

**DIRECT ACCESS AGREEMENT
BETWEEN
STATE OF VERMONT
AGENCY OF TRANSPORTATION
AND
TOWN OF DANVILLE**

THIS LICENSE AGREEMENT, made and entered into this ____ day of _____, 2024, by and between the **STATE OF VERMONT**, a sovereign state, acting through its Agency of Transportation, with its principal office at Barre City Place, 219 North Main Street, Barre, Vermont 05641 (the “STATE”) and the **TOWN OF DANVILLE**, a municipality in the State of Vermont with its principal office at 36 Route 2 West, Danville, Vermont 05828 and with a mailing address of P.O. Box 183, Danville, Vermont 05828 (the “USER”).

WITNESSETH:

WHEREAS, the STATE is the owner of a line of railroad (“the Line”), extending from St. Johnsbury to Swanton, Vermont; and

WHEREAS, the former St. Johnsbury and Lake Champlain Railroad Company properties in the Town of Danville now owned by the STATE are part of a STATE-owned rail trail (“the Line”) which extends from St. Johnsbury to Swanton, Vermont; and

WHEREAS, the Line is railbanked and is to be used for interim trail use, in accordance with 5 V.S.A. § 3408(a) and authorization from the federal Surface Transportation Board in Lamoille Valley R.R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Caledonia, Washington, Orleans, Lamoille and Franklin Counties, VT, STB Docket No. AB-444 (Sub-No. 1X) (served Feb. 13, 2004);

WHEREAS, the Line is managed by the Agency of Transportation’s Rail and Aviation Bureau by way of its Statewide Rail Trail Program; and

WHEREAS, pursuant to 5 V.S.A. § 3406 and 19 V.S.A. § 26a, the STATE may license state-owned railroad property; and

WHEREAS, USER desires to have and to use one (1) private, at-grade direct access point (“the Direct Access”) to the Line, at or near the following point:

Town/County	Danville/Caledonia
Valuation Plan	V50/12
Valuation Station/Railroad Milepost	595+06.949/11.270
GPS Coordinates	N 44.40552, W -72.14563

U.S. DOT Crossing Number	None
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and

WHEREAS, the STATE is willing to grant USER direct access rights, subject to the conditions stated in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties covenant and agree as follows:

1. Description of Licensed Facility. For and in consideration of the faithful performance of all the covenants and agreements to be performed by USER, STATE hereby licenses USER, at USER's own expense, to construct, maintain and use the following facility:

One (1) private, at-grade Direct Access from the southerly side of the rail trail, twenty feet (20.0') in width, upon and across the property of STATE at or near a point identified as valuation station 595+06.949, approximate railroad milepost 11.270, in the Town of Danville, County of Caledonia and State of Vermont. The sole purpose of the Direct Access is to provide bicyclist and pedestrian access from USER's adjacent land/trailhead on the southerly side of the Line. No vehicles shall access or be parked within the State-owned railroad right-of-way. STATE may require USER, at USER's sole cost and expense, to install an eighteen-inch diameter by twenty-foot long (18" dia. x 20') corrugated high density polyethylene (HDPE) culvert pipe to the reasonable satisfaction of STATE. Culvert end sections which more efficiently channel water into and out of culverts, in addition to protecting surrounding soils from erosion, scouring and reduce sedimentation problems are not likely needed at this location but shall be installed to the reasonable satisfaction of STATE if the STATE determines they are necessary.

In aid of the foregoing description, reference also may be had to a certain valuation map, prepared in accordance with standards prescribed by the former Interstate Commerce Commission, and entitled in part:

RIGHT-OF-WAY AND TRACK MAP
THE ST. JOHNSBURY AND LAKE CHAMPLAIN R.R. CO.
OPERATED BY
THE ST. JOHNSBURY AND LAKE CHAMPLAIN R.R. CO.
STATION 550+0 TO STATION 602+80
SCALE 1-IN. = 100-FT. DATED JUNE 30, 1916
OFFICE OF VALUATION ENGINEER:
BOSTON, MASS.

which is numbered V50/12.

The parcel of land to be served by the Direct Access is described more particularly in the following:

Address	448 Peacham Road
Town	Danville
Ownership	Town of Danville, Highway Garage & Athletic Fields
Parcel ID	SA003-020.002
SPAN	174-055-11506

2. Consolidation of Access Points; No Interest Being Conveyed. To minimize the number of access points to the Line, the parties acknowledge that the Direct Access eventually may serve other properties adjacent to the USER's property. Although the number of additional users, the terms and conditions of easement grants over USER's property adjacent to the Line, and the sharing of cost and liabilities are not part of this Agreement, the parties agree to cooperate in the future toward the goal of minimizing the number of access points to the Line.

Notwithstanding anything in this Agreement, the STATE reserves the right to close the Direct Access and terminate this Agreement in the event that reasonable alternative access becomes available for the benefit of the USER's property served by the Direct Access or the USER fails to negotiate in good faith the terms and conditions of easement grants over the USER's property adjacent to the Line, and the sharing of costs and liabilities with additional users that may request a license to cross the Line.

Notwithstanding anything in this Agreement, the USER acknowledges and agrees that this Direct Access Agreement is a mere grant of a License to pass over the lands of the STATE and this license does not convey any property rights beyond said License, and it is further understood and agreed that this Agreement is not a lease, easement, sale, lien or grant of any other property right in said lands whatsoever. The USER shall keep said license free from any and all liens or claims of any third party whatsoever, and further, the USER shall not attempt to hypothecate or otherwise encumber said property to the benefit of any creditor. The STATE shall be under no obligation to subordinate its interest in this Agreement to any person whatsoever.

3. Duration; Renewal. This Agreement shall continue in force for a term of five (5) years and may be renewed for four (4) additional successive terms of five (5) years each, for a total of twenty-five (25) years, but may be terminated by USER's giving notice in writing to STATE of intent to terminate not less than thirty (30) days before the requested termination date of this Agreement. So long as the USER is not otherwise in default in carrying out the terms and conditions as provided for in this Agreement, the USER may continue to use the Direct Access after the expiration of the initial term or any renewal or extension period, and in that event, this Agreement shall be considered as renewed and shall continue in effect from year to year. Should, however, the USER default in carrying out the other terms and conditions as provided for in this Agreement, then STATE, at its option, may terminate this Agreement in accordance with Section 4, below.

4. Termination. Upon breach by the USER of any condition or covenant contained in this Agreement, including, but not limited to, a failure to provide proper certification of insurance, the STATE may terminate this Agreement and physically close or barricade the Direct Access thirty (30) days after notice of the default to the USER if the USER has failed to cure the default to the full satisfaction of the STATE. The USER, for themselves, their agents, employees, heirs, successors or assigns, hereby acknowledges and agrees that each and all unconditionally waive any and all claims of damage or loss whatsoever that the USER, their agents, employees, heirs, successors or assigns may suffer as a result of the Termination of this Agreement and/or the closure of the Direct Access pursuant to this Paragraph.

~~**5. Document Preparation/Review Fees.** USER agrees to pay STATE the sum of \$300.00 (non-refundable) representing a portion of the cost of preparation of this document. [Intentionally omitted]~~

~~**6. License Fee.** In addition to the document preparation fee, USER, prior to execution of this Agreement and each anniversary date of this Agreement, shall pay to STATE annual license fee in advance. During the first five (5) year period of this Agreement, annual license fee shall be Two Hundred and no/100 dollars (\$200.00). At the end of the first five (5) year period and at the end of each succeeding five (5) year period, the amount of annual rent shall be adjusted to reflect any increase in the Consumer Price Index for all Urban Consumers (CPI-U) over the previous five (5) years and that rate shall be used each year for the next five (5) year period. For the purpose of this Agreement, the CPI-U is 313.548 (based on the United States Department of Labor, Bureau of Labor Statistics for April 2024).~~

~~Should any license fee payment or other monetary obligation of the USER under this Agreement become past due, then the USER will be responsible for paying the party to which the obligation is owed interest on the amount past due, at the maximum legal rate of interest permitted by 9 V.S.A. § 41a. [Intentionally omitted]~~

7. Maintenance. USER, at USER's sole cost and expense, shall construct and thereafter maintain and keep the Direct Access in good repair and at all times, in a manner reasonably satisfactory to STATE. In particular but without limiting USER's general maintenance obligation, USER shall keep the Direct Access free and clear of all rubbish, debris and brush and, to maintain sight distance, shall keep the STATE-owned railroad right-of-way free of brush and other vegetation for distances of fifty feet (50') in both directions from the Direct Access.

STATE may elect to perform maintenance or repair to the Direct Access, in which event USER, upon presentation of invoices, will promptly reimburse the STATE.

8. Reconstruction. USER further agrees to assume the expense of labor, equipment, materials, etc., necessary to reconstruct in part or in total, the Direct Access and

approaches if they become worn out or become obsolete by reason of use, age, standards or damage.

9. Fences; Manual Gates. STATE may require USER, at USER's sole cost and expense, to install and maintain fences along the boundaries between USER's property and the railroad right-of-way, as well as manual fence gates at the Direct Access, all to the reasonable satisfaction of STATE. If manual gates are installed, USER shall keep the manual gates closed and securely fastened at all times, except when the Direct Access is actually being used.

Irrespective of any negligence on the part of STATE, USER agrees to defend, indemnify and save harmless STATE from and against any and all loss, cost, or damage which USER or any person may suffer or sustain by reason of entry of livestock upon the railroad right-of-way through fences and gates required to be maintained by USER, and from any and all judgments which any person or persons may recover from STATE or its authorized agents, officers, representatives and employees by reason of any such loss or damage.

10. Use of Direct Access. USER shall not obstruct or interfere with authorized uses of the railroad right-of-way and shall permit the Direct Access to be used by the general public and by any person or persons including USER, USER's tenants, employees, agents and persons having business with USER. It is expressly understood and agreed that the Direct Access is a public one, for access for bicyclist and pedestrians, and is intended for unrestricted public use.

11. Signing. The USER, at his/her sole cost and expense, will erect and maintain signs conforming to State of Vermont, Agency of Transportation, Rail Operations detail sheet "R-1" (revised: October 5, 2009), "Drive Crossing with Rail Trail" and the latest edition of the Federal Highway Administration's *Manual on Uniform Traffic Control Devices ("MUTCD")*.

12. Act 250 Permit. Should any activity of USER involving the Direct Access require a permit under Vermont's Land Use and Development Act, 10 V.S.A. Chapter 151 ("Act 250"), then STATE, if necessary, will join USER as co-applicant for the permit. The agreement of STATE to join in the application for a land use permit is conditioned upon the contents of the application and permit conforming to the terms of this Agreement and being in conformity with all applicable statutes, rules and regulations. USER shall make whatever alterations and changes are required to conform the permit application to this Agreement. In connection with the land use permit, USER further agrees to be responsible for and bear the cost of the application, preparation for participation in the proceedings necessary to obtain its issuance, compliance and all other incidental items. USER further agrees to indemnify, defend and save harmless STATE and its authorized agents, officers, representatives and employees from and against any all actions, penalties, liabilities, claims, demands, damages or losses resulting from any administrative or court proceedings arising directly or indirectly out of acts or omissions of the USER with regard to the terms and conditions imposed by the land use permit.

13. Independence; Waiver of Liability; Defense and Indemnification. The USER will act in an independent capacity and not as officers or employees of the STATE.

USER acknowledges that the proposed Direct Access of the State-owned railroad right-of-way is being requested for USER's advantage and does not involve the STATE's performance of any duty to the public. USER further acknowledges that installation and use of the proposed Direct Access by the USER will expose the STATE to additional liability to which it would not otherwise be exposed. Accordingly, USER agrees that STATE shall not be liable for injury or death of USER or any agent of USER or for loss or destruction of or damage to any property of USER or any agent of USER while upon, about, or in the use of the Direct Access. Further, USER hereby agrees to defend, indemnify and save harmless STATE from and against any and all claims, liability, demands, causes of action, cost or expense resulting directly or indirectly from any injury to or death of persons, or loss or destruction of or damage to property, and from all claims, demands, liability or causes of action, cost or expense, resulting directly or indirectly from the installation, maintenance, presence or use of the Direct Access, irrespective of any negligence on the part of STATE or its agents or employees. Without limiting the foregoing, it is agreed that this covenant of indemnification shall apply to all cases of loss, damage, injury, death, cost or expense for which any party to this Agreement may or shall be liable. For the purpose of this Agreement, all persons using the Direct Access shall be deemed agents of USER. Without limiting the foregoing, the above duty to defend, hold harmless, and indemnify the STATE shall include any and all damages that may result to any person whatsoever as a result of termination and closure of the Direct Access pursuant to this Agreement.

The USER shall defend the STATE and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the USER or of any agent of the USER. The STATE shall notify the USER in the event of any such claim or suit, and the USER shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement, the USER may request recoupment of specific defense costs and may file suit in the Washington Superior Court requesting recoupment. The USER shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the USER.

The USER shall indemnify the STATE and its officers and employees in the event that the STATE, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the USER.

14. Insurance; Certificates of Insurance. Before entering onto the STATE's property or otherwise exercising its rights under this Agreement, USER must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the USER to maintain current certificates of insurance on file with the STATE through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the USER for the USER's operations. These are solely minimums that have been established to protect the interests of the STATE.

Workers Compensation: With respect to all operations performed, the USER shall carry workers compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under this agreement, the USER shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$2,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/Legal Liability

Automotive Liability: The USER shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

This insurance shall name the STATE and the USER as insureds, as their respective interests may appear. This insurance shall be placed with an insurance company authorized to do business in the State of Vermont. **Certificates of insurance shall be delivered to the STATE as proof of compliance with ten (10) days of execution of this license.** The insurance policy must provide that coverage will not be terminated or canceled without thirty (30) days' advance notice to the STATE. The amounts of insurance shall not be deemed as limiting the liability of the USER to defend, indemnify, and save harmless the STATE as provided in this agreement. If the STATE becomes liable for an amount in excess of the insurance provided by the USER, then the USER shall save and hold harmless the STATE for the excess.

At the end of the first five (5) year period of this Agreement and at the end of each succeeding five (5) year period, the insurance amounts specified in this paragraph may be adjusted by the STATE to reflect any increase in the Consumer Price Index for All Urban Consumers (CPI-U) over the previous five (5) years and such adjusted amounts shall be used each year for the next five (5) year period. Moreover, the insurance amounts specified in this section may be adjusted by the STATE at any time to reflect changes in the Vermont Tort Claims Act, 12 V.S.A. Chapter 189.

15. Defense, Indemnification and Insurance; Scope of Benefits. The covenants and provisions of this Agreement relating to defense, indemnification and insurance are for the benefit of STATE and its successors and assigns, as well as their officers, agents and employees.

16. Restoration of STATE-owned Railroad Property. In the event of termination of this Agreement, or any portion thereof, USER, at his/her sole cost and expense, will remove the Direct Access and approaches and restore affected areas of STATE-owned railroad property to the condition prior to any modifications by the USER. Any materials installed on STATE-owned railroad property not removed by USER will remain the property of STATE.

17. Work on STATE-owned Railroad Property; Advance Consent. USER will not construct, alter or repair structures of any kind upon STATE-owned railroad property until fifteen (15) days after receiving consent from STATE, except necessary emergency repairs. All work to be performed on STATE-owned railroad property shall be done in a manner satisfactory to STATE and shall be performed at such time and in such manner as not to unnecessarily interfere with the uses of the STATE-owned railroad right-of-way.

18. Project Inspectors; Flag Protection. STATE, at USER's sole cost and expense, may assign an inspector to the site to monitor any construction within the STATE-owned railroad right-of-way. In addition, STATE at USER's expense, may assign one or more flaggers to the Direct Access site whenever the USER's construction or maintenance operations are such that they will in any manner interfere with uses of the STATE-owned railroad right-of-way.

19. Liens. USER will fully pay for all materials joined or affixed to STATE-owned railroad property, and pay in full all persons who perform labor upon STATE-owned railroad property on USER's behalf. USER will not allow any mechanics' liens or materialmen's liens of any kind or nature to be enforced against STATE-owned railroad property for any work done or materials furnished at USER's insistence or request.

20. Acknowledgment of Title. USER hereby acknowledges the title of STATE in and to the STATE-owned railroad property that is the subject of this Agreement and agrees never to assail or resist the STATE's title.

21. Attorney's Fees. In case STATE shall bring suit to compel performance of, or to recover for breach of, any covenant, agreement or condition contained in this Agreement, USER shall pay to STATE reasonable attorney fees in addition to the amount of judgment and costs.

22. Consent to Assignment. This Agreement will not be assigned by USER without the prior written consent of the STATE, which consent will not be unreasonably withheld or delayed after receipt by STATE of satisfactory proof of financial responsibility on the part of the proposed assignee(s).

23. Entire Agreement. Except as provided in Section 2, above, this Agreement, with the terms and provisions contained herein, constitutes the entire agreement between the parties hereto with respect to the Direct Access and supersedes and replaces all other agreements and representations in connection with construction, maintenance, and use of the Direct Access.

24. Release of Farm or Other Crossing Rights. USER, for himself/herself, his/her heirs, successors and assigns, hereby releases and discharges STATE from any obligation, whether imposed by statute, deed or other written instrument, to construct and maintain farm or other crossings over or across STATE-owned railroad property for the benefit of USER's lands, which are more particularly identified in paragraph 1, above.

25. Subordination to Other Permits, Leases and Grants. This Agreement is subject and subordinate to any and all permits, leases and grants heretofore made and now in effect upon the premises over which the Direct Access is to be constructed, as well as any and all other permits, leases and grants that may hereafter be made by STATE during the term of this Agreement that do not materially interfere with USER's exercise of the rights licensed hereunder.

26. Compliance with Law. This Agreement pertains only to the former Rensselaer & Saratoga Railroad Company properties operated by the Delaware and Hudson Company ("D&H") and owned by the State of Vermont and administered by its Agency of Transportation and does not release USER from the requirements of any otherwise applicable statutes, rules, regulations or ordinances (e.g., Act 250, zoning, etc.).

Without limitation of the foregoing, USER is reminded of the need to obtain a separate 19 V.S.A. § 1111 permit from the Agency of Transportation (in the case of a state highway) or the town (in the case of a town highway) before undertaking any construction within the right-of-way of any public highway.

27. Tax Compliance. As required by Vermont law (32 V.S.A. § 3113), USER hereby certifies, under the pains and penalties of perjury, that he/she is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of this Agreement. Notwithstanding any other provision of this Agreement, STATE reserves the right to deny any renewal, extension, consent, or permission under this Agreement unless USER and any proposed assignee first provide STATE with written certification of tax compliance.

28. Child Support. (Applicable if any USER is a natural person, not a corporation or partnership.) Each USER states that, as of the date this Agreement is signed, he/she either (a) is not under any obligation to pay child support, (b) is under such an obligation and is in good standing with respect to that obligation, or (c) has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

USER makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if USER is a resident of Vermont, then such USER makes this statement with regard to any and all children residing in any other state or territory of the United States.

29. Notice. Any notice or other communication in connection with this Agreement shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and delivered by hand or sent either (a) by registered or certified mail (return receipt requested) with the United States Postal Service; or (b) by Federal Express or other similar overnight mail carrier furnishing evidence of receipt to the sender, at the following addresses:

(a) As to STATE: State of Vermont - Agency of Transportation
Policy, Planning & Intermodal Development Div.
Rail & Aviation Bureau
Barre City Place
219 North Main Street
Barre, Vermont 05641

With copy to: State of Vermont - Agency of Transportation
Assistant Attorney General
Barre City Place
219 North Main Street
Barre, Vermont 05641

(b) As to USER: Town of Danville
P.O. Box 183
Danville, Vermont 05828

Either party may change the address at which notices are to be received by notice given as set forth above.

30. Recording. STATE, at USER's expense, will record a Memorandum of Direct Access Agreement which is short-form notice of this Direct Access Agreement in the town land records and, as soon as the recording data become available, will notify USER as to the book, page and date received for record. USER, at the time of execution of this Agreement, will provide the STATE with a check made payable to "*Town of Danville*" in the amount of \$45.00 (three pages @ \$15.00) for the estimated cost of recording and will be responsible for reimbursing STATE for any additional recording fees that may be charged.

31. Section Headings. The section headings contained in this Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

32. Interpretation of Agreement. If an ambiguity or question of intent arises with respect to any provision of this Agreement, the Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this Agreement.

33. Waiver. Any waiver at any time by any party hereto of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this document, shall not be deemed to be a waiver with respect to any subsequent default or matter. No delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall be deemed to be a waiver of such right.

34. Reactivation of Rail Service. In accordance with 49 C.F.R. § 1152.29 (Prospective use of rights-of-way for interim trail use and rail banking), TENANT acknowledges that use of the Line's right-of-way is subject to possible reconstruction and reactivation of the right-of-way for rail service.

35. Miscellaneous. Upon execution, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.

* * * Remainder of Page Deliberately Left Blank * * *

IN WITNESS WHEREOF, the **STATE OF VERMONT** has caused this instrument to be subscribed, this ____ day of _____, 2024, by Joe Flynn, its Secretary of Transportation and duly authorized agent.

STATE OF VERMONT
(“STATE”)

By: _____
Joe Flynn, Its Secretary of Transportation
and Duly Authorized Agent

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

At Barre City, this ____ day of _____, 2024, personally appeared Joe Flynn and acknowledged the foregoing instrument, by him as Secretary of Transportation and duly authorized agent of the **STATE OF VERMONT** subscribed, to be his free act and deed and the free act and deed of the **STATE OF VERMONT**.

Before me,

Signature of Notary Public

Type or print name of Notary Public

Commission No. _____
(My commission expires Jan. 31, 2025)

APPROVED AS TO FORM:

DATED: 6/12/2024

DocuSigned by:
Trini Brassard

ASSISTANT DIRECTOR

IN WITNESS WHEREOF, the **TOWN OF DANVILLE** has caused this instrument to be subscribed this ____ day of _____, 2024, by Eric Bach, its Selectboard Chair and duly authorized agent.

**TOWN OF DANVILLE
("USER")**

By: _____
Eric Bach, Its Selectboard Chair and Duly
Authorized Agent

STATE OF VERMONT)
CALEDONIA COUNTY, ss.)

At Danville, this ____ day of _____, 2024, personally appeared Eric Bach and acknowledged the foregoing instrument, by him as Chair and duly authorized agent of the **TOWN OF DANVILLE** subscribed, to be his free act and deed and the free act and deed of the **TOWN OF DANVILLE**.

Before me,

Signature of Notary Public

Type or print name of Notary Public

Commission No. _____
(My commission expires _____)