



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

21
Beards

Bureau of Rail & Transit
February 19, 2016

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

REQUESTED ACTION

Authorize the Department of Transportation to enter into a Loan Agreement with the Mount Washington Railway (Vendor #154039) Base Station Road, Mount Washington, NH in an amount not to exceed \$1,800,000, pursuant to RSA 228:66-a for the construction of a diesel locomotive, passenger coach and Summit Transfer Station facility improvements from the date of Governor and Council approval through October 31, 2036. 100% General Funds-Capital.

Funding is available in Class III Railroad Capital Rail Line Rehabilitation Revolving Loan Fund Account as follows:

04-096-096-960030-9950
Capital Rehabilitation Revolving
415-506591-RR Loan Fund

FY 2016
\$1,800,000

EXPLANATION

This fund, first established in 1994, provides loans for railroad rehabilitation and equipment for Class III Railroads and Cog Railroads that operate in the State of New Hampshire. The loan program is administered by the New Hampshire Department of Transportation. Some of the fund's requirements are: the railroad must agree to continue utilization of the line involved to at least eighty (80%) percent of either the average freight tonnage or the annual passenger level for the previous three (3) years; the railroad must maintain the line and all improvements; the State secures a lien on the improvements and/or equipment in an amount at least equal to the principal and interest of the loan, to expire upon repayment of the loan; and the loan is subject to approval by the Governor and Executive Council.

The Department of Transportation solicited proposals for projects to be funded by repayments of previous loans, and received two proposals, however only the proposal submitted by the Mount Washington Railway met the criteria of the program. The Department and the Mt. Washington Railway agreed that the construction of a locomotive, passenger coach, and Summit Transfer Station facility were

eligible projects and within the limit of funds available and, therefore, the loan agreement has been prepared for Governor and Council approval.

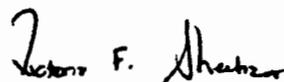
Approval of this agreement will authorize the Department of Transportation to provide financial assistance through the Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund for the Mount Washington Railway to design and construct a diesel locomotive, passenger coach, and improvements to the Summit Transfer Station facility to be operated and maintained on the facilities owned by the Mount Washington Railway. These projects will allow the Mount Washington Railway to improve its tourist passenger excursion service on Mount Washington.

The Loan Agreement between the Mount Washington Railway and the Department of Transportation satisfies all statutory requirements. The Notice of Lien on the improved property, specified by RSA 228:66.a-IV, has been executed and the Loan Agreement and Notice of Lien have been reviewed and approved by the Department of Justice. Copies of the fully executed Special Agreement, Loan Agreement, and Notice of Lien have been provided to the Secretary of State's Office and the Department of Administrative Services. Subsequent to Governor and Council approval, copies of the Special Agreement and Loan Agreement will be on file with the Department of Transportation and the Notice of Lien will be recorded in the Coos County Registry of Deeds.

Once the construction, final testing and the commencement of operation of the locomotive, passenger coach and on the Summit Transfer Station facility improvements by the Mount Washington Railway is complete, in accordance with procedures established by the Treasury Department, the Loan Agreement will be replaced with a Supplemental Loan Agreement, which will establish the final borrowing rate and repayment schedule.

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

LOAN AGREEMENT

This Loan Agreement made and entered into this 22 day of February, 2016 by and between the State of New Hampshire by and through its Department of Transportation situated at PO Box 483, 7 Hazen Drive, Concord, New Hampshire 03302-0483 (hereinafter referred to as the "Department") and the Mount Washington Railway Company with a principal place of business at Base Station Road, Mount Washington, New Hampshire 03589, (hereinafter referred to as the "Railroad"). The Department and Railroad hereby contract and agree:

Loan Terms. The Department agrees to lend to the Railroad, and the Railroad agrees to borrow from the Department, the sum of **One Million, Eight Hundred-Thousand Dollars and No/100 (\$1,800,000.00)**. The Railroad may draw upon these funds during the *construction period*. The *construction period*, as used in this agreement, begins on the date that this agreement is approved by Governor and Executive Council and ends on October 31, 2016. Upon request by the Railroad, the construction period may be extended at the sole discretion of the Department. Interest on the funds drawn during the construction period shall be equal to the twenty-six (26) week U. S. Treasury bill rate as published in the Wall Street Journal for the preceding Monday. The interest on the draw of funds shall be added to the principal and repaid during the term of the loan.

Interest rate will be identified by Office of State Treasurer and will be shown on the amortization table.

No later than six months following the anticipated construction completion date of **October 31, 2016**, the Railroad shall sign a Supplemental Loan Agreement, which will lock in the interest rate and amortization schedule for loan payments.

Repayments of the principal and interests shall be quarterly, beginning no later than six (6) months following the anticipated construction completion date of **October 31, 2016**. Said loan shall have a repayment term of twenty (20) years with level payment amortization.

To fund said loan, the state shall issue General Obligation Capital Improvement Bonds in accordance with RSA 6-A. Per RSA 228:66-a, the principal and interest due by the Railroad "shall be sufficient to fully reimburse the state for the principal and interest payments on that portion of the bonds authorized". The rate of interest paid by the Railroad will produce a level amortization payment of principal and interest, when if examined on an individual payment basis, will be greater or less than the corresponding debt service payments of said bonds. However, the gross payments paid by the Railroad will be equal to the corresponding debt service payments by the State if each are carried out to their full term.

The loan may be prepaid by the Railroad without any prepayment penalty.

2. **Security.** Pursuant to RSA 228:66-a IV, the Railroad hereby grants to the Department a lien in the property and equipment of the Railroad, including the improvements described in APPENDIX A, in an amount which equals the sum of principal and interest to be repaid by the Railroad in favor of the Department which shall be recorded in the Registry of Deeds in the county in which the Locomotive, passenger coach and trackage are operated and located.
3. **Representations, Warranties and Covenants.** The Railroad represents and warrants as follows:
 - 3.1 **Corporate Existence.** The Railroad is a New Hampshire corporation with authority to do business in the State of New Hampshire.
 - 3.2 **Corporate Documents.** All its books and records, including without limitation Articles of Incorporation, Bylaws, minute books and books of account, are accurate and up-to-date.
4. **Affirmative Covenants.** The Railroad covenants and agrees that:
 - 4.1 The Railroad shall complete the work listed in APPENDIX A as it had proposed in its application materials, attached as APPENDIX B.
 - 4.2 The Railroad shall continue utilization of the line involved on an annual basis at a passenger level of at least 80 percent of the Railroad's prior 3 years preceding this agreement, per RSA 228:66-a.
 - 4.3 The Railroad assures and commits by this Loan Agreement that the operator and its successors and assigns shall continue to maintain the Locomotive, passenger coach and trackage in accordance with New Hampshire Department of Transportation regulations and standards for the term of the loan. Any inspector from the Department may enter upon the Railroad's property and inspect said rail properties for the purpose of insuring compliance with the terms of this ARTICLE.
 - 4.4 The work shall be satisfactorily completed if and when the scope of work as defined in APPENDIX A has been accomplished in a workmanlike manner consistent with customary and usual railroad practices. Upon completion of work, or any portion thereof, the Railroad shall notify the Department in writing that the work is complete and the Department shall make a final inspection of all work performed within 15 days of the delivery of said notice. If the Department is satisfied that the work has been satisfactorily completed, it shall give written notice to that effect to the Railroad. If the

Department is not so satisfied, it shall state in writing giving to the Railroad the reasons why.

5. **Additional Covenants and Assurances.**

5.1 Records, Etc. The Railroad shall at all times keep accurate records of the railroad materials and will permit Department or its agents or representatives at any reasonable time and from time to time to visit the Railroad's place(s) of business, without hindrance or delay, to inspect the work performed on the railroad pursuant to APPENDIX A. If the Department believes that any work is not being performed in accordance with customary and reasonable railroad practices, it shall so notify the Railroad in writing within 10 days of the inspection and examine, check, audit and make copies and abstracts from the Railroad's records and books of account (including without limitation corporate minutes, and records, journals, orders, receipts and correspondence relating to real estate).

6. **Indemnification.**

6.1 The Railroad shall indemnify and save harmless the State of New Hampshire, the Department, its officers, agents and employees from all suits, actions or claims of any character, name, and description brought for, or on account of any injuries or damages received or sustained by any person, persons, or property by or from the Railroad or by or in consequence of any neglect in performing the work described in APPENDIX A, or by or on account of any act or omission, neglect or misconduct of said Railroad.

7. **Events of Default.** The occurrence of any one or more of the following events, which remains uncured for a period of 30 days from the date that the Department provides written notice of such to the Railroad, shall constitute an event of default:

7.1 **Nonpayment.** Failure to pay principal or interest when due;

7.2 **Breach of This Loan Agreement.** Breach by the Railroad of any of the provisions of this Loan Agreement;

7.3 **Breach of Representation or Warranty.** If any representation or warranty made by the Railroad herein or in any certificate or statement furnished to the Department by or on behalf of the Railroad shall prove to have been incorrect or misleading in any material respect when made or furnished;

8. **Department Rights on Default.**

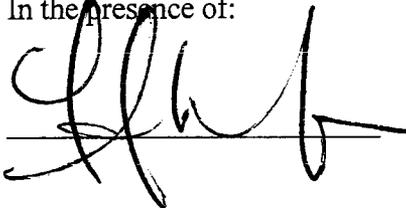
- 8.1 Upon the occurrence of an event of default under Section 7 above.
- 8.2 Acceleration. The Department may at any time or times thereafter declare the unpaid principal and interest under this Loan Agreement immediately due and payable whereupon the same shall become immediately due and payable without any notice or demand.

9. **General.**

- 9.1 No Assignment. The Railroad shall not assign this Loan Agreement or its rights hereunder without the prior written consent of the Department.
- 9.2 Successors and Assigns. This Loan Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, personal representatives and assigns.
- 9.3 Governing Law; Jurisdiction; Waiver of Jury Trial. This Loan Agreement shall be interpreted in accordance with and governed by the laws of New Hampshire, Chapter 310:3 Laws of 1997.
- 9.4 Entire Loan Agreement. This Loan Agreement which may 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 superseding all prior agreements and understanding relating hereto.

IN WITNESS WHEREOF, the Department and the Railroad have executed this Loan Agreement by their duly authorized agents on this 22 day of February, 2016

In the presence of:



STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



Patrick Herlihy, Director of Aeronautics
Rail and Transit

THE STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this 22nd day of FEBRUARY, 2016, before me, J. THOMAS MANGEAU 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.

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

J. THOMAS MANSEAU, Notary Public
State of New Hampshire
My Commission Expires October 21, 2020

J. Thomas Manseau
NOTARY PUBLIC

In the presence of:

MOUNT WASHINGTON RAILWAY Company

Wayne W. Presby
Wayne W. Presby, President

THE STATE OF NEW HAMPSHIRE
COUNTY OF Grafton

On this 8th day of February, 2016, before me, Jennie Lund the undersigned officer, personally appeared Wayne W. Presby 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.



Jennie Lund
NOTARY PUBLIC

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

OFFICE OF ATTORNEY GENERAL

DATE: March 8, 2016

[Signature]
Assistant Attorney General

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

ATTEST:

Secretary of State

APPENDIX A

The work shall consist of three items, as detailed in the Railroad's application materials:

1. At the Summit Transfer Station existing track, install a switch and install a second station track, rehabilitate existing and construct additional boarding platforms.
2. The construction of a new railroad passenger coach to be owned by the Mount Washington Railway Company.
3. The construction of a new diesel locomotive to be owned by the Mount Washington Railway Company.

The total cost of the project is as follows:

Project Description	Loan Amount
Summit transfer, track replacement & boarding platforms (new construction & rehabilitation)	\$750,000
Railroad Passenger Coach (new construction)	\$300,000
Diesel Locomotive (new construction of 6 th locomotive)	\$750,000
TOTAL	\$1,800,000

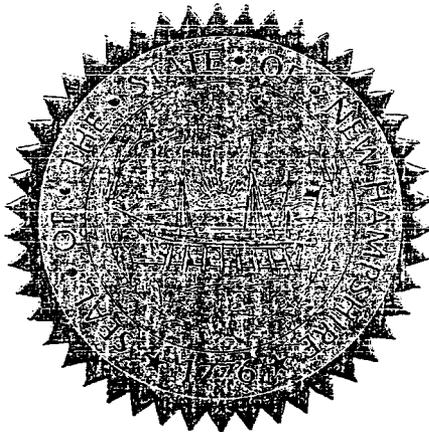
TOTAL LOAN AMOUNT (not including interest)

\$1,800,000

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 MOUNT WASHINGTON RAILWAY COMPANY is a New Hampshire corporation, formed by the laws of 1858 effective June 25, 1858. I further certify 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 11th day of February, A.D. 2016

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

William M. Gardner
Secretary of State

CERTIFICATE OF VOTE

I, WAYNE PRESBY, hereby certify that I am duly elected Secretary of the Mount Washington Railway Company.

I hereby certify that Wayne W. Presby is the President of the Mount Washington Railway Company and is empowered to enter into a Special Agreement, which encompass a Loan Agreement and Notice Of Lien and Supplemental Loan Agreement, with the State of New Hampshire to assist in the financing of the purchasing of a diesel engine and other locomotive material for the design and construction of a locomotive, the purchasing of material and equipment for the design and construction of a passenger coach, the reconstruction and installation of station tracks and platforms at the Summit Transfer Station for use for the Mount Washington Railway Company pursuant to the Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund under RSA 228:66-a.

I hereby certify that the above has not been amended or repealed, and remains in full force and effect as of 2-8-16.

Attested:

2-8-16
Date

Wayne W. Presby
, Secretary

CORPORATE SEAL

THE STATE OF NEW HAMPSHIRE
COUNTY OF Grafton

On this the 8th day of February, 20 16 before me, Jenniel Lund, the undersigned officer, personally appeared Wayne W Presby 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.



Jenniel Lund
Notary Public/Justice of the Peace

NOTICE OF LIEN

The State of New Hampshire and the Mount Washington Railway Company, with an address of 3168 Base Station Road, Mount Washington, New Hampshire 03589, give notice that a lien equal to the amount of \$1,800,000.00 and any interest, which may hereafter accrue on that amount, to be repaid by the Railroad, is created in favor of the State of New Hampshire which is a lien on the improved property under a Loan Agreement between the State of New Hampshire and the Mount Washington Railway Company, dated 02/22/2016. The improved property is more particularly described below.

The lien is created by operation of law, pursuant to RSA 288:66.a-IV, and shall expire only when the loan is repaid. The loan is scheduled to be repaid on January 1, 2037.

The Notice of Lien shall be recorded in the Coos County Registry of Deeds.

PROPERTY DESCRIPTION

All the property, real and personal, that is located on the Mount Washington Railway Company's property in the unincorporated area of Thompson and Meserves Purchase, New Hampshire, and more specifically described as follows:

- 1.) All the property, real and personal, including, but not limited to that described in the Loan Agreement between the State of New Hampshire and the Mount Washington Railway Company dated 02/22/2016, for participation in the State of New Hampshire's Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund, on file with New Hampshire Department of Transportation, Bureau of Rail and Transit.

IN WITNESS WHEREOF the parties have caused this NOTICE OF LIEN to be executed by their duly authorized agents.

2/22/16
Dated

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

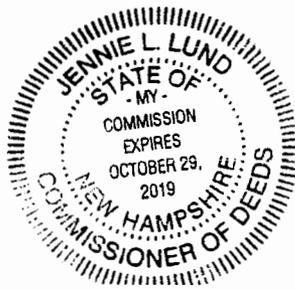
By: [Signature]
Duly Authorized

Dated
State of New Hampshire
County of Coos

MOUNT WASHINGTON RAILWAY

By: Wayne W. Presby
Duly Authorized

The forgoing instrument was acknowledged before me this 8th day of February, 2016, by Wayne W. Presby, President of the Mount Washington Railway Company, a New Hampshire Legislative Corporation, on behalf of the corporation.



[Signature]
(signature)
Personal Banker / Com of Deeds
(title)

SPECIAL AGREEMENT

MOUNT WASHINGTON RAILWAY COMPANY

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

**LOCOMOTIVE, PASSENGER COACH AND SUMMIT TRANSFER
IMPROVEMENTS**

February 5, 2016

SPECIAL AGREEMENT

This Special Agreement made and entered into this ____ day of _____, 20 __, by and between the State of New Hampshire (hereinafter referred to as the "State") by and through its Department of Transportation, Bureau of Rail and Transit (hereinafter referred to as the "Bureau"), and Mount Washington Railway Company, a railroad corporation having its principal place of business at Base Station Road, Mount Washington, New Hampshire 03589, (hereinafter referred to as the "Railroad")

The State and Railroad agree to the articles listed below:

ARTICLE I LOAN AGREEMENT

The Bureau shall prepare a Loan Agreement under the Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund to assist in the funding the railroad rehabilitation project described in ARTICLE II and EXHIBIT A. The Bureau shall administer the Loan Agreement funds in accordance with State requirements, and the Railroad may periodically draw down funds during the construction period, as defined in the Loan Agreement. The actual project cost shall not exceed the loan award of \$1,800,000, which shall be identified in the Supplemental Loan Agreement.

ARTICLE II PROJECT DESCRIPTION

The Railroad shall complete three separate projects, detailed in EXHIBIT A of this Special Agreement, as it had proposed in its application materials (attached as exhibit B), and shall include materials and labor for a diesel locomotive, railroad passenger coach, and summit transfer, track replacement, and boarding platforms (Summit Transfer Facility).

ARTICLE III PROJECT OVERSIGHT FEE - BUREAU

It is agreed the Railroad shall pay the Bureau a Project Oversight Fee for required administrative work including inspections and records reviews. This Project Oversight Fee will be \$18,000, 1% of the loan award, and will be due in advance of the distribution of loan funds. The Bureau will separately invoice the Railroad in advance of loan disbursement for this one-time oversight fee.

ARTICLE IV ACCEPTANCE OF PROJECT AND INSPECTION

The parties agree that the Bureau must inspect and accept the diesel engine, other locomotive materials, railroad passenger coach, passenger coach materials, and summit transfer track replacement including track components, and boarding platforms including materials and review and approve all work on the design and construction of the locomotive, passenger coach and Summit Transfer Facility in order to insure compliance with this Special Agreement.

**ARTICLE V
MAINTENANCE**

The Railroad agrees and commits, by this Special Agreement, that the Railroad, its successors and assigns, shall continue to maintain and operate the locomotive, passenger coach and Summit Transfer Facility in accordance with New Hampshire Department of Transportation regulations and standards for at least the period until the principal and interest of the loan have been repaid by the Railroad. An inspector from the Bureau shall periodically inspect the locomotive, passenger coach, Summit Transfer Facility and operation of the locomotive, passenger coach and Summit Transfer Facility for the purpose of insuring compliance with the terms of this ARTICLE.

**ARTICLE VI
CONTINUATION OF SERVICE AND LIEN**

The Railroad, its successors and assigns, hereby commits to continue service and to maintain the locomotive, passenger coach and Summit Transfer Facility in accordance with New Hampshire Department of Transportation regulations and standards for the mountain railroad. The Railroad acknowledges that a lien against the Railroad shall be created in favor of the State in an amount equal to the principal and interest of the Loan Agreement. The lien shall continue in force until the principal, and accrued interest, provided under the terms of the Loan Agreement has been repaid by the Railroad. The lien shall be recorded in Coos County Registry of Deeds in which the Railroad's principal place of business is situated. In the event that the Railroad is sold, the Bureau may assign the outstanding principal and interest of the Loan Agreement to an approved purchaser. The Bureau acknowledges that the lien against the Railroad is specific to the locomotive, passenger coach and Summit Transfer Facility constructed including costs incurred during the project and interest which may accrue on that amount and is subordinate in all respects to the balance of any Railroad mortgages.

**ARTICLE VII
NO ASSUMPTION OF OBLIGATIONS**

The Bureau acknowledges and agrees that the execution of this Special Agreement shall not impose upon the Railroad's mortgagors any obligations to perform nor shall it be deemed to be an assumption by the Railroad's mortgagors of the obligations and liabilities of the Railroad under this Special Agreement.

**ARTICLE VIII
COMPLIANCE WITH FEDERAL STATUTES,
REGULATIONS AND EXECUTIVE ORDER**

The Railroad shall comply with all applicable Federal, State and local laws and regulations. In compliance with these laws, the Railroad agrees that, among other things, it will take all of the steps necessary to conform to the requirements of the statutes and executive orders and respective regulations issued there under.

**ARTICLE IX
ELIGIBILITY FOR FINANCIAL ASSISTANCE**

The Railroad certifies that it will utilize the line to a level equal to eighty (80%) percent of their annual passenger level for the prior three (3) years preceding this Special Agreement per RSA 228:66-a II).

**ARTICLE X
INDEMNIFICATION**

The Railroad shall defend, indemnify and save harmless the State and the Bureau (including its officers and employees) from all suits, actions or claims of any character, name or description brought for, or on account of any injuries or damages arising out of the design and construction of the locomotive, passenger coach and Summit Transfer Facility project. Nothing contained herein shall constitute a waiver or release of any claims the Railroad may have against any third person arising out of or related in any way to the diesel engine, other locomotive materials, passenger coach, Summit Transfer Facility and labor used in the design and construction of the locomotive, passenger coach and Summit Transfer Facility project. The parties specifically agree that nothing contained herein shall waive any claim the Railroad 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 Railroad may have against any third party on account of any act of omission, neglect, misconduct, malfeasance or misfeasance relating to the work to be performed under this Special Agreement.

**ARTICLE XI
NO THIRD PARTY BENEFICIARY**

It is specifically agreed between the parties executing this Special Agreement that it is not intended by any of the articles of the Special Agreement to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Special Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Special Agreement. The duties, obligations, and responsibilities of the parties to this Special Agreement with respect to third parties shall remain as imposed by law.

**ARTICLE XII
NO WAIVER OF SOVEREIGN IMMUNITY**

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

**ARTICLE XIII
CONSTRUCTION OF SPECIAL AGREEMENT AND TERMS**

This Special Agreement is in accordance with the laws of the State of New Hampshire and is binding upon the parties 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 Special Agreement or to be used in determining the intent of the parties hereto.

**ARTICLE XIV
ENTIRE SPECIAL AGREEMENT**

The terms of the Loan Agreement are hereby incorporated by reference. This Special Agreement, which is being executed in conjunction with the Loan Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, and, except as provided under the Loan Agreement, constitutes the entire Special Agreement and understanding between the parties and supersedes all prior agreements and understandings relating thereto.

**ARTICLE XV
SEVERABILITY**

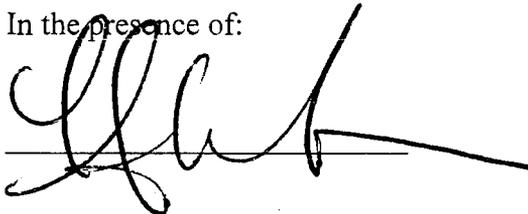
In the event any part of this Special Agreement is void or unenforceable, all other provisions shall continue in full force and effect.

**ARTICLE XVI
EFFECTIVE DATE OF SPECIAL AGREEMENT**

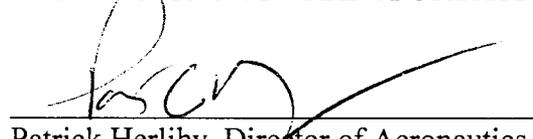
This Special Agreement, and all obligations of the parties hereunder, shall become effective on the date of the Loan Agreement's approval by the Governor and Executive Council.

IN WITNESS WHEREOF, the parties hereto have caused this Special Agreement to be executed by their duly authorized agents on the day and year first above written.

In the presence of:



STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION


Patrick Herlihy, Director of Aeronautics
Rail and Transit

THE STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this the 22ND day of FEBRUARY, 20 16 before me,
J. THOMAS MANSEAU, 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.

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

J. THOMAS MANSEAU, Notary Public
State of New Hampshire
My Commission Expires October 21, 2020

J. Thomas Manseau
Notary Public/Justice of the Peace

In the presence of:

MOUNT WASHINGTON RAILWAY COMPANY

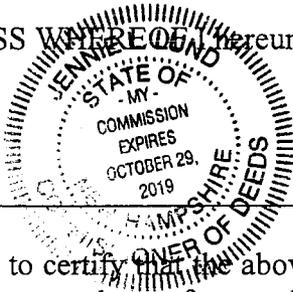
Jennie L Lund

Wayne W. Presby
Wayne W. Presby, President

THE STATE OF NEW HAMPSHIRE
COUNTY OF Grafton

On this the 8th day of February, 20 16 before me,
Jennie L Lund, the undersigned officer,
personally appeared Wayne W. Presby 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.



Jennie L Lund
Notary Public/Justice of the Peace

This is to certify that the above-referenced Special Agreement has been reviewed by this
office, and is approved as to form and execution.

DATE: March 8, 20 16

OFFICE OF ATTORNEY GENERAL

BY: [Signature]
Assistant Attorney General

EXHIBIT A

The work shall consist of three items, as detailed in the Railroad's application materials:

- 1) At the Summit Transfer Station existing track, install a switch and install a second station track, rehabilitate existing, and construct additional, boarding platforms.
- 2) The construction of a new railroad passenger coach to be owned by the Mount Washington Railway Company.
- 3) The construction of a new diesel locomotive to be owned by the Mount Washington Railway Company.

The total cost of the project is as follows:

Project Description	Loan Amount
Summit transfer, track replacement & boarding platforms (new construction & rehabilitation)	\$750,000
Railroad Passenger Coach (new construction)	\$300,000
Diesel Locomotive (new construction of 6 th locomotive)	\$750,000
TOTAL	\$1,800,000

Additionally, and separate from the loan, the Railroad will be required to pay an upfront, one-time administrative fee as follows:

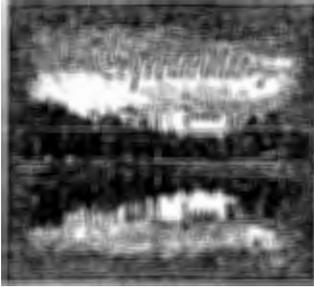
Oversight Fees	Amount
1% of loan award due in advance of distribution of loan funds	\$18,000
TOTAL	\$18,000

EXHIBIT B

APPLICATION FOR REVOLVING LOAN

MOUNT WASHINGTON RAILWAY COMPANY

2015



Wayne W. Presby
83 Elm Street
Littleton, NH 03561
603-444-0335
Fax: 603-444-0383
cograilway@roadrunner.com



July 7, 2015

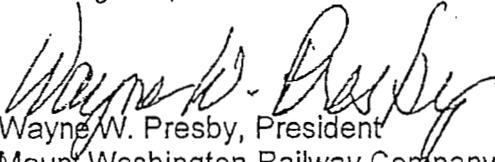
Louis A. Barker, Railroad Planner
State of New Hampshire
Bureau of Rail & Transit
John O. Morton Building
7 Hazen Drive
P.O. Box 483
Concord, NH 03302-0483

Re: Rehabilitating Class III Railroads and Cog Railroads Revolving Loan Fund
Application Form

Dear Mr. Barker:

I have enclosed our application for funds pursuant to the Railroads Revolving Loan Fund. Please note that our application encompasses projects that total \$1,800,000.00. We have a long history of working with the Bureau pursuant to this program. We look forward to working with you again. If you have additional questions or need additional information please feel free to contact me.

Best regards,

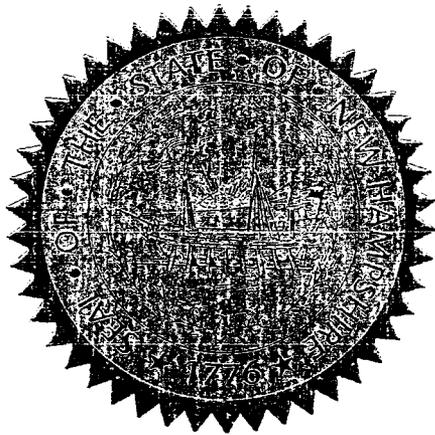

Wayne W. Presby, President
Mount Washington Railway Company

1. Summit Transfer, Track Replacement and Boarding Platforms - New Construction and Rehab			
Track Materials	\$110,000	120 lbs/ft/\$3/lb/ 300 feet	
Switches	\$500,000	Based on Previous Costs	
Labor & Equipment	\$140,000		
Total	\$750,000		
2. Railroad Passenger Coach - New Construction			
Coach	\$300,000	Costs based on Experience with Prototype	
Total	\$300,000		
3. Sixth Diesel Locomotive - New Construction			
Locomotive	\$750,000	Estimated Based on Cost of Other 5 Already in Service	
Total	\$750,000		
Total of All Projects	\$1,800,000		
New	\$1,800,000		

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 MOUNT WASHINGTON RAILWAY COMPANY is a New Hampshire corporation, formed by the laws of 1858 effective June 25, 1858. I further certify 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 11th day of February, A.D. 2016

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

William M. Gardner
Secretary of State

CERTIFICATE OF VOTE

I, WAYNE PRESBY hereby certify that I am duly elected Secretary of the Mount Washington Railway Company.

I hereby certify that Wayne W. Presby is the President of the Mount Washington Railway Company and is empowered to enter into a Special Agreement, which encompass a Loan Agreement and Notice Of Lien and Supplemental Loan Agreement, with the State of New Hampshire to assist in the financing of the purchasing of a diesel engine and other locomotive material for the design and construction of a locomotive, the purchasing of material and equipment for the design and construction of a passenger coach, the reconstruction and installation of station tracks and platforms at the Summit Transfer Station for use for the Mount Washington Railway Company pursuant to the Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund under RSA 228:66-a.

I hereby certify that the above has not been amended or repealed, and remains in full force and effect as of 2-8-16.

2-8-16
Date

Attested:
Wayne W. Presby
, Secretary

CORPORATE SEAL

THE STATE OF NEW HAMPSHIRE
COUNTY OF Grafton

On this the 8th day of February, 2016 before me, Jennie L Lund, the undersigned officer, personally appeared Wayne W Presby 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.

Jennie L Lund
Notary Public/Justice of the Peace

