



Victoria F. Sheehan  
Commissioner

APR 21 '21 AM 11:40 P  
**THE STATE OF NEW HAMPSHIRE**  
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.  
Assistant Commissioner

Bureau of Rail & Transit  
February 25, 2021

His Excellency, Governor Christopher T. Sununu  
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 Company (Vendor #154039), Base Station Road, Mount Washington, NH, in an amount not to exceed \$1,228,160.00, pursuant to RSA 228:66-a for Rail Replacement Materials, construction of re-rail installation car and labor to install replacement rail, from the date of Governor and Council approval through September 30, 2021. 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	<u>FY 2021</u>
415-506591-RR Loan Fund	\$1,228,160.00

**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, including a proposal submitted by the Mount Washington Railway that met the criteria of the program. The Department and the Mt. Washington Railway agreed that the Rail Replacement Materials, construction of re-rail installation car and labor to install replacement rail were eligible projects and within the limit of funds available and, therefore, the loan agreement has been prepared for Governor and Council approval.

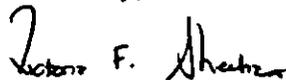
Approval of this agreement will authorize the Department of Transportation to provide financial assistance through the Class III Railroad and Cog Railroad Capital Rail Line Rehabilitation and Equipment Revolving Loan Fund for the Mount Washington Railway Company to acquire Rail Replacement Materials, construct a re-rail installation car and the labor to install replacement rail to be operated and maintained on the facilities owned by the Mount Washington Railway. These projects will allow the Mount Washington Railway to improve and enhance the safety of its tourist passenger excursion service on Mount Washington.

The Loan Agreement between the Mount Washington Railway Company 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 over the replacement rail 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,



Victoria F. Sheehan  
Commissioner

Attachments

**SPECIAL AGREEMENT**

**MOUNT WASHINGTON RAILWAY COMPANY**

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

**RAIL REPLACEMENT MATERIALS, RE-RAILING CAR AND LABOR**

**February 25, 2021**

## **SPECIAL AGREEMENT**

This Special Agreement made and entered into this 21 day of April, 20 21, 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 \$1,216,000, which shall be identified in the Supplemental Loan Agreement.

### **ARTICLE II PROJECT DESCRIPTION**

The Railroad shall complete three separate phases project, detailed in EXHIBIT A of this Special Agreement, as it had proposed in its application materials (attached as exhibit B), and shall include Rail Replacement Materials, Re-railing Car and Labor.

### **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 \$12,160, 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 rail replacement materials, railroad replacement car, rail replacement car materials, track installations, including rail and other track materials and review and approve all work on the design and construction of the track facilities 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 utilize the Rail Replacement Materials, Re-railing Car and replaced track 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 Rail Replacement Materials, Re-railing Car and Labor and operation of the trackage 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 operate over the trackage replaced during this project and utilize the Re-railing Car 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 Rail Replacement Materials, Re-railing Car and track 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 Re-railing Car and Rail Replacement 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 Rail Replacement Materials, Re-railing Car and Labor used in the design and construction of the Re-railing Car and Rail Replacement 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**

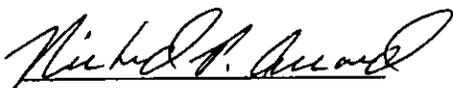
In the event any part of this Special Agreement is void or unenforceable, all other provisions shall continue in full force and effect.

**ARTICLE XVI  
EFFECTIVE DATE OF SPECIAL AGREEMENT**

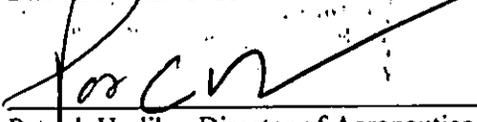
This Special Agreement, and all obligations of the parties hereunder, shall become effective on the date of the Loan Agreement's approval by the Governor and Executive Council.

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 21 day of April, 2021 before me,  
Jennifer Lane, 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.

Jennifer D Lane  
Notary Public, State of New Hampshire  
My Commission Expires Sept. 5, 2023

Jennifer D Lane  
Notary Public/Justice of the Peace

In the presence of:

MOUNT WASHINGTON RAILWAY COMPANY

[Signature]

Wayne W. Presby  
Wayne W. Presby, President

THE STATE OF NEW HAMPSHIRE  
COUNTY OF Grafton

On this the 23 day of Feb, 20 21 before me,  
Timothy M. Connolly, 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.

TIMOTHY M CONNOLLY  
Notary Public, State of New Hampshire  
My Comm. Expires Aug 3, 2021

Timothy M Connolly  
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.

OFFICE OF ATTORNEY GENERAL

DATE: 4/21, 20 21

BY: Allison B. Greenstein  
Assistant Attorney General

**EXHIBIT A**

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

1. The purchase of rail, and other track materials, necessary to complete the rail replacement project;
2. 50% of the cost of construction for a new railroad re-railing car to be owned by the Railroad; and
3. The labor for the removal and disposal of old rail, installation of new rail, and the construction of new tie plates.

The total cost of the project is as follows:

Project Description	Bureau Oversight Fee (1%)	Project Funds (99%)	Total Loan Amount
Rail Replacement Capital Items (rail, joint bars, nuts, bolts, washers, custom tie plates, Pandrol weld-on shoulders, Pandrol rail clips & lag bolts)	\$8,410	\$841,000	\$849,410
Re-railing car (50% proration: see info below)	\$1,250	\$125,000	\$126,250
Labor (removal of existing rail, construction of tie plates & installation of new rail)	\$2,500	\$250,000	\$252,500
<b>TOTAL</b>	<b>\$12,160</b>	<b>\$1,216,000</b>	<b>\$1,228,160</b>

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	\$12,160
<b>TOTAL</b>	<b>\$12,160</b>

## LOAN AGREEMENT

This Loan Agreement made and entered into this 21 day of April, 2021 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, Two Hundred, Twenty Eighty-Thousand, One Hundred, Sixty Dollars (\$1,228,160.00)**. The Railroad may draw upon these funds during the *construction period*. The *construction period*, as used in this agreement, began on the date that the first eligible project costs were incurred and ends on September 30, 2021. 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.

The 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 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. 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 *Rail Replacement Materials, Re-railing car and Labor* are installed, utilized 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 Replacement Rail, Materials and Re-railing Car 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 21 day of April, 2021.

In the presence of:

Richard N. Wood

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

Patrick Herlihy  
Patrick Herlihy, Director of Aeronautics, Rail & Transit

THE STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

On this 21 day of April, 2021, before me, Jennifer Lane 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.

Jennifer D Lane  
Notary Public, State of New Hampshire  
My Commission Expires Sept. 5, 2023

Jennifer D Lane  
NOTARY PUBLIC

In the presence of:

MOUNT WASHINGTON RAILWAY Company

[Signature]

Wayne W. Presby  
Wayne W. Presby, President

THE STATE OF NEW HAMPSHIRE  
COUNTY OF Grafton

On this 20 day of Feb, 2021, before me, Timothy M. Connolly 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.

Timothy M. Connolly  
NOTARY PUBLIC

TIMOTHY M CONNOLLY  
Notary Public, State of New Hampshire  
My Comm. Expires Aug 3, 2021

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: 4/21, 2021

Allison B. Greenstein

Assistant Attorney General

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APPROVED by Governor and Executive Council on \_\_\_\_\_, 20 \_\_, Item # \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Secretary of State

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
120 NASSAU ST., 15TH FLOOR  
NEW YORK, N.Y. 10038  
TEL: (212) 486-4500  
WWW.STATE.NY.US

**APPENDIX A**

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

1. The purchase of rail, and other track materials, necessary to complete the rail replacement project;
2. 50% of the cost of construction for a new railroad re-railing car to be owned by the Railroad; and
3. The labor for the removal and disposal of old rail, installation of new rail, and the construction of new tie plates.

The total cost of the rail replacement capital project is as follows:

<b>Project Description</b>	<b>Bureau Oversight Fee (1%)</b>	<b>Project Funds (99%)</b>	<b>Total Loan Amount</b>
Rail Replacement Capital Items (rail, joint bars, nuts, bolts, washers, custom tie plates, Pandrol weld-on shoulders, Pandrol rail clips & lag bolts)	\$8,410	\$841,000	\$849,410
Re-railing car (50% proration: see info below)	\$1,250	\$125,000	\$126,250
Labor (removal of existing rail, construction of tie plates & installation of new rail)	\$2,500	\$250,000	\$252,500
<b>TOTAL</b>	<b>\$12,160</b>	<b>\$1,216,000</b>	<b>\$1,228,160</b>

**TOTAL LOAN AMOUNT (not including interest)**

**\$1,228,160**

**CERTIFICATE OF VOTE**

I, Susan M. 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 for the purchase of rail materials and other materials for replacement of track components, the purchasing of material and equipment for the design and construction of a re-railing car, the reconstruction and installation of tracks 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 2-23-21.

Attested:

2-23-21  
Date

Susan M. Presby  
Secretary

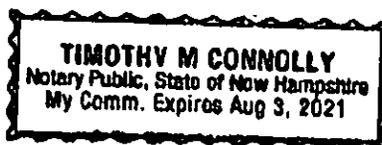
**CORPORATE SEAL**

THE STATE OF NEW HAMPSHIRE  
COUNTY OF Grafton

On this the 23 day of Feb, 20 21 before me, Timothy M. Connolly, the undersigned officer, personally appeared Susan 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.

Timothy M. Connolly  
Notary Public Justice of the Peace



# State of New Hampshire

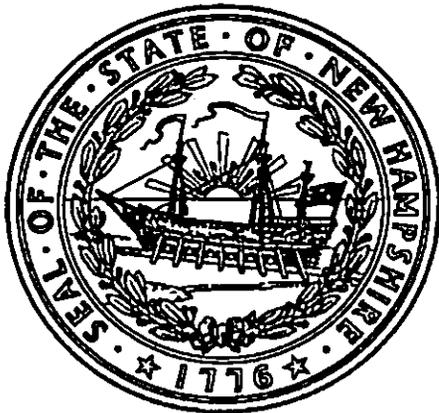
## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that MOUNT WASHINGTON RAILWAY COMPANY a New Hampshire State Chartered (Legislative) formed to transact business in New Hampshire on June 25, 1858. I further certify that it has paid the fees required by law and has not dissolved.

Business ID: 67434

Certificate Number: 0005354018



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 21st day of April A.D. 2021.

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

William M. Gardner  
Secretary of State



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



Victoria F. Sheehan
Commissioner

William Cass, P.E.
Assistant Commissioner

January 6, 2021

Wayne Presby, President
Mount Washington Railway Company
3168 Base Station Road
Mount Washington, NH 03589

Re: 2020 Railroad Revolving Loan Program

Dear Mr. Presby,

The Department has completed its review of two applications received in response to the 2020 Class III and Cog Railroad Revolving Loan Program, which included an application from you on behalf of the Mount Washington Railway Company in the amount of \$1,354,410. After a thorough evaluation of all submitted materials for both applicants, the Department is pleased to offer a partial loan award to you as follows:

Table with 4 columns: Project Description, Bureau Oversight Fee (1%), Project Funds (99%), Total Loan Amount. Rows include Rail Replacement Capital Items, Re-railing car, Labor, and a TOTAL row.

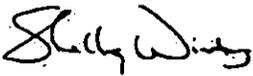
In balancing the eligible loan requests of both applicant railroads the Department looked at specific subcomponents within each applicant's submitted materials to develop a funding recommendation that awarded some funding for each railroad and for the highest ranked subcomponents. As such, please note that this loan award removes 50% of the cost of a re-railing car that was included in your proposed application as the building of re-railing car is not exclusive to this rail improvement project and will be used for ongoing maintenance.

If you are interested in accessing the funds, as noted above, please send a confirmation email or letter to my attention by January 22nd and the Department will begin to prepare necessary loan documents for the loan

award, including a Special Agreement, Loan Agreement, and Notice of Lien. If you decide to move forward, Railroad Planner Lou Barker will work with you and your staff to prepare and execute these documents in the coming months.

If you have any questions regarding this award offer, please feel free to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Shelley Winters".

Shelley Winters  
Administrator

Cc: Rachel Miller (NH State Treasury)  
Patrick Herlihy (Director, NHDOT Division of Aeronautics, Rail & Transit)

# 2020 NHDOT RAILROAD REVOLVING LOAN APPLICATION

Name of Applicant: **Mount Washington Railway Company**  
 Address of Applicant: **3168 Rose Station Road, MA, Whitehouse, NH 03297**

Applicant's Point of Contact:  
 Name & Title: **Wayne W. Pinsky, President**  
 Phone Number: **603-278-2437**  
 Email Address: **wayne@mtw2.com**

Proposed Project Description:  
 (Attach a supplemental page if necessary)  
**Rail Replacement Project - Remove 25lb Rail and supporting wooden side piece and replace with custom made tie plates and 100lb rail**

Proposed Project Location:  
 Railroad Line Name: **Mount Washington Railway**  
 Railroad Valuation Maps: **MA**  
 Engineering Valuation Stations (start - end): **5/10 - 5/10**  
 Total Miles: **5/10 - 5/10**

Amount of Loan Applied For: **\$155,410** (Must match Line 34 below)  
 Term of Loan Applied For (in Years): **5.00**

Proposed Project Construction/Project Period:  
 Start Date: **1/1/19**  
 End Date: **12/31/20**

### TOTAL PROJECT COST INFORMATION & SUMMARY

Rehabilitation		\$1341,000
Acquisition		
New Construction		
Other Item #1:	Insert item name/type	
Other Item #2:	Insert item name/type	
Subtotal Proposed Project Cost		\$1,341,000
+ Payroll Oversight Frg (1% of Subtotal)		\$13,410
Total Proposed Project Cost		\$1,354,410

List any third parties participating in this proposed project & identify their contributions:

Name of Third Party	Contribution to proposed project

Is the applicant involved in any litigation, liens or other legal encumbrances that could affect this proposed project?  
**No**

If yes, please explain and describe fully (attach a supplemental page if necessary)

By signing below, I attest that I am duly authorized by the applicant Railroad to apply for "Class III Railroads and Cog Railroad Revolving Loan Funds" as solicited by the NH Department of Transportation and that all statements in connection with this application are true and correct.

Date: **7/22/20**  
 Signature: **Wayne W. Pinsky**  
 Name & Title of Signatory: **Wayne W. Pinsky, President**

<b>RAIL REPLACEMENT PROJECT - MOUNT WASHINGTON RAILWAY COMPANY</b>			
Rail, Joint Bars, Nuts, Bolts, Washers	\$500,000		
Custom Tie Plates	\$132,000		
Pandrol Weld On Shoulders	\$110,000		
Pandrol Rail Clips	\$33,000		
Lag Bolts	\$66,000		
Rerailing Car	\$250,000		
Labor:	\$250,000		
Removal of Existing Rail			
Construction of Tie Plates			
Installation of New Rail			
Proposed Project Cost	\$1,341,000		
Bureau Oversight Fee	\$13,410		
Total	\$1,354,410		

## **EXHIBIT C**

### **DESCRIPTION OF APPLICANT'S BUSINESS AND HOW THE PROPOSED PROJECT WILL CONTRIBUTE TO ITS BUSINESS**

The Mount Washington Cog Railway was built in 1869. It is the first mountain climbing train in the world. It has operated every summer (except during WWI and WWII) from approximately May 1 to November 1. We have even operated all winter on a few occasions. Its primary purpose is to take tourists to and from the State Park on the summit of Mt. Washington. Mount Washington is the highest peak in the Northeast and a prime tourist destination. The summit of Mount Washington is owned by the State of New Hampshire and the Cog Railway and is part of the state park system. In 2019, the Railway completed its 8<sup>th</sup> record season in a row. Ridership on the Railway increased from a low of 60,000 riders in 2009 to 130,000 riders in 2019.

The Mount Washington Cog Railway designs and manufactures all of its rolling stock. Beginning in 2008, the railway began putting into service new diesel locomotives which it designed and built at its workshops at the base of Mt. Washington. As of October 2019, the railway completed the building of its 7<sup>th</sup> diesel locomotive and still maintains two operating steam locomotives. This is the largest fleet operated on the line since it was built.

According to a survey conducted some years ago by the University of New Hampshire, the Cog Railway was the 2<sup>nd</sup> best known attraction in the State of New Hampshire. The best known attraction was the Old Man of the Mountain, which is no longer in existence.

The proposed rerailling project will provide significant benefits to the operation of the railway. The current rail in use on the railway weighs 25lbs. per yard. It was installed around 1874 replacing the original strap rail used to build the railway. The 25lb rail is supported by wooden side pieces which are prone to failure if they are not regularly replaced and maintained. In addition, the 25lb. rail originally did not use conventional engineered joint bars. Flat steel bars were used to join the rails together. This resulted in prolific failure of the wooden side pieces at each rail joint. Fifteen years ago, a newly designed joint bar was employed which reduced the failure of these side pieces by over 90%. Nonetheless the 25lb. rail is considered a light rail and is in need of replacement.

Pursuant to this project we plan to replace the 25lb. rail and the wooden side pieces with 100lb. rail which is known as heavy rail. The new rail will be 2600 times stiffer than the existing rail. It will not be supported by a wooden side piece. It will be mounted to custom made tie plates using weld-on Pandrol shoulders and rail clips and fastened directly to cross ties using 10 ½" lag bolts. The enhanced stiffness and rigidity of this rail and fastening system will exponentially increase the strength and resiliency of the existing track system. This will be particularly true due to the comparatively small wheel loads (10,000lbs vs. 60,000lbs+) of the cog railway vs. main line rolling stock and the slow speeds at which the cog railway operates (4.76 mph). To

complete this project the railway has built a custom rerailing car which employs an internal knuckle boom crane, lights and hydraulic powered tools. This has been inspected by John Robinson and has been the subject of several articles in railroading magazines for its unique design and capability.

The benefits of this project are numerous. It will result in a smoother ride, lower future track maintenance and a significant reduction in damage to rolling stock thus reducing maintenance costs substantially. It will also increase customer confidence in the line and should result in further increases in passenger demand. The rerailing car will be in existence for decades to come and will facilitate an increase in the number of days/nights that track maintenance can take place.

In the 38 years I have been involved at the railway, this project in my opinion represents the highest cost to benefit of any project we have yet to undertake.

**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 \$1,228,160.00 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 April 21, 2021. 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 March 15, 2041.

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 April 21, 2021, 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.

4/21/21  
Dated

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

By: [Signature]  
Duly Authorized

2/2/21  
Dated  
State of New Hampshire  
County of Coos

MOUNT WASHINGTON RAILWAY  
By: [Signature]  
Duly Authorized

The forgoing instrument was acknowledged before me this 23 day of Feb, 2021, by Wayne W. Presby, President of the Mount Washington Railway Company, a New Hampshire Legislative Corporation, on behalf of the corporation.

[Signature]  
(signature)

(title)





STATE OF NEW HAMPSHIRE  
INTER-DEPARTMENT COMMUNICATION

A handwritten signature in black ink, appearing to read "Louis A. Barker".

**From:** Louis A. Barker  
Railroad Planner

**Date:** April 9, 2021  
**At:** Bureau of Rail and Transit

**Thru:** Lynne York, Financial Analyst  
Bureau of Finance and Contracts

Shelley Winters, Administrator  
Bureau of Rail & Transit

Patrick Herlihy, Director  
Division of Aeronautics, Rail & Transit

**Subject:** Railroad Revolving Loan Fund

**To:** Rachel Miller, Chief Deputy Treasurer  
NH State Treasury

This memo serves as the Bureau of Rail & Transit's status report for the Railroad Revolving Loan Fund as of December 31, 2020. In calendar year 2020 the State received \$236,776.30 in loan payments, which included \$140,436.77 principal repayment and \$96,339.53 interest payment.

The following tables have also been provided to supplement this memo:

Table 1 An excerpt from our financial tracking worksheet for "2020 Repayments Received for the Railroad Revolving Loan Fund"

Table 2 Railroad Revolving Loan Appropriation Ledger documenting the appropriations of 1994, 1997, 2002, 2013, and 2015, less actual amounts borrowed under the program.

Note: This shows that a balance of \$3,455.22 was in the fund at the time the last loan agreement was completed in 2017.

Table 3 Outstanding loan balances as of December 31, 2020

Table 4 Calendar Year 2020 Principal Payments received as of December 31, 2020

Table 5 Calendar Year 2020 Interest Payments received as of December 31, 2020

The Bureau has received applications from the Mt. Washington Railway Corporation and Profile Mountain (Conway Scenic Railroad) in response to the availability of funds in this program.

It appears that based on the statutory appropriations (in accordance with Chapter 338:3 Laws of 1994 and Chapter 310:3 Laws of 1997 in the amount of \$4,000,000 less current outstanding Principal Balance would allow for a loan award in the range of \$1,512,981.51.

Statutory Authority for appropriation of funds	\$ 4,000,000.00
Principal balances from amortization tables (Table 3)	<u>2,487,018.49</u>
<b>Estimated available funds</b>	<b>\$ 1,512,981.51</b>

(Note: The Bureau offered loan amounts totaling \$1,375,<sup>89 000</sup>~~248~~)

In preparation of loan agreements based on a re-appropriation the Bureau requests concurrence from your office that current fund amounts can be made available for the proposed loans under the terms of this program.

Thank you for your time and please contact me at 271-2425 if you need any additional information.

cc: Marie Mullen (NHDOT Director of Finance)

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**Applicant:** Mt. Washington Railway Corp. ("Cog")  
**Loan Request:** \$1,354,410 (\$1,341,000+ \$13,410 1% Bureau oversight fee)  
**Average Score:** 6.67  
**Proposed Project:** Rail Replacement Project to include (1) replacement of 25lb rail and wooden (support) side pieces with 100lb (heavy) rail mounted to custom-made tie plates using weld-on Pandrol shoulders and rail clips that are fastened directly to cross ties using 10.5" lag bolts and (2) construction/building of a custom re-railing car with internal knuckle boom crane, lights and hydraulic powered tools to allow for track maintenance to occur at night and during all types of weather.  
**Proposed Loan Award:** \$1,228,160

**General Notes & Comments:**

- Suggested loan amount removes 50% of the cost of a re-railing car that was included in the proposed budget. The building of re-railing car is not exclusive to this rail improvement project and will be used for ongoing maintenance so a proration of the re-railing car is suggested. The total cost of the re-railing car is \$250,000 and the proposed loan award would thus only include \$125,000 toward that asset.
- The proposed loan award would fund 91% of the applicant's loan request

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**Applicant:** Profile Mountain Holdings Corp dba Conway Scenic  
**Loan Request:** \$484,800 (\$480,000 + \$4,800 1% Bureau oversight fee)  
**Average Score:** 4.17  
**Proposed Project:** Primary objective is refinancing of Dome Car Rhonda Lee (\$300,000 + 1% bureau oversight fee) and working capital (\$180,000 + 1 % bureau oversight fee) toward materials for track improvements if revenues were lower than projected due to COVID.  
**Proposed Loan Award:** \$160,840

**General Notes & Comments:**

- The original loan application included refinancing of Dome Car Rhonda Lee and working capital (for some possible track work) if revenues were lower than projected due to COVID, but the Railroad Benefit-Cost Analysis excluded the working capital and yielded a recommendation of loan approval that was only for the refinancing of the Dome Car Rhonda Lee.
- As this was the lower ranked application, the proposed loan award is the balance of funds not awarded to higher scored application and will allow for partial refinancing of the Rhonda Lee Dome Car.
- The proposed loan award would fund 33% of the applicant's original loan request and 53% of the loan request for the Dome Car Rhonda Lee only.

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**With your concurrence, I would propose to:**

- (1) Send a letter of award to Mount Washington Railway Company, for the amount and reduced scope (removal of 50% of re-railing car) noted above, and begin preparing documentation to process the loan.
- (2) Send a letter of partial award offer to Conway Scenic, for the amount and reduced scope (partial award of refinancing of Dome Car Rhonda Lee only) noted above, and if they accept, begin preparing documentation to process the loan.

I approve this request                       I would like to review/discuss before approving

*John F. Shestak*

Encl. Railroad Revolving Fund Benefit – Cost Analysis documentation

cc: Chris Waszczuk, Deputy Commissioner  
Marie Mullen, Director of Finance  
Chuck Corliss, Rail & Transit

**STATE OF NEW HAMPSHIRE**  
**Inter-Departmental Communication**

Date: February 25, 2021

**To:** Diane Savoie  
Bureau of Accounts

**VIA:** Stephen A. McLocklin  
Business Supervisor  
Department of Administrative Services  
Budget Office

**From:** Shelley Winters  
Administrator  
Department of Transportation  
Bureau of Rail & Transit

**Subject:** Railroad Revolving Loan Fund - Appropriation

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The Department of Transportation, Bureau of Rail & Transit is requesting a warrant in the amount of \$1,375,248.00 pursuant to RSA 228:66-a to the RR Capital Rehabilitation Revolving Loan Fund account:

94338 -- RR Capital Rehab Rev			
04-096-096-9600-99500000			
Fiscal Year 2021			
Class	Current Budget	Requested Change	Adjusted Budget
Expense			
415-506591	148,944.00	1,375,248.00	1,524,192.00
Total	148,944.00	1,375,248.00	1,524,192.00

The above referenced statute limits the amount of principal outstanding on State issued debt to \$4,000,000.00. Attached is the Bureau's Railroad Revolving Fund Status Report for Calendar Year 2020 to Treasury including Table 1 that represents the amount of principal repaid on previously issued debt shown on Table 2, and is the basis for the amount of the appropriation requested herein.

Also, attached is the May 7, 2020 letter from the Chief Deputy State Treasurer Rachel Miller acknowledging that sufficient funds are available for re-appropriation.

Thank you for your assistance with this request, and if you have any questions feel free to contact Louis Barker at 271-2425.

Attachments

CC: Rachel Miller, Chief Deputy State Treasurer  
Marie Mullen