August 20, 2018



William F. Sullivan, Jr., Director
Profile Mountain Holdings Corp.

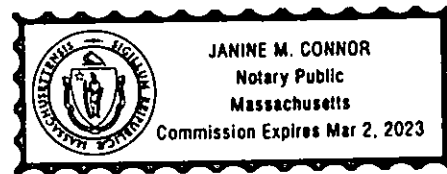
COMMONWEALTH OF MASSACHUSETTS

On this 21 day of August, 2018 before me, the undersigned notary public, personally appeared William F. Sullivan, Jr., proved to me through satisfactory identification which was a Massachusetts Driver's License, to be the person whose name is signed on this document, and acknowledged to me that he signed it voluntarily for its stated purpose.

 _____, Notary Public

My commission expires:

NOTARY SEAL





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



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Beauh

**CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER**

**JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER**

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

Bureau of Rail & Transit
October 2, 2014

REQUESTED ACTION

Pursuant to RSA 228:57 and RSA 228:68, authorize the Department of Transportation to enter into an Operating Agreement with Conway Scenic Railroad Co. (Vendor # 154819) of North Conway, NH to provide tourist excursion train service between Conway and Whitefield, effective upon Governor and Council approval or January 1, 2015, whichever is later, through December 31, 2024, with a provision for renewal for an additional 10-year period, subject to Governor and Council approval through December 31, 2034. 100% Agency Income.

Income from the agreement will be credited as follows:

Special Railroad Fund 04-96-96-964010-2991-009-407323 Agency Income

EXPLANATION

The Department of Transportation owns the Mountain Division Railroad, which travels through Conway, Bartlett, Harts Location, Carroll and Whitefield. Conway Scenic Railroad currently has an Operating Agreement in effect through December 31, 2014 to provide tourist excursion train service on the state-owned line, and in accordance with Section 1.14 of their current agreement, requested a 10-year contract renewal. Subsequent to their request, the Department and the railroad negotiated the proposed 10-year Operating Agreement so that Conway Scenic Railroad can continue to provide tourist excursion train service on the state-owned line between Conway and Whitefield.

The Conway Scenic Railroad has fifteen fulltime employees and approximately sixty-five part-time employees. Additionally, the Conway Scenic Railroad is an economic engine in the Mount Washington Valley and the State drawing over 55,000 riders annually, many of whom travel from out-of-state and patronize other area businesses on their way to or from the Conway Scenic Railroad.

Following a request for proposals in 1994, the original five-year Operating Agreement between the Department and the Conway Scenic Railroad was approved by Governor and Council on July 13, 1994. This agreement was renewed by Governor and Council on July 26, 1999 (Item 209) for an additional five years with a term ending December 31, 2004. On September 8, 2004 Governor and Council meeting (Item 150) approved a 10-year Operating Agreement renewal with a term ending December 31, 2014. It is this current Operating Agreement that is proposed to be extended 10 years to a completion date of December 31, 2024, with an additional 10-year renewal term, subject to Governor and Council approval.

Under the terms of the proposed Operating Agreement, each operating season the Conway Scenic Railroad will pay 10% of its gross revenue to the State and is required to invest 10% of its revenue in the maintenance of this State-owned railroad line.

This Agreement has been approved by the Office of the Attorney General as to form and execution. Copies of the fully executed Agreement are on file at the Secretary of State's Office and the Department of Administrative Services' Office, and subsequent to Governor and Council approval, a copy will be on file at the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,

A handwritten signature in black ink, appearing to read "C.D. Clement, Sr.", written in a cursive style.

Christopher D. Clement, Sr.
Commissioner

Attachments

CONWAY SCENIC RAILROAD
ANNUAL RIDERSHIP, REVENUE AND USER FEE PAID TO STATE
 State-owned Mountain Division

Year	Total Ridership	Railroad's Total Revenue	Total User Fees
2001	52,984	\$902,909.07	\$90,289.91
2002	48,793	\$904,826.26	\$89,882.64
2003	46,471	\$900,869.45	\$90,066.95
2004	53,960	\$953,110.81	\$87,020.94
2005	49,141	\$1,113,456.90	\$98,534.70
2006	54,078	\$1,180,453.14	\$106,084.03
2007	58,355	\$1,315,446.85	\$117,093.73
2008	42,929	\$1,303,215.89	\$115,605.34
2009	52,889	\$1,282,649.75	\$113,179.94
2010	52,879	\$1,362,142.62	\$123,183.50
2011	53,697	\$1,443,587.11	\$127,750.48
2012	55,407	\$1,664,540.78	\$151,213.20
2013	45,159	\$1,725,238.60	\$157,385.89
2014	17,898	\$841,961.57	\$75,785.80
Overall	684,640	\$16,894,408.80	\$1,543,077.05

Through 8/31/2014

**TOURIST EXCURSION AGREEMENT
ON THE
MOUNTAIN DIVISION RAILROAD LINE
BETWEEN
CONWAY AND WHITEFIELD**

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

AND

**CONWAY SCENIC RAILROAD INCORPORATED
P.O. BOX 1947
CONWAY, NEW HAMPSHIRE 03860-1947**

January 1, 2015

Initial *PH*

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Initial 

ARTICLE I - GENERAL CONDITIONS

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

- a. "Agreement" - means the Passenger Excursion Agreement dated January 1, 2015.
- b. "Monthly Gross Operating Revenue" - means those revenues derived from ticket sales for providing service
- c. "Commencement Date" - January 1, 2015.
- d. "Completion Date" - December 31, 2024 unless this Agreement is otherwise extended or renewed.
- e. "Contractor" - Conway Scenic Railroad Incorporated, PO Box 1947, Conway, NH 03860-1947.
- f. "Contracting Officer" - means 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. "Contractor's Representative" means representative of the Contractor responsible for making contract decisions and will be the Contractor's contact for the State's Contract Officer.
- h. "Effective Date" means the date the Agreement is approved by the Governor and Council of the State of New Hampshire.
- i. "FRA" means the Federal Railroad Administration.
- j. "Line" - means the State owned railroad line beginning in Conway at MP 56 Station 2570+08.5 and heading west to MP 101.0, Station 4946+15 in Whitefield as more particularly described in Section 2.1.
- k. "Major Maintenance Expenditure" - means any expenditure to address a condition on the Line that prevents Service on the Line while the condition exists. Major Maintenance Expenditures include, but are not limited to, bridge failures/rehabilitation, major washouts, crossing rehabilitation/reconstruction.
- l. "Operating Year" - January 1 to December 31.
- m. "Operations Manager" means the Contractor's representative responsible for day-to-day operations and maintenance on the State owned line who will be the contact for the Bureau of Rail and Transit personnel.
- n. "OTM" - means Other Track Materials including, but not limited to joint bars, bolts, tie plates, spikes and rail anchors.
- o. "Service" - means Tourist Excursion Service
- p. "State" - means the State of New Hampshire.
- q. "STB" means the Surface Transportation Board.
- r. "Subcontractor" - An individual, partnership, firm, corporation, or any combination thereof, or joint venture, to whom the Contractor sublets any part of the Agreement.
- s. "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.

Initial 

- t. "User Fee" - Fee to be paid by the Contractor to State for the use of certain State-owned rail facilities.

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, 2025. If the Contractor and the State cannot agree upon a new Operating Agreement by July 1, 2024, 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;

Initial 

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.

Initial *BA*

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;

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 ("Remedies"):

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

Initial 

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.

1.10.2 All railroad or corporate taxes assessed by the State of New Hampshire, including those specified in New Hampshire RSA 82, and the Federal Government as a result of the Operating Agreement are not included in the user fee and are the responsibility of the Contractor.

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, which shall not be unreasonably withheld. None of the Service shall be subcontracted by the Contractor without the prior written consent of the State, which shall not be unreasonably withheld.

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 1.12.1 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 1.13.1 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.

Initial 

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.

Initial 

1.19 HEADINGS.

1.19.1 The headings throughout the 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 ENERGY EFFICIENCY

1.20.1 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).

1.21 ENVIRONMENTAL PROTECTION

1.21.1 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.

1.22 DISPUTE RESOLUTION

1.22.1 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.

1.23 ENTIRE AGREEMENT

1.23.1 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.

1.24 FULL FORCE AND EFFECT

1.24.1 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 Rail Facilities

The Contractor shall have the exclusive right to operate tourist excursion trains including special trains, work trains, and other operations approved by the Contracting Officer on the rail facilities. The rail facilities consist of the railroad corridor between Engineering Valuation Station 2570+08.5, MP P56 in Conway and Engineering Valuation Station

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4946+15, MP P101.0 in Whitefield on the State-owned Mountain Division Railroad Corridor.

2.1.1 The Contractor and the State agree that there may be a demand for freight service on portions of this railroad corridor during the period this Agreement is in effect. Should that occur, the operating service area defined in Article 2.1 may, at the State's discretion, be revised to the railroad corridor between Engineering Valuation Station 2570+08.5 MP P56 in Conway and Engineering Station 4746+19 MP 97.23 in Carroll.

2.1.2 The Contractor acknowledges the Track Usage Agreement between CSRR & NHCR for operations between MP 97.23 and MP 101.05. Said agreement is incorporated into this Agreement (Exhibit B).

2.2 Property of the State

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 Alterations to Property

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.

2.4 Recreational Use By Others

The parties contemplate that at least the following recreational uses will be made on the State-owned Mountain Division Railroad Line during the term of this Agreement: (1) a year-round Recreational Trail, pursuant to one or more Rail-Trail agreements with the Towns of Conway and Bartlett, provided the Towns meet their 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, with such use being managed by the Department of Resources and Economic Development (DRED) in coordination and cooperation with the NHDOT's Bureau of Rail & Transit. 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

Initial 

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 Towns of Conway and Bartlett. 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 acknowledges the Track Usage Agreement between CSRR & NHCR for operations between MP 97.23 and MP 101.05. Said agreement is incorporated into this Agreement (Exhibit B).

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 Time Table.

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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. Crossings and switches to be kept in good operating condition. In accordance with CFR 49 Part 234.105, 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 a minimum to FRA Class I (Class II where desired operating speed dictates) 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 shall be, with written approval of the Contract Officer, 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, or in any amount remaining pursuant to the required expenditures pursuant to Section 3.2.2.1, whichever is greater, in the aggregate for the Contractor's Conway Scenic Railroad operations. However, the Contractor waives any claims to damages for any delays in

Initial 

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.

3.2.3.3 The State as track and bridge owner and the Contractor as operator will be subject to the provisions of 49 CFR Part 237 – Bridge Safety Standards, which became effective September 13, 2012. If the State is not able to perform or pay the cost of performing the required inspections, then the Contractor agrees to perform the inspections in order to operate and meet the requirements of 49 CFR Part 237.

3.3 INSPECTION.

3.3.1 The Contractor shall patrol the area of service and formally inspect the track at least twice a week prior to and during passenger operation, prepare reports as per FRA Track Safety Standards Subpart F (49 CFR 213.233) and submit reports each month. The Contractor shall patrol the area between Notchland (MP 76.56) and Crawford Gateway (MP 84.61) daily prior to passage of a passenger/revenue train. Should any defects be found, the Contractor shall take the appropriate remedial action as per FRA Track Safety Standards and record as per (49 CFR 213.241).

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.

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.

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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, at the expense of the construction contractor.

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 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.

Initial 

4.3.3 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 State.

4.5.5 The Contractor shall be responsible for collecting revenues and for delivering monthly traffic reports, marketing reports, revenue reports and maintenance cost reports on forms and according to a schedule to be specified by the State. (See EXHIBIT A)

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, and will report on the marketing effort on a form and according to a schedule to be specified by the State (See EXHIBIT A).

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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 indicated herein, the Contractor will cooperate with other potential operators in the use of rail facilities. Provided, however, that all other potential operators shall be required to enter into a mutually acceptable agreement with Contractor regarding the terms and conditions relating to the use of rail facilities, including, without limitation, commercially reasonable terms and conditions relating to liability protection for Contractor and compensation due to Contractor relating to the use of the rail facilities. Notwithstanding the foregoing, at all times Contractor provision of the Service shall have priority over all other users and Contractor shall retain dispatching control of the Line. Any compensation earned by Contractor arising from other potential operators of the rail facilities shall be included in Contractor's Monthly Gross Operating Revenue. If the Contractor and other potential operators cannot agree among themselves, the State retains the power to determine the terms and conditions of occupation or use. The decision of the State is final.

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 may be terminated by the State 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.

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IN WITNESS WHEREOF, we have hereunto set our hands on the 17th day of September, 2014.

CONWAY SCENIC RAILROAD CORP.

[Signature]
WITNESS

BY: [Signature]
Russell G. Seybold, President

THE STATE OF NEW HAMPSHIRE
COUNTY OF Carroll

On this 17th day of September, 2014, before me, Julie L George the undersigned officer, personally appeared Russell G. Seybold 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

[Signature]
WITNESS

THE STATE OF NEW HAMPSHIRE

BY: [Signature]
Christopher D. Clement, Sr.
Commissioner, Department of Transportation

THE STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this 13th day of October, 2014, before me, DAWN M. DOSSETT the undersigned officer, personally appeared Christopher D. Clement, Sr. 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

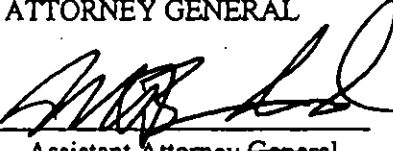
DAWN M. DOSSETT
Notary Public-New Hampshire
My Commission Expires Sept. 28, 2016

Initial [Signature]

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

OFFICE OF ATTORNEY GENERAL

DATE: 10/16, 2014
msb

BY: 
Assistant Attorney General

APPROVED by Governor and Executive Council on _____, 20 __, ITEM # _____.

ATTEST: _____
Secretary of State

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ATTACHMENTS TO AGREEMENT

- A. Certificate of Good Standing
- B. Certificate of Corporate Vote/Authority
- C. Certificate of Insurance

EXHIBITS TO AGREEMENT

- A. Reports and Payment Schedule Certificate of Good Standing
- B. Trackage Usage Agreement (New Hampshire Central RR)

Initial 

**ATTACHMENT A
CERTIFICATE OF EXISTENCE**

**ATTACHMENT B
CERTIFICATE OF VOTE**

**ATTACHMENT C
CERTIFICATE OF INSURANCE**

Initial 

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 Conway Scenic Railroad, Inc. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on May 24, 1974. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.

In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 22nd day of September, A.D. 2014



William M. Gardner

William M. Gardner
Secretary of State

CONWAY SCENIC RAILROAD
North Conway, NH

CERTIFICATE OF VOTE

I, DORTHEA M. WASSON-SEYBOLD, do hereby certify that I am duly elected Secretary of Conway Scenic Railroad, a corporation organized under the laws of the State of New Hampshire.

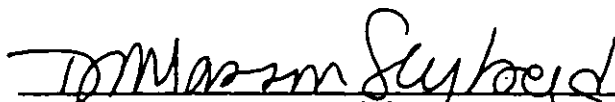
I hereby certify the following is a true and correct copy of a vote taken at the meeting of the Board of Directors of the Corporation, effective on September 17, 2014, in accordance with the By-laws, at which a quorum was present, and that the same is still in force and effect:

1. Resolved, that Russell G. Seybold be and is hereby authorized to execute proposals and contracts, at limits established from time to time by the Board of Directors, on behalf of Conway Scenic Railroad, and that the Corporation will be bound according to the provisions of such proposals and/or contracts. The signature of Russell G. Seybold shall serve to bind the Corporation on such proposals and contracts.
2. It is further certified that, as the date hereof, Russell G. Seybold is President of the Conway Scenic Railroad, and he is authorized on behalf of the Corporation, to enter into and execute an Operating Agreement, dated and effective January 1, 2015 and any and all documents attendant thereto, with the State of New Hampshire, Department of Transportation.

IN WITNESS WHEREOF, I have subscribed my name as DORTHEA M. WASSON SEYBOLD, and have cause the Seal of the Corporation to be hereunto affixed this 17th day of September 17, 2014.

9-17-2014

Date



Dortha M. Wasson-Seybold, Secretary
Conway Scenic Railroad

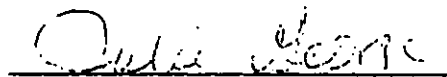
STATE NEW HAMPSHIRE
COUNTY OF CARROLL

On, September 17, 2014, before the undersigned officer personally appeared the person identified in the foregoing certificate, known to me (or satisfactorily proven) to be the Secretary 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.

9/17/2014

Date



Notary Public



CERTIFICATE OF LIABILITY INSURANCE

CONWSCE-01

KWOOD

DATE (MM/DD/YYYY)
9/17/2014

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 (AC, Ho, Ext): (603) 356-3392 FAX (AC, No): (603) 356-9290 E-MAIL: ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
INSURED Conway Scenic Railroad, Inc. c/o Russ Seybold, Manager PO Box 1947 North Conway, NH 03860	INSURER A: Indian Harbor Insurance Co.	
	INSURER B: Allmerica Financial Benefit 41840	
	INSURER C:	
	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.

INSTR LTR	TYPE OF INSURANCE	ADDITIONAL RISK/NEED (Y/N)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	RRL003941901	12/21/2013	12/21/2014	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ Excluded MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ Included GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		AWV900277603	12/21/2013	12/21/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ 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	Y/N	N/A			PER STATUTE OTHER 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)

Re: Scenic Railroad Operations

New Hampshire Department of Transportation, Bureau of Rail & Transit, is an Additional Insured as respects General Liability Insurance per form RRL 204 09/11.

CERTIFICATE HOLDER**CANCELLATION**

New Hampshire Department of Transportation Bureau of Rail & Transit
Attn: Lou Barker
PO Box 483
7 Hazen Drive
Concord, NH 03302-0483

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

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EXHIBIT A

**CONWAY SCENIC RAILROAD, INC.
REPORT AND PAYMENT DUE DATES**

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

Track Usage Agreement between CSRR & NHCR.

On December 13, 2004 it was determined and agreed that the Conway Scenic Railroad (CSRR) would allow operation on a portion of the Crawford Notch Line formerly known as the Maine Central Railroad's Mountain Sub-Division, by the New Hampshire Central Railroad (NHCR) in order for NHCR to serve rail freight customers. This track segment is owned by the State of New Hampshire and is administered by the Department of Transportation, Bureau of Rail and Transit. CSRR is the State's contracted operator of this trackage.

By this agreement, The New Hampshire Central Railroad agrees to, at their sole expense, install and maintain a bi-directional, sliding derail @ 20' West of Airport Road located at MP 100.91. The derail will be controlled by a "high" style switch stand, with a red target clearly marked DERAIL. This derail will be locked in the applied position to effectively establishing a protective separation between the two operations. Additional protection of the NHCR will be provided by the lining and locking of the mainline switch at MP 97.23 to the reversed or diverting position with a CSRR lock. Sole operation of the switch will be by CSRR. With the exception of MOW and Inspection equipment, CSRR trains may not occupy the track west of the switch without receiving verbal authority from NHCR. Conversely, NHCR shall never operate East of the derail without obtaining a valid CSRR Track Occupancy Permit.

It is the responsibility of the NHCR to maintain the section of track between MP 101.05 (former B&M MP 128.15) and MP 100.91 to FRA class II safety standards. Inspection of track in these limits will be conducted by NHCR per the schedule prescribed in TSS part 213.233.

NHCR will, upon a minimum of 120 hours advance written notice from CSRR, clear the mainline of freight cars back to a point west of the switch at HAZEN to allow the passage of CSRR passenger trains to MP 101 at HAZEN. NHCR will within 24 hours after receipt of written notice from CSRR, contact CSRR via telephone or return fax to confirm receipt of the notice. Written notice will be via fax transmission to NHCR's office at 603-922-9058. NHCR shall notify CSRR of any change in the fax number.

When returning Eastward, CSRR train crews shall restore the derail. Upon clearing East of the switch at MP 97.23 CSRR shall verbally notify, as soon as practical, and then confirm in writing within 24 hours to NHCR the reversing and locking of the switch. In practice it is expected that CSRR would inform NHCR well in advance (weeks or months) of its planned excursions to MP 101, however CSRR retains the right to have NHCR clear said trackage with 120 hours advance written notice.

CONWAY SCENIC RAILROAD
PO BOX 1947
N. CONWAY, NH 03860

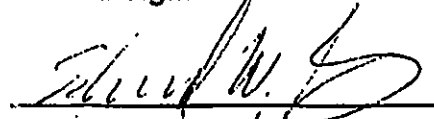
NEW HAMPSHIRE CENTRAL RR
PO BOX 165
N. STRATFORD, NH 03590

Authorized Signature/Title

Authorized Signature/Title

 OPERATIONS
MANAGER

Date 7/27/07


Date 7/31/07