

District 8
Certcode 0615-0

**CERTIFICATE OF HIGHWAY MILEAGE
YEAR ENDING FEBRUARY 10, 2019**

Fill out form, make and file copy with the Town Clerk, and mail ORIGINAL, before February 20, 2019 to:
Vermont Agency of Transportation, Division of Policy, Planning and Intermodal Development, Mapping Section
One National Life Drive, Montpelier, VT 05633.

We, the members of the legislative body of SWANTON in FRANKLIN County
on an oath state that the mileage of highways, according to Vermont Statutes Annotated, Title 19, Section 305,
added 1985, is as follows:

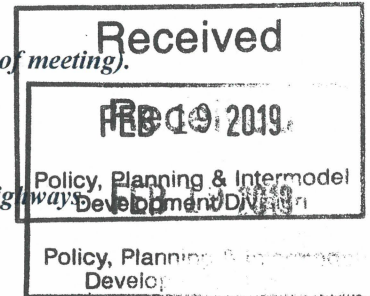
PART I - CHANGES TOTALS - Please fill in and calculate totals.

Town Highways	Previous Mileage	Added Mileage	Subtracted Mileage	Total	Scenic Highways
Class 1	0.067				0.000
Class 2	18.520				0.000
Class 3	39.27	0.295		39.565	0.000
State Highway	27.786				0.000
Total	85.643				0.000
* Class 1 Lane	0.000				
* Class 4	2.26				0.000
* Legal Trail	0.91				

* Mileage for Class 1 Lane, Class 4, and Legal Trail classifications are NOT included in total.

PART II - INFORMATION AND DESCRIPTION OF CHANGES SHOWN ABOVE.

- NEW HIGHWAYS:** Please attach Selectmen's "Certificate of Completion and Opening".
PLEASE SEE THE ATTACHED DOCUMENTS THAT CONFIRM THE TOWN'S LEASE ARRANGEMENT WITH THE STATE FOR THE LAND OCCUPIED BY ROBIN HOOD DRIVE.
- DISCONTINUED:** Please attach SIGNED copy of proceedings (minutes of meeting).
- RECLASSIFIED/REMEASURED:** Please attach SIGNED copy of proceedings (minutes of meeting).
- SCENIC HIGHWAYS:** Please attach a copy of order designating/discontinuing Scenic Highway.



IF THERE ARE NO CHANGES IN MILEAGE: Check box and sign below. []

PART III - SIGNATURES - PLEASE SIGN.

Selectmen/ Aldermen/ Trustees Signatures:

[Signatures: Jay Antonio, Daniel E. Bellas, Paul J. Fournier]

T/C/V Clerk Signature:

Date Filed:

01-22-2019

Please sign ORIGINAL and return it for Transportation signature.

AGENCY OF TRANSPORTATION APPROVAL: Signed copy will be returned to T/C/V Clerk.

APPROVED: _____
Representative, Agency of Transportation

DATE: _____

Vermont Statutes Annotated

19 V.S.A. § 305. Measurement and inspection

§ 305. Measurement and inspection

(a) After reasonable notice to the selectboard, a representative of the agency may measure and inspect the class 1, 2, and 3 town highways in each town to verify the accuracy of the records on file with the agency. Upon request, the selectboard or their designee shall be permitted to accompany the representative of the agency during the measurement and inspection. The agency shall notify the town when any highway, or portion of a highway, does not meet the standards for its assigned class. If the town fails, within one year, to restore the highway or portion of the highway to the accepted standard, or to reclassify, or to discontinue, or develop an acceptable schedule for restoring to the accepted standards, the agency for purposes of apportionment under section 306 of this title shall deduct the affected mileage from that assigned to the town for the particular class of the road in question.

(b) Annually, on or before February 10, the selectboard shall file with the town clerk a sworn statement of the description and measurements of all class 1, 2, 3, and 4 town highways and trails then in existence, including any special designation such as a throughway or scenic highway. When class 1, 2, 3, or 4 town highways, trails, or unidentified corridors are accepted, discontinued, or reclassified, a copy of the proceedings shall be filed in the town clerk's office and a copy shall be forwarded to the agency.

(c) All class 1, 2, 3, and 4 town highways and trails shall appear on the town highway maps by July 1, 2015.

(d) At least 45 days prior to first including a town highway or trail that is not clearly observable by physical evidence of its use as a highway or trail and that is legally established prior to February 10, 2006 in the sworn statement required under subsection (b) of this section, the legislative body of the municipality shall provide written notice and an opportunity to be heard at a duly warned meeting of the legislative body to persons owning lands through which a highway or trail passes or abuts.

(e) The agency shall not accept any change in mileage until the records required to be filed in the town clerk's office by this section are received by the agency. A request by a municipality to the agency for a change in mileage shall include a description of the affected highway or trail, a copy of any surveys of the affected highway or trail, minutes of meetings at which the legislative body took action with respect to the changes, and a current town highway map with the requested deletions and additions sketched on it. A survey shall not be required for class 4 town highways that are legally established prior to February 10, 2006. All records filed with the agency are subject to verification in accordance with subsection (a) of this section.

(f) The selectboard of any town who are aggrieved by a finding of the agency concerning the measurement, description, or classification of a town highway may appeal to the transportation board by filing a notice of appeal with the executive secretary of the transportation board.

(g) The agency shall provide each town with a map of all of the highways in that town together with the mileage of each class 1, 2, 3, and 4 highway, as well as each trail, and such other information as the agency deems appropriate.

Excerpt of 19 V.S.A. § 305 - *Measurement and inspection* from Vermont Statutes Online located at – <https://legislature.vermont.gov/statutes/section/19/003/00305>

December 2018



State of Vermont
Division of Policy, Planning and Intermodal Development
Mapping Section
1 National Life Drive
Montpelier, VT 05633-5001
<http://vtrans.vermont.gov/planning/maps>

Agency of Transportation

Telephone: 802-828-3666
Fax: 802-828-2334
Email: kerry.alley@vermont.gov

May 28, 2019

Daniel Billado
Chair, Selectboard
Swanton, c/o Town Clerk
PO Box 711
Swanton, VT 05488

Dear Mr. Billado,

Please find the enclosed copy of the 2019 Certificate of Highway Mileage for the Town of Swanton. We have placed the original certificate in the VTrans Mapping records, but we were unable to process the addition of mileage Robin Hood Drive because it is on leased land and because there is no mechanism for including such mileage in the Class 3 Town Highway totals.

While corresponding with David Jescavage regarding Robin Hood Dr in March 2019, we also discussed the possibility of meeting to systematically review all of the discrepancies on the Swanton Town Highway Map. I think this is a great idea. Two issues of which I am already aware are TH-33 (Comstock Rd) and TH-67 (Cargill entrance).

I look forward to working with the Town of Swanton to make updates to the mileage and map, and please feel free to contact me with any questions or comments regarding the above items, or with mapping in general.

Sincerely,

A handwritten signature in cursive script that reads "Kerry Alley".

Kerry Alley
Mapping & GIS Specialist

Enclosures

cc: David Blackmore, District Transportation Administrator
~~Matthew Langham, VTrans Planning Coordinator~~
Amy Bell

Alley, Kerry

From: Alley, Kerry
Sent: Friday, March 15, 2019 5:45 PM
To: 'SW TOWN ADMIN'
Subject: RE: SWANTON TOWN CERTIFICATE OF HIGHWAY MILEAGE 2019

Hi David,

After a lot of tossing ideas back and forth, VTrans came to the same conclusion as did your Town lawyer: a "Town Highway" can't be laid out on leased property. I get the impression that it's more about the time limit of a lease, as opposed to indefinite fee ownership, ROW easement, or maintenance agreement.

So, the bottom line is that we can't add it to our records as a "Town Highway", and therefore it doesn't qualify for Town Highway funding. If you're interested in showing it on the Town Highway Map, I can pursue that possibility further, but it would still be clearly indicated as not a Town Highway, and would not have a TH#. We are adding it to our data as a private road, which we don't generally show on the Town Highway Maps.

This was a very interesting question, and we kept asking until we were convinced we were getting the right answer to the right question.

Regarding other Map issues, I think your idea of getting everyone together is a good idea!

Have a good weekend,

Kerry

From: SW TOWN ADMIN <TOWNADMIN@swantonvermont.org>
Sent: Thursday, March 14, 2019 9:15 PM
To: Alley, Kerry <Kerry.Alley@vermont.gov>
Subject: FW: SWANTON TOWN CERTIFICATE OF HIGHWAY MILEAGE 2019

Hi Kerry, Thank you for your response. Please see my answers in red to the questions you posed below.

1. Did the Selectboard formally/officially accept the new portions of Robin Hood Dr as a Town Highway? **No, our attorney has advised that the Town cannot layout the new portions of Robin Hood Drive because the land to the old rail line is owned by the state. The Town has an agreement with the state to lease this rail line land for use as a Town road. The details are in the documents that I sent you. Because of this lease agreement, the Town cannot go through the normal procedure for certifying mileage for the new portions of Robin Hood Drive. Therefore, we are submitting the VTrans lease agreement to the state as a substitute for a Certificate of Completion & Opening.**

2. Also, Robin Hood Dr (see TH-69 in the Town Highway Map excerpt below) has been mapped turning 90 deg right at the end, into the Truck and Trailer repair business (see other image below). Is this correct? If so, will Robin Hood Dr be considered a forked road? **The 90 degree**

turn is correct. This year, the Selectboard will be taking measures to discontinue that short turn. From the point where that turn starts going southerly to Bushey Street, Robin Hood Drive is part of the leased land from the state (see red & blue sections of Robin Hood drive on map below). This section is not credited to the Town as being maintained by the Town. Could the length of this section be added to the section from Bushey Street to U.S. Route 7 for credit?

3. Are there construction plans or survey maps in addition to the Lease exhibit you provided? ***The Town has no construction plans or survey maps other than what was submitted to you.***

Thank you for your help with this Kerry. Please call or email me with any more questions you may have.

David



David Jescavage
Town Administrator
P.O. Box 711
1 Academy Street
Swanton, VT 05488
802-868-7418

From: Alley, Kerry [<mailto:Kerry.Alley@vermont.gov>]
Sent: Wednesday, March 13, 2019 7:02 PM
To: SW TOWN ADMIN
Subject: RE: SWANTON TOWN CERTIFICATE OF HIGHWAY MILEAGE 2019

Hi David,

I'm still trying to clarify on our end how to handle the Lease aspect of the portion of Robin Hood Drive that is within the State ROW. This is a different scenario than when a Town Highway enters a State ROW to intersect a State Highway (which is generally covered by Maintenance Agreements), so I "passed the buck" to a VTrans lawyer on Monday, and haven't heard back from him yet. This question even stumped my Supervisor!

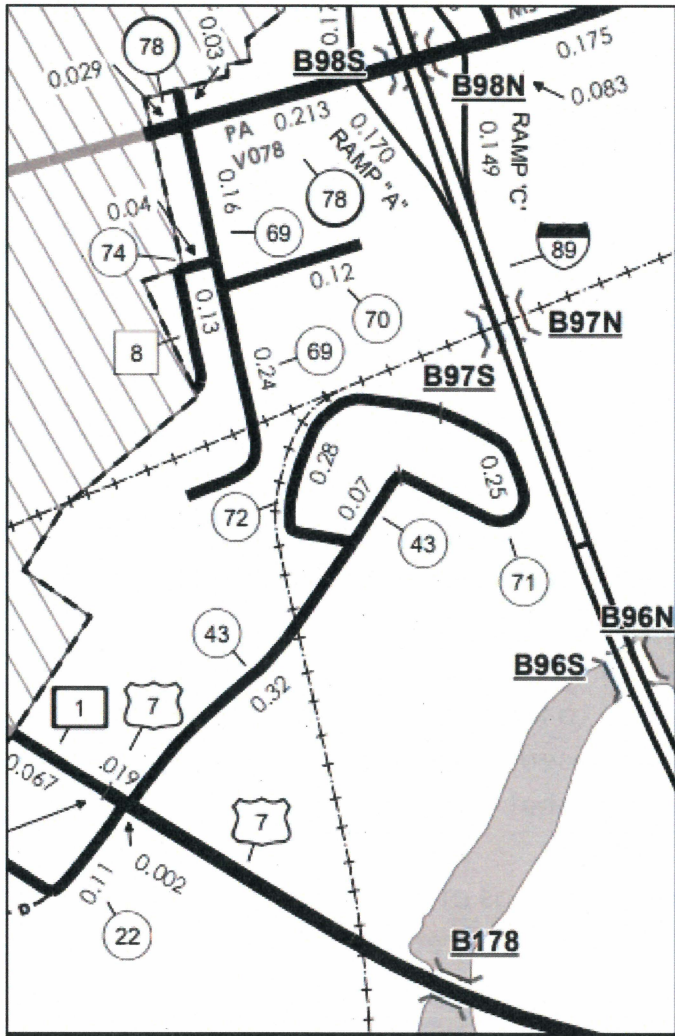
I have not scrutinized the documentation you provided to know for sure whether there is anything else I need, but I think it's likely there will be based on my initial review. Maybe you can clarify a couple things for me before I look for things that might not be there:

Did the Selectboard formally/officially accept the new portions of Robin Hood Dr as a Town Highway? I've been assuming this wasn't done, as I haven't noticed anything suggesting that, and the comments of Brian P. Monaghan, Esq. seem to imply that you shouldn't.

Also, Robin Hood Dr (see TH-69 in the Town Highway Map excerpt below) has been mapped turning 90 deg right at the end, into the Truck and Trailer repair business (see other image below). Is this correct? If so, will Robin Hood Dr be considered a forked road? Or will one "fork" have a different name? Are there construction plans or survey maps in addition to the Lease exhibit you provided? These are the biggest questions that occurred to me as I previewed the documentation last week, but I had been waiting to hear about handling the Lease before exploring them further.

That's where I stand at the moment, I'm sorry I don't have more specific information for you right now!

Kerry





From: SW TOWN ADMIN <TOWNADMIN@swantonvermont.org>
Sent: Wednesday, March 13, 2019 6:08 PM
To: Alley, Kerry <Kerry.Alley@vermont.gov>
Subject: FW: SWANTON TOWN CERTIFICATE OF HIGHWAY MILEAGE 2019

Hi Kerry, Did you receive the hardy copy version of this information that I sent by certified mail on February 14th? Did I include enough information to certify the newly added mileage on Robin Hood Drive?

David Jescavage
Town Administrator
 P.O. Box 711
 1 Academy Street
 Swanton, VT 05488
 802-868-7418
townadmin@swantonvermont.org
www.townofswantonvermont.weebly.com

From: SW TOWN ADMIN
Sent: Thursday, February 14, 2019 4:46 PM
To: 'Alley, Kerry'
Subject: SWANTON TOWN CERTIFICATE OF HIGHWAY MILEAGE 2019

Hi Kerry,

I will be sending originals of the Town's 2019 Certificate of Highway Mileage by certified U.S. Mail with support documents today. Also, I am attaching copies of everything that I am mailing for you to review in advance. As I mentioned in our recent phone conversation, we have added a newly constructed section of Robin Hood drive between Bushey Street and U.S. Route 7. The Town leases this section from its owner - the State of Vermont. Therefore, the Town cannot lay out a road on it but would like to have it added to the state certified mileage so that it can get credit for maintaining it as a Class 3 road. As we discussed on the phone, I am including the relevant leasehold agreement documents. Please review all of the documents for the lease arrangement and let me know if you need any other information.

On another note, as soon as the snow & cold temps are gone, I will contact you to set up a meeting with Town officials to discuss the discrepancies you noted on the Vermont General Highway Map for the Town of Swanton plus some additional ones I've discovered. The Selectboard is interested in making this map as accurate as possible.

Thank you for all the professional assistance you've given.

David Jescavage

Town Administrator

P.O. Box 711

1 Academy Street

Swanton, VT 05488

802-868-7418

townadmin@swantonvermont.org

www.townofswantonvermont.weebly.com

Alley, Kerry

From: Dunleavy, John
Sent: Thursday, March 14, 2019 4:32 PM
To: Croft, Johnathan
Cc: Smith, Florence; Fitzgerald, Mark; Moulton, Sara; Alley, Kerry
Subject: RE: WACR - Montpelier - Stonecutters Way; LVRT - Swanton - Robin Hood Drive

Well, if push came to shove I would have to agree with Swanton's lawyer that it would be anomalous to formally lay out a town highway on leased land.

The old common-law maxim was, "Once a highway, always a highway," meaning that a highway once established remains a highway until formally discontinued in substantial compliance with statutory procedures. Obviously, that concept is fundamentally incompatible with leased land, where the tenant's leasehold is limited in time (even if it's probable that the lease will be renewed indefinitely).

From: Croft, Johnathan <Johnathan.Croft@vermont.gov>
Sent: Thursday, March 14, 2019 4:26 PM
To: Dunleavy, John <John.Dunleavy@vermont.gov>
Cc: Smith, Florence <Florence.Smith@vermont.gov>; Fitzgerald, Mark <Mark.Fitzgerald@vermont.gov>; Moulton, Sara <Sara.Moulton@vermont.gov>; Alley, Kerry <Kerry.Alley@vermont.gov>
Subject: RE: WACR - Montpelier - Stonecutters Way; LVRT - Swanton - Robin Hood Drive

Good afternoon John,

We don't have a category that we can put this type of public right of way on the Mileage Certificates and Town Highway Maps, we have town highways, state highways, state and federal forest roads and legal trails. There are access roads that are public rights of way, such as within parks, town forests, access to the sewage treatment plants, etc. that are public, but we are not specifically mapping them. This road might fit into that category and not be a highway.

Aside from the Town's attorney's position, could a road be laid out as a town highway on leased state land, or is there no process that would allow this?

Johnathan

Johnathan Croft | Mapping Section Chief
Vermont Agency of Transportation
1 National Life Dr | Montpelier, VT 05633
802-828-2600 | johnathan.croft@vermont.gov



From: Dunleavy, John <John.Dunleavy@vermont.gov>
Sent: Thursday, March 14, 2019 4:14 PM
To: Alley, Kerry <Kerry.Alley@vermont.gov>; Croft, Johnathan <Johnathan.Croft@vermont.gov>
Cc: Smith, Florence <Florence.Smith@vermont.gov>; Fitzgerald, Mark <Mark.Fitzgerald@vermont.gov>; Moulton, Sara

<Sara.Moulton@vermont.gov>

Subject: RE: WACR - Montpelier - Stonecutters Way; LVRT - Swanton - Robin Hood Drive

Interesting – the Town of Swanton’s own attorney took the position that the Town can’t formally lay out a town highway on leased land.

Do Johnathan’s folks have any way of mapping a public way that’s not a formal highway?

From: Alley, Kerry <Kerry.Alley@vermont.gov>

Sent: Thursday, March 14, 2019 11:24 AM

To: Dunleavy, John <John.Dunleavy@vermont.gov>; Croft, Johnathan <Johnathan.Croft@vermont.gov>

Cc: Smith, Florence <Florence.Smith@vermont.gov>; Fitzgerald, Mark <Mark.Fitzgerald@vermont.gov>; Moulton, Sara <Sara.Moulton@vermont.gov>

Subject: RE: WACR - Montpelier - Stonecutters Way; LVRT - Swanton - Robin Hood Drive

Some additional information:

I’ve attached a scanned copy of the Swanton lease agreement sent to me by the town, as well as the letters accompanying the signed lease agreement, a letter of intent to lease, and an email expressing leaseholder opinion regarding the laying out a town highway.

Regarding Stonecutters Way in Montpelier, I have their 1999 Certificate with a Certificate of Completion and Opening (also attached), but it was never added to our mileage records. The response from Tom McArdle (Montpelier Public Works) when I asked him about it earlier this week was:

Although it has all the typical attributes of a town highway, the highway is situated within leased property. The lease is from the state of Vermont as the title owner of this railroad property. As railroad lands, it cannot be sold or otherwise conveyed as real property but long term leases are permitted. As I understand, a lease is not recognized as acceptable evidence of town ownership.

We’ve known for many years it wouldn’t be accepted & measured as a town highway but I don’t recall requesting consideration. It would be beneficial to have the street at least plotted on the official town highway map even if it included a foot note and was shown with a different line type. Also, Sara & I won’t be around forever so a permanent record would be helpful when the institutional memory is no longer available to explain it.

Kerry

Kerry Alley | GIS Professional III
Vermont Agency of Transportation
1 National Life Dr | Montpelier, VT 05633
802-828-3666 | Kerry.Alley@vermont.gov
<http://vtrans.vermont.gov/planning/maps>

From: Dunleavy, John <John.Dunleavy@vermont.gov>

Sent: Thursday, March 14, 2019 10:52 AM

To: Croft, Johnathan <Johnathan.Croft@vermont.gov>

Cc: Smith, Florence <Florence.Smith@vermont.gov>; Fitzgerald, Mark <Mark.Fitzgerald@vermont.gov>; Moulton, Sara

<Sara.Moulton@vermont.gov>; Alley, Kerry <Kerry.Alley@vermont.gov>

Subject: RE: WACR - Montpelier - Stonecutters Way; LVRT - Swanton - Robin Hood Drive

Mark Fitzgerald:

Did you folks ever get a chance to check these leases?

From: Croft, Johnathan <Johnathan.Croft@vermont.gov>

Sent: Thursday, March 14, 2019 10:47 AM

To: Dunleavy, John <John.Dunleavy@vermont.gov>

Cc: Smith, Florence <Florence.Smith@vermont.gov>; Fitzgerald, Mark <Mark.Fitzgerald@vermont.gov>; Moulton, Sara <Sara.Moulton@vermont.gov>; Alley, Kerry <Kerry.Alley@vermont.gov>

Subject: RE: WACR - Montpelier - Stonecutters Way; LVRT - Swanton - Robin Hood Drive

Good morning John,

Can a municipality legally lay out a highway on the leased parcels and we approve them as town highways on the Mileage Certificates? Or can they be added as town highways without the laying out process, similar to "dedication and acceptance"?

Johnathan

Johnathan Croft | Mapping Section Chief
Vermont Agency of Transportation
1 National Life Dr | Montpelier, VT 05633
802-828-2600 | johnathan.croft@vermont.gov



From: Dunleavy, John <John.Dunleavy@vermont.gov>

Sent: Monday, March 11, 2019 8:26 PM

To: Fitzgerald, Mark <Mark.Fitzgerald@vermont.gov>

Cc: Croft, Johnathan <Johnathan.Croft@vermont.gov>; Smith, Florence <Florence.Smith@vermont.gov>

Subject: WACR - Montpelier - Stonecutters Way; LVRT - Swanton - Robin Hood Drive

Mark:

My understanding is that VTrans expected the municipalities to lay out highways on both these leased parcels. Could you check the lease files and clarify?

Thanks.

Sent from my iPad

Begin forwarded message:

From: "Croft, Johnathan" <Johnathan.Croft@vermont.gov>

Date: March 11, 2019 at 2:47:47 PM EDT

To: "Dunleavy, John" <John.Dunleavy@vermont.gov>

Cc: "Alley, Kerry" <Kerry.Alley@vermont.gov>, "Moulton, Sara" <Sara.Moulton@vermont.gov>

Subject: Question on laying out a highway on leased VTrans rail land

Good afternoon John,

We have received a highway addition on the Mileage Certificates for Swanton for a road with the underlying land being leased from VTrans Rail. This is Robin Hood Drive and the land is leased through an agreement that Kevin Clairmont worked on. Can Swanton lay this out as a highway and we approve the addition on the Mileage Certificate?

This would also have some bearing on Stonecutter's Way in Montpelier, where the City has a road on land owned by VTrans and can this road be considered a highway if laid out by the legislative body?

Johnathan

Johnathan Croft | Mapping Section Chief
Vermont Agency of Transportation
1 National Life Dr | Montpelier, VT 05633
802-828-2600 | johnathan.croft@vermont.gov



Town of Swanton
2019
Certificate of Highway Mileage
DOCUMENTATION

To:
Kerry Alley
AOT Mapping & GIS Specialist
Vermont Agency of Transportation (VTrans)

2010 LETTER OF INTENT TO LEASE
FONDA BRANCH
FOR ROBIN HOOD DRIVE

SW TOWN ADMIN

To: 'Alley, Kerry'
Cc: HIGHWAY DEPARTMENT; JOEL CLARK
Subject: SWANTON TOWN CERTIFICATE OF HIGHWAY MILEAGE 2019
Attachments: 2019 CERT OF MILES SWANTON TOWN.pdf; SWANTON ROBIN HOOD DRIVE MAP.pdf;
SWANTON 2019 CERT MILEAGE DOCS PKT.pdf

Hi Kerry,

I will be sending originals of the Town's 2019 Certificate of Highway Mileage by certified U.S. Mail with support documents today. Also, I am attaching copies of everything that I am mailing for you to review in advance. As I mentioned in our recent phone conversation, we have added a newly constructed section of Robin Hood drive between Bushey Street and U.S. Route 7. The Town leases this section from its owner - the State of Vermont. Therefore, the Town cannot lay out a road on it but would like to have it added to the state certified mileage so that it can get credit for maintaining it as a Class 3 road. As we discussed on the phone, I am including the relevant leasehold agreement documents. Please review all of the documents for the lease arrangement and let me know if you need any other information.

On another note, as soon as the snow & cold temps are gone, I will contact you to set up a meeting with Town officials to discuss the discrepancies you noted on the Vermont General Highway Map for the Town of Swanton plus some additional ones I've discovered. The Selectboard is interested in making this map as accurate as possible.

Thank you for all the professional assistance you've given.

David Jescavage
Town Administrator

P.O. Box 711
1 Academy Street
Swanton, VT 05488
802-868-7418

townadmin@swantonvermont.org
www.townofswantonvermont.weebly.com

State of Vermont
Operations Division
1 National Life Drive
Montpelier, VT 05633
www.aot.state.vt.us

Agency of Transportation

[phone] 802-828-2628
[fax] 802-828-3983
[ttd] 800-253-0191

August 11, 2010

Richard Thompson
Town Administrator
Town of Swanton
1 Academy Street
Swanton, VT 05488

RE: Lease of Railroad Right of Way for Municipal Road

Dear Dick;

Thank you for taking the time to discuss your plans for the new roadway connecting Robin Hood Drive to Route 7 using the Lamoille Valley Railroad right of way. As you know this right of way is 90' wide and you have advised you would like to lease the entire right of way from VTrans to use for this project.

At this time this corridor is not actively used for rail purposes. It is however, VTrans responsibility to maintain rail rights of way so they could return to rail use if the need arises. As discussed, this lease of the property would require the right of way to be returned to a condition suitable for the installation of rail infrastructure within a six month time span should the need arise.

Given our discussions, it is the intent of VTrans to lease to the Town of Swanton the LVRR right of way from Robin Hood Drive to Route 7 for construction of a roadway. This lease will include the following conditions in addition to the return of the property for rail use above:

1. All construction shall be the responsibility of the Town of Swanton.
2. The Town of Swanton shall carry insurance for the property listing VTrans as an additional insured. The Town will also be required to indemnify VTrans.
3. Construction of the roadway from Robin Hood Drive to Route 7 can be done in phases, but all phases must be completed no later than August 11, 2017.
4. Upon completion of each phase of the roadway as built plans will be filed with the Property Management section of VTrans.

Please consider this letter as a notice to proceed while we get the lease implemented. Once you have insurance for your activities you are authorized to begin construction in anticipation of having this road operational for the school year to alleviate unsafe travel patterns. We will issue this lease as a no fee lease for 50 years with the ability to renew. There will be the ability for VTrans to terminate the lease with 6 months notice if the property is needed for rail use.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Trini Brassard".

Trini Brassard
Assistant Director of Operations

2010 LEASEHOLDER OPINION

From: bmonaghan@wmlawvt.com
Date: 10/20/10 12:17:35
To: 'Swanton Town Administrator'
Subject: RE: ROBIN HOOD DRIVE

Dick:

I am of the belief that the Town does not have to provide notice to anyone to do any work within the State's railroad ROW. You currently have a written letter showing the State's intent to lease to the Town that section of right of way, and nothing more than that.

Technically speaking, there is no town highway at issue here, in that you will be using the State's right of way to build a road. You will maintain the road and treat it as a public highway. Nevertheless, none of the town highway statutes are triggered here because the Town is not laying out or altering a highway. The Town is conducting maintenance and installation activities on a State-owned property. There is no legal requirement to provide any notice to anyone in this circumstance.

* Additionally, you had mentioned that the Town would "take over" this road as a Town road once it is constructed. I do not believe you will have the legal authority to do that. You will only be a leaseholder, so you will not have the power to take over the road. Nevertheless, you should treat it as a Town highway by plowing it and maintaining it, but it will not legally be a Town road.

Please let me know if you have any questions.

Brian

Brian P. Monaghan, Esq.
Walsh & Monaghan, LLP
156 Battery Street
Burlington, Vermont 05401
Tel: 802.660.4735
Fax: 802.419.3662
bmonaghan@wmlawvt.com
www.wmlawvt.com
www.linkedin.com/in/brianpmonaghan
www.twitter.com/brianpmonaghan

92 Fairfield Street
St. Albans, Vermont 05478-1728
Tel: 802.524.0080
Fax: 802.419.3662

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2013 FONDA BRANCH LEASE
FOR ROBIN HOOD DRIVE



State of Vermont
PPAID Division – Rail Unit
One National Life Drive
Montpelier, VT 05633-5001
kevin.clairmont@state.vt.us

Agency of Transportation

[phone] 802-828-2710
[fax] 802-828-2829
[ttd] 800-253-0191

April 4, 2013

Mr. David J. Jescavage, Town Administrator
Town of Swanton
P.O. Box 711
Swanton, Vermont 05488

Fonda Branch

Re: ~~D & H Rail Trail~~ – Lease Agreement, Exhibit A, and Memorandum of Lease

Dear Mr. Jescavage,

Enclosed for review, signature, notarization, and date please find the Lease Agreement, Exhibit A, and Memorandum of Lease. These documents pertain to the State's pending lease to the Town of Swanton for the following described premises: Being a section of the former Central Vermont Railway St. Armand Subdivision railroad right-of-way known as the Fonda Branch, beginning at a point on the north side of U.S. Route 7, at or near valuation station 7377+60 (Mile Post 139.72), to the north side of the former St. Johnsbury & Lake Champlain Railroad Company, at or near valuation station 7401+56 (Mile Post 140.18), thence a distance of approximately 2,430 feet, along the former centerline of track, to Robin Hood Drive. Further description may be had by referencing the area shown with yellow highlight on the plat attached hereto as "Exhibit A" and made a part hereof. Please return all of the originals back to my attention. You will also need to include the following:

- 1) Check made payable to State of Vermont for \$1.00, which is your annual lease.
- 2) Check made payable to State of Vermont for \$300.00 which is our document preparation fee.

Once the Lease Agreement is fully executed, you will have ten (10) days to submit a Certificate of Insurance naming the State of Vermont as an additional insured. The minimum coverage of this insurance shall be as stipulated in Section 8.2.

You have thirty (30) days from the date on this letter to review, discuss, and approve.

Should you have any questions please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kevin Clairmont".

Kevin Clairmont
Rail Technician



Town of Swanton
TOWN ADMINISTRATOR

David J. Jescavage

P.O. Box 711, 1 Academy Street
Swanton, VT 05488
(802) 868-7418

April 22, 2013

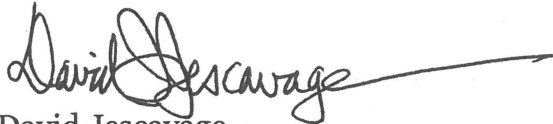
Mr. Kevin Clairmont
Rail Technician
State of Vermont
PPAID Division-Rail Unit
One National Life Drive
Montpelier, VT 05633-5001

Dear Mr. Clairmont:

Enclosed are the signed documents for the Fonda Branch Lease Agreement and a Town check for \$1.00 for the annual lease as well as a check for \$300.00 for the document preparation fee. Once the Town receives the fully executed Lease Agreement, I will send you a Certificate of Insurance naming the State of Vermont as an additional insured.

Please let me know if you need any other information.

On Behalf of the Swanton Selectboard,



David Jescavage
Town Administrator

Enclosures
Certified Mail/Return Receipt

Cc: Selectboard

TOWN OF SWANTON
1 ACADEMY STREET P.O. BOX 711
SWANTON, VT 05488



CHECK NO. 17634

58-2/0116

PAY One & 00/100 Dollars

DATE 04/22/13 AMOUNT *****1.00

TO THE ORDER OF STATE OF VERMONT
VERMONT

Paul L. Fournier
AUTHORIZED SIGNATURE MP

⑈017634⑈ ⑆011600020⑆ ⑈40⑈04774 8⑈

TOWN OF SWANTON

17634

INV DATE	INVOICE/REF. NO.	DESCRIPTION	CTRL NO.	AMOUNT PAID
04/22/13		ANNUAL LEASE	17634	1.00

04/22/13 CHECK DATE 1.00 CHECK AMOUNT

TOWN OF SWANTON
1 ACADEMY STREET P.O. BOX 711
SWANTON, VT 05488



CHECK NO. 17633

58-2/0116

PAY Three hundred & 00/100 Dollars

DATE 04/22/13 AMOUNT *****300.00

TO THE ORDER OF STATE OF VERMONT
VERMONT

Paul L. Fournier
AUTHORIZED SIGNATURE MP

⑈017633⑈ ⑆011600020⑆ ⑈40⑈04774 8⑈

TOWN OF SWANTON

17633

VEND: STATE OF STATE OF VERMONT CTRL NO 17633

Security features included. Details on back.

Security features included. Details on back.

**MEMORANDUM OF LEASE
BETWEEN
STATE OF VERMONT, LANDLORD
AND
TOWN OF SWANTON, TENANT**

LANDLORD	State of Vermont, Agency of Transportation Policy, Planning and Intermodal Development Division One National Life Drive Montpelier, Vermont 05633-5001
TENANTS	Town of Swanton P. O. Box 711 1 Academy Street Swanton, Vermont 05488
DATE OF EXECUTION	_____, 2013
DATE OF COMMENCEMENT	_____, 2013
DATE OF TERMINATION	_____, 2043 (assuming Tenant's exercise of all renewal rights, as specified below)
TERM	Initial term of five (5) years.
RIGHT OF RENEWAL	Tenant has the right to renew lease for five (5) additional terms of five (5) years each not to exceed a total of thirty (30) years, subject to all the terms and conditions of the Lease; to exercise right of renewal, Tenant must give Landlord written notice at least ninety (90) days before the expiration of each existing term.
DESCRIPTION OF PROPERTY	Being a certain tract or parcel of LANDLORD's land, formerly the Central Vermont Railway's St. Armand Subdivision, also known as the Fonda Branch, beginning at a point on the north side of U.S. Route 7 at or near valuation station 7377+60 (Milepost 139.72) for the full width of the LANDLORD's railroad right-of-way and extending northerly to the north side of the former St. Johnsbury & Lake Champlain Railroad Company, at or near valuation station 7401+56 (Milepost 140.18), in the Town of Swanton, County of Franklin and State of Vermont, a distance of approximately 2,430 feet, along the former centerline of track, to Robin Hood Drive. Further description may be had by referencing the area shown with yellow highlight on the plat attached hereto as "Exhibit A" and made a part hereof.
OPTION TO PURCHASE OR RIGHT OF FIRST REFUSAL	Tenant does <i>not</i> have the right to purchase the leased property or to exercise a right of first refusal with respect to the leased property.
RESTRICTIONS ON ASSIGNMENT	Tenant may <i>not</i> assign the lease or sublet the leased premises or any portion thereof without the prior written consent of the Landlord.
LOCATION OF AN ORIGINAL LEASE	An original lease is kept at the Landlord's offices and may be inspected during Landlord's regular business hours.

IN WITNESS WHEREOF, the STATE OF VERMONT has caused this instrument to be subscribed, this ____ day of _____, 20__, by Brian R Searles/Susan M. Minter, its [Deputy] Secretary of Transportation and duly authorized agent.

STATE OF VERMONT
("LANDLORD")

By: _____
Brian R. Searles/Susan M. Minter
Its Secretary of Transportation and
Duly Authorized Agent

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

At Montpelier, this ____ day of _____, 20__, personally appeared Brian R. Searles/Susan M. Minter and acknowledged the foregoing instrument, by him/her as [Deputy] Secretary of Transportation and duly authorized agent of the STATE OF VERMONT subscribed, to be his/her free act and deed and the free act and deed of the STATE OF VERMONT.

Before me,

Notary Public
(My commission expires Feb. 10, 2015)

APPROVED AS TO FORM:

DATED: 4/2/2013



ASSISTANT ATTORNEY GENERAL

IN WITNESS WHEREOF, the TOWN OF SWANTON, has caused this instrument to be subscribed this 16th day of April, 2013, by the hand of Lucien J. Lavoie, its Selectboard Chairman and duly authorized agent.

TOWN OF SWANTON
("TOWN")

By: [Signature]
Its Duly Authorized Agent

STATE OF VERMONT)
FRANKLIN COUNTY, ss.)

At Swanton, this 16th day of April, 2013, personally appeared Lucien J. Lavoie and acknowledged the foregoing instrument, by him/her subscribed as Select board Chairman and duly authorized agent of the TOWN OF SWANTON, to be his/her free act and deed, and the free act and deed of the TOWN OF SWANTON.

Before me,

[Signature]
Notary Public
(My commission expires Feb. 10, 2015)

LEASE
BETWEEN
THE STATE OF VERMONT,
AGENCY OF TRANSPORTATION,
AND
TOWN OF SWANTON

RECEIVED & RECORDED
Apr 30, 2013 02:50P
DOCUMENT TYPE: Lease
DOCUMENT NUMBER: 00005135
CATHY L. FOURNIER, TOWN CLERK
SWANTON, VT

THIS LEASE, made and entered into on this 25 day of April, 2013, by and between the STATE OF VERMONT, a sovereign state, acting through its Agency of Transportation, with its principal office at One National Life Drive, Montpelier, Vermont 05633-5001, (the "LANDLORD") and TOWN OF SWANTON, a municipal corporation with its principal place of business at P.O. Box 711, Swanton, Vermont 05488 (the "TENANT");

WHEREAS, the LANDLORD is the owner of a railroad corridor extending from St. Johnsbury to Swanton, Vermont ("the Line"); and

WHEREAS, the Line is railbanked and is to be used for interim trail use, in accordance with 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); and

WHEREAS, the Line also has been railbanked under 5 V.S.A. § 3408(a); and

WHEREAS, in Sec. 16(f) of Act No. 141 of 2002 (eff. June 21, 2002), the General Assembly authorized the LANDLORD to enter into a long-term lease with the TENANT for use of a portion of the Line in the Town of Swanton; and

WHEREAS, 5 V.S.A. §§ 3406(a) and 3408(b) authorize the LANDLORD to enter into leases and agreements with municipalities for interim use of State-owned railroad properties that have been railbanked; and

WHEREAS, the parties hereto desire to enter into a long-term lease to govern the TENANT's interim use of a portion of the Line as a roadway connecting U.S. Route 7 and Robin Hood Drive (TH #69);

NOW, THEREFORE, the parties agree as follows:

Article I - The Demised Premises

1.1. **Description.** The LANDLORD hereby leases to the TENANT the following described premises (the Premises") in "as is" condition:

Being a section of the former Central Vermont Railway St. Armand Subdivision railroad right-of-way known as the Fonda Branch, beginning at a point on the north side of U.S. Route 7, at or near valuation station 7377+60 (Mile Post 139.72), to the north side of the former St. Johnsbury & Lake Champlain Railroad Company, at or near valuation station 7401+56 (Mile Post 140.18), thence a distance of approximately 2,430 feet, along the former centerline of track, to Robin Hood Drive. Further description may be had by referencing the area shown with yellow highlight on the plat attached hereto as "Exhibit A" and made a part hereof.

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

RIGHT-OF-WAY AND TRACK MAP
CENTRAL VERMONT RY. CO.
OPERATED BY THE CENTRAL VERMONT RY. CO.
STATION 7339+20 TO STATION 7392+00
SCALE: 1" = 100' JUNE 30, 1917

which are numbered V8/140 and V8/141, and

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 2550 + 00 TO STATION 2602 + 80
SCALE 1" = 100' DATED JUNE 16, 1916

which is numbered V50/96.

1.2. Trail Use. Subject to the terms and conditions of this Lease, TENANT shall have the right to construct, operate, maintain, and replace a roadway connecting Robin Hood Drive to U.S. Route 7 along the Line for the entire term of this Agreement.

1.3. Reactivation of Rail Service. In accordance with 49 C.F.R. § 1152.29 and 5 V.S.A. § 3408(b) (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.

1.4. All-terrain Vehicle (ATV) Access. The TENANT will not allow all-terrain vehicles (ATVs) to use or cross the Line except at pre-existing, authorized crossings (such as personal use of farm crossings or private driveway crossings, or use of town highway crossings involving town highways where ATV use is allowed by local authorities); or unless decided otherwise by the LANDLORD, on a case-by-case basis, through a public decision making process that includes public hearings conducted by the LANDLORD guided by pending policy and standards to be developed by the LANDLORD that comply with federal statutes, regulations, and guidance governing transportation enhancement activities and pedestrian and bicycle accommodations on federal-aid projects.

1.5. TENANT's Use of the Line. TENANT agrees:

- a. The TENANT shall be responsible for all construction;
- ➔ b. The TENANT may construct the roadway from U.S. Route 7 to Robin Hood Drive (TH #69) in phases; however, the TENANT must complete all phases of construction no later than August 11, 2017;
- c. Upon completion of each phase of the roadway, the TENANT will file "as built" plans with the Property Management unit of the VTrans Rail Program.

Article II – Beginning and Expiration

2.1. Term. The term of this Lease (the "Term") shall begin on the date that both LANDLORD and TENANT execute this Lease (the "Commencement Date") and extend for a term of five (5) years from the Commencement Date, unless the term shall sooner be terminated or extended under the provisions of this Lease.

Article III – Rentals and Fees

3.1. Annual Rent. In addition to the document preparation fee, TENANT shall pay to the LANDLORD annual rent in advance. During the first five-year period of this Lease, annual rent shall be One and no/100 Dollar (\$1.00).

3.2. Payment of Utility Charges, Taxes, Etc. As further consideration for this Lease, the TENANT covenants and agrees to pay all charges for electricity, water, and other utilities and all taxes, duties and assessments, which may during the term of this Lease be charged, assessed or imposed upon the Demised Premises, and upon any and all buildings, structures, betterments or other improvements upon or to be placed upon the Demised Premises by the TENANT. If the Demised Premises are not taxed separately but as a part of a larger tract or parcel, then the TENANT shall pay a reasonable and equitable portion, as fixed and determined by the LANDLORD, of the taxes upon the whole part or parcel.

3.3. Third-Party Agreements; LANDLORD's Entitlement to Rents and Fees. The LANDLORD shall have the right to any and all rents, license fees and permit fees arising from present and future easements, leases, licenses or other agreements with third parties (including any renewals thereof) to use or access the Demised Premises, including but not limited to rents, license fees and other revenues paid by utilities occupying a portion of the Demised Premises with poles and wires. Such future easements, licenses or other agreements with third parties (including any renewals thereof) shall not unreasonably interfere with TENANT's operations on the Demised Premises.

3.4. Document Preparation Fee. Prior to execution of this Lease by the LANDLORD, the TOWN will pay LANDLORD the non-refundable sum of \$300.00, representing a portion of the cost of preparation of this document.

Article IV – Renewal; Holding Over

4.1. Renewal. This Lease, at the option of the TENANT, may be renewed or extended for five (5) additional terms of five (5) years each not to exceed a total of thirty (30) years, subject to all the terms and conditions of this Lease, provided that the TENANT gives written notice of intent to renew to LANDLORD at least ninety (90) days before expiration of the current term of this Lease.

4.2. Holding Over. Should the TENANT, with the LANDLORD's consent, continue to occupy the Demised Premises after the expiration of the initial term or any renewal or extension period, then this Lease shall be considered as renewed and shall continue in effect from year to year, subject, however, to termination as provided in this Lease, upon the same term and conditions as contained in this Lease.

Article V – Maintenance

5.1. General TENANT Responsibilities. TENANT shall be responsible to perform, at its own expense, all required maintenance of the Demised Premises and will keep each and every part of the Demised Premises in a safe, clean and desirable condition at all times during the term of this Lease.

5.2. Refuse and Snow Removal. TENANT shall be responsible for all refuse and snow removal.

5.3. Avoidance of Interference with Railroad Operations. [Deliberately omitted.]

5.4. Fencing. LANDLORD may require TENANT, at its sole cost and expense, to install and maintain fences between the Demised Premises and the remaining portions of the LANDLORD's property, all to the reasonable satisfaction of the LANDLORD.

Article VI – Construction and Use

6.1. Compliance with Laws, Rules, Regulations, Etc. The TENANT, at its sole cost and expense, will comply with and obey all laws, rules, regulations, ordinances, and requirements of federal, LANDLORD, and municipal authorities and their various agencies and departments, insofar as applicable to the Demised Premises or the use of the Demised Premises.

6.2. Non-interference with Railroad Operations. [Deliberately omitted.]

6.3. TENANT Responsibility for Costs. The TENANT shall be responsible for any costs resulting from the preparation, improvement, and use of the Demised Premises.

6.4. Approval of Proposed Construction and Renovation. The TENANT shall not begin any construction or renovation on the Demised Premises without the prior written approval of the LANDLORD. Any request for such approval shall include the proposed location, design, materials, intended utilization, and other specifications.

6.5. Responsibility for Obtaining Permits. Before beginning any construction, the TENANT shall obtain all necessary federal, state and municipal permits (Act 250, zoning, etc.).

6.6. Cooperate with existing utilities. Prior to commencement of any construction, the TENANT shall cooperate with all existing utilities, to include but not limited to Vermont Gas Systems, Inc., to safe guard appurtenances of the utility.

Article VII – Assignment and Subletting

7.1. Assignment by TENANT. The TENANT shall not assign this Lease, sublet or mortgage the Demised Premises or any structures now or hereafter placed on the Demised Premises, without the prior written consent of the LANDLORD. Consent to assign, sublet, mortgage or encumber the whole or any part of the Demised Premises shall not be deemed as waiving this restriction as to any other portion or giving assent to any other subletting, assignment or encumbrance. The TENANT further covenants and agrees that the Demised Premises shall be used only for the purposes specified in this Agreement.

LANDLORD agrees that its consent to any proposed subletting, assignment or mortgage shall not be unreasonably withheld.

7.2. Changes in Control. If the TENANT is a closely-held corporation, then any proposed sale of controlling stock interest or other transaction involving control of the TENANT shall be subject to review by the LANDLORD as if such proposed transaction were an assignment.

7.3. Assignment by LANDLORD. In the event of a change of ownership during the term of this Lease, or any renewal or extension of this Lease, the LANDLORD's sole responsibility shall be to notify the TENANT that the ownership of the property has been transferred, providing the full name, address and taxpayer identification number of the person to whom future rental payments should be directed.

Article VIII – Indemnity and Public Liability Agreement

8.1. Independence, Liability. The TENANT will act in an independent capacity and not as officers or employees of the State. The TENANT 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 TENANT or of any agent of the TENANT. The State shall notify the TENANT in the event of any such claim or suit, and the TENANT shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the TENANT may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The TENANT 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 TENANT.

The TENANT 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 TENANT.

8.2. Insurance. Before commencing work on this Agreement the TENANT must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the TENANT to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the TENANT for the TENANT's operations. These are solely minimums that have been established to protect the interests of the LANDLORD.

Workers Compensation: With respect to all operations performed, the TENANT 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 the contract, the TENANT 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
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

TENANT shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The TENANT 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. TENANT shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

8.3. Increases in Required Insurance. The LANDLORD reserves the right, upon thirty (30) days' written notice, to require reasonable increases in the foregoing required insurance.

8.4. Self-Insurance. If TENANT is or intends to become a self-insurer, it shall so notify LANDLORD. If not reasonably satisfied that TENANT is able to cover the risks assumed, LANDLORD may so notify TENANT, in which event TENANT shall immediately obtain coverage from a licensed insurer, as described above in this article.

Article IX – Termination

9.1. Termination for Cause; Right of Re-entry. If the rent above reserved, or any part thereof, shall be unpaid on any day of payment, or if default shall be made in any of the covenants or agreements herein contained, on the part of the TENANT, or if the Demised Premises shall become vacant, or if the TENANT shall be declared bankrupt or insolvent according to law, or if a receiver be appointed of the property of the TENANT, then the LANDLORD shall in any such event, in addition to any action it may have in law or equity to recover damages by reason of breach of the provisions of this Lease, have the right to serve upon the TENANT a ten (10) days' written notice terminating this Lease and its term. Ten (10) days after service of said notice, this Lease and the term thereof shall terminate. In the event that the TENANT fails or neglects to remove from the Demised Premises upon the date fixed in the notice, the LANDLORD shall have the right to remove the TENANT by summary proceedings as for a holding over after the expiration of the term of the Lease, or without giving such notice may, as provided in paragraph 9.2 in this Lease, re-enter and take possession of the Demised Premises either by force or otherwise without being liable to prosecution or damages therefore. In the event of such a re-entry, all buildings, structures and materials erected or placed upon the Demised Premises shall thereupon be and become the property of the LANDLORD, and/or may be removed and/or demolished by the LANDLORD at the sole cost and expense of the TENANT. The TENANT hereby covenants and agrees to pay to the LANDLORD, upon demand, the entire cost of such removal and/or demolition.

9.2. Termination Without Cause. The LANDLORD reserves the right to terminate this Lease and the term thereof at any time upon giving six (6) months notice in writing to the TENANT of its intent to terminate. If LANDLORD gives such notice, this Lease and its term shall end at the expiration of six (6) months from the day when such notice is given. Thereafter the LANDLORD may re-enter upon and take possession of the Demised Premises and every part thereof, without being liable to prosecution or damages therefore, and shall have and enjoy the Demised Premises as of its former owner, free, clear and discharged of this Lease and of all rights of the LANDLORD hereunder.

9.3. Refund of Prepaid Rent. [Deliberately omitted.]

9.4. Removal of TENANT-owned Improvements. It is understood and agreed by and between the parties hereto that if the TENANT shall have paid the rent as provided in this Agreement in full and without default, and shall have faithfully kept and performed every and all the terms and conditions herein by the TENANT to be kept and performed and not otherwise, the TENANT may within thirty (30) days after the expiration or other termination of this Lease remove all buildings, structures and material erected or placed by the TENANT upon the Demised Premises during the term of this Lease, rent being paid during such time upon the same terms as herein LANDLORD, provided that the Demised Premises are left in as good condition as they were in before such buildings and structures were erected thereon. All buildings, structures, improvements, and other property erected or placed by the TENANT upon the premises which are not so removed shall thereupon be and become the property of the LANDLORD and/or may be removed or demolished by the LANDLORD at the sole cost and expense of the TENANT. The TENANT hereby covenants and agrees to pay to the LANDLORD, upon demand, the entire cost of such removal or demolition.

9.5. Condition of Demised Premises Upon Expiration or Termination. The TENANT covenants and agrees to surrender the premises hereby demised at the expiration of the term, or at any time when this Lease shall be terminated as provided in this Agreement, in good order and condition satisfactory to the LANDLORD.

9.6. Acceleration of Rent. [Deliberately omitted.]

9.7. Surrender of Lease. The TENANT may surrender this Lease at the end of the original term or any renewal thereof, and at the same date in any following year of a holdover tenancy from year-to-year, by giving written notice to the LANDLORD of intent to surrender at least thirty (30) days before the proposed date of surrender. TENANT agrees that if TENANT fails to give such notice, then possession shall be deemed to continue until this Lease is terminated by the LANDLORD as provided in this Agreement.

9.8. Attorneys Fees. If becomes necessary for LANDLORD to institute suit for eviction and/or for damages, on account of rental arrears or violation of the terms of the Lease, LANDLORD shall be entitled to recover of the TENANT its attorneys' fees and court costs, which fees and costs TENANT hereby covenants and agrees to pay.

9.9. Delinquent Taxes. This Lease shall automatically end if the TENANT becomes delinquent in the payment of any property taxes assessed on the Demised Premises or on any TENANT-owned improvements located on the Demised Premises.

Article X – Tax Certification

10.1. Tax Compliance. As required by Vermont law (32 V.S.A. § 3113), TENANT hereby certifies, under the pains and penalties of perjury, that it 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, the LANDLORD reserves the right to deny any renewal, extension, consent, or permission under this Agreement unless TENANT and any proposed assignee first provide the LANDLORD with written certification of tax compliance.

Article XI – Waiver

11.1. 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 Agreement, 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.

Article XII – Hazardous Materials; Environmental Reports

12.1. Compliance With Cleanup Laws. The TENANT, at its own expense, shall comply with all present and hereinafter enacted environmental/cleanup responsibility laws (“Cleanup Laws”) affecting the TENANT’s occupancy of the Demised Premises. The TENANT, at its own expense, shall make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authorities (the “Authorities”) under the Cleanup Laws. Should the Authority(ies) determine that a cleanup plan be prepared and that a cleanup be undertaken because of any spills or discharges of hazardous substances or wastes on the Demised Premises during the term of this Lease, then TENANT, at its own expense, shall prepare and submit the required plans and financial assurances and carry out the approved plans.

12.2. TENANT Responsibilities. The TENANT’s obligations under this Article shall arise if there is any closing, terminating or transferring of operations of TENANT’s establishment pursuant to the Cleanup Laws. At no expense to the LANDLORD, the TENANT shall promptly provide all information requested by the LANDLORD to determine the applicability of the Cleanup Laws to the Demised Premises, and shall sign the affidavits or submissions promptly when requested to do so by the LANDLORD.

12.3. Defense and Indemnification. The TENANT shall indemnify, defend and hold harmless the LANDLORD from all fines, suits, procedures, claims and actions of any kind arising out of or in any way connected with any spills or discharges of hazardous substances or wastes on the Demised Premises arising out of TENANT's operations during the term of this Lease; and from all fines, suits, procedures, claims and actions of any kind arising out of the TENANT's failure to provide all information, make all submissions and take all steps required by the Authority(ies) under the Cleanup Laws or any other environmental laws.

12.4. Notification to LANDLORD. The TENANT shall promptly supply the LANDLORD with any notices, correspondence and submissions made by the TENANT to any Authority(ies), including the United States Environmental Protection Agency ("EPA"), the United States Occupational Safety and Health Administration ("OSHA"), or any other local, state or federal authority that requires submission of any information concerning environmental matters or hazardous wastes or substances.

12.5. Survival of TENANT Obligations. The TENANT's obligations and liabilities under this Article shall continue so long as the LANDLORD remains responsible for any spills or discharges of hazardous substances or wastes on the Demised Premises that occur during the term of this Lease.

Article XIII – Storage, Handling and Transportation of Hazardous Materials and Wastes

13.1. TENANT's Obligations. The TENANT shall comply with all present and hereinafter enacted federal, state and local laws, ordinances, rules and regulations dealing with the storage, handling and transportation of hazardous substances and wastes. Without limitation of the foregoing, the TENANT's attention is directed to Titles 40 and 49 of the Code of Federal Regulations (storage and handling of hazardous materials) and the applicable laws and regulations of federal and state departments and agencies dealing with agriculture, public utility regulation, labor and industry, environment and natural resources, public health, safety, health, emergency management, and forests, parks and recreation, as well as any other department or agency concerned with hazardous substances or wastes.

Article XIV – Child Support

14.1. Child Support. (Applicable if TENANT is a natural person.) TENANT 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.

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

Article XV – Miscellaneous

15.1. Acknowledgement of LANDLORD's Title. The TENANT hereby acknowledges the title of the LANDLORD in and to the Demised Premises described in this Agreement and agrees never to assail or resist said title.

15.2. Sale of Alcoholic Beverages. The TENANT covenants and agrees not to sell or permit the sale of any beer, ale, wine or other spirituous liquor, of any kind whatsoever, upon or about the Demised Premises.

15.3. No Residential Use of the Demised Premises. The TENANT covenants and agrees that no portion of the Demised Premises shall be used as a residential dwelling unit.

15.4. Avoidance of Entry on LANDLORD's Remaining Property. The TENANT will take all measures reasonably required by the LANDLORD to prevent persons from entering on or near the LANDLORD's property except as may be allowed herein by TENANT's use of the Demised Premises.

15.5. Right of Entry. The LANDLORD and its designees shall have the right of entry at any time during reasonable working hours for the purpose of inspection of the Demised Premises.

15.6. Original Term; Renewal Terms. All references herein to the term of this Lease shall mean the original term and any extension or renewals thereof.

15.7. Topic Headings. The topic headings of the articles, sections or paragraphs in this Agreement are for convenience and reference purposes only and are not to be considered or relied upon for purposes of the content of such articles, sections or paragraphs.

15.8. Entire Agreement. This Lease with the terms and provisions contained herein constitutes the entire agreement between the parties and supersedes and replaces all other agreements and representations in connection with leasing the premises herein described. This Lease may only be modified or amended by a writing which states that it modifies or amends this Lease and which is signed by all parties.

15.9. Compliance with Law. This Agreement pertains only to the former railroad properties owned by the State of Vermont and administered by its Agency of Transportation and does not release TENANT from the requirements of any otherwise applicable statutes, rules, regulations or ordinances (e.g., Act 250, local zoning, etc.).

No subtenant, partner, affiliate, employee or officer of the TENANT shall utilize or employ the Demised Premises or any rights or privileges acquired under the terms of the Lease, or knowingly allow such utilization or employment, in a manner which would constitute a violation of criminal law, whether state or federal.

15.10. 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 or at such other address as may hereafter be designated by notice:

- (a) As to LANDLORD
- Secretary of Transportation
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633-5001
- With copy to:
- Assistant Attorney General
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633-5001
- (b) As to TENANT:
- Town of Swanton
P.O. Box 711
Swanton, VT 05488

In addition, at the option of the LANDLORD, any notice herein provided to be given by the LANDLORD to the TENANT may be given by leaving it at the residence or place of business of the TENANT or any officer of the TENANT or by posting such notice on any part of the Demised Premises.

15.11. Prior Negotiations, Etc. No statements, expressions of opinion, representations or agreements of any nature whatsoever, not herein expressly stated, made by any representative or agent of the State of Vermont or the Vermont Agency of Transportation shall be binding on, or of any effect against, the State of Vermont or the Vermont Agency of Transportation.

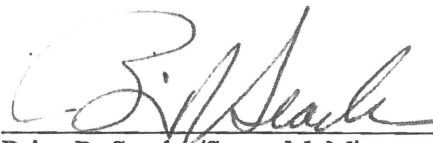
15.12. Successors and Assigns. The covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the successors, executors, administrators and assigns of the parties hereto respectively provided, however, that this Lease shall not be assigned by the TENANT without the prior written consent of the LANDLORD, as provided in this Agreement.

15.13. ADA Compliance. The TENANT agrees to comply with the Americans with Disabilities Act of 1990 and to assure that individuals with disabilities have equitable access to the services, programs and activities offered by the TENANT under this Lease.

15.14. Interpretation of Agreement. If an ambiguity or question of intent arises with respect to any provision of this Lease, the Lease 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 Lease.

IN WITNESS WHEREOF, the STATE OF VERMONT has caused this instrument to be subscribed, this 25 day of April, 2013, by Brian R. Searles/Susan M. Minter, its [Deputy] Secretary of Transportation and duly authorized agent.

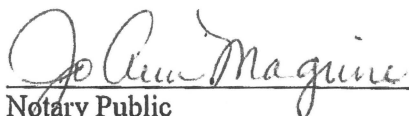
STATE OF VERMONT
("LANDLORD")

By: 
Brian R. Searles/Susan M. Minter
Its Secretary of Transportation and
Duly Authorized Agent

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

At Montpelier, this 25th day of April, 2013, personally appeared Brian R. Searles/Susan M. Minter and acknowledged the foregoing instrument, by him/her as [Deputy] Secretary of Transportation and duly authorized agent of the STATE OF VERMONT subscribed, to be his/her free act and deed and the free act and deed of the STATE OF VERMONT.

Before me,


Notary Public
(My commission expires Feb. 10, 2015)

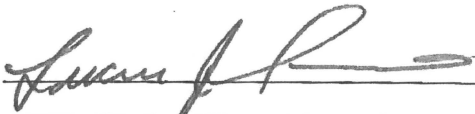
APPROVED AS TO FORM:

DATED: 4/2/2013


ASSISTANT ATTORNEY GENERAL

IN WITNESS WHEREOF, the TOWN OF SWANTON, has caused this instrument to be subscribed this 16th day of April, 2013, by the hand of Lucien J. Lavoie, its Selectboard Chairman and duly authorized agent.

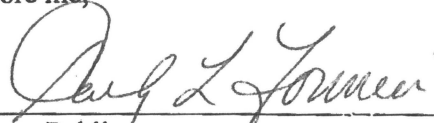
TOWN OF SWANTON
("TOWN")

By: 
Its Duly Authorized Agent

STATE OF VERMONT)
FRANKLIN COUNTY, ss.)

At Swanton, this 16th day of April, 2013, personally appeared Lucien J. Lavoie and acknowledged the foregoing instrument, by him/her subscribed as Selectboard Chairman and duly authorized agent of the TOWN OF SWANTON, to be his/her free act and deed, and the free act and deed of the TOWN OF SWANTON.

Before me,


Notary Public
(My commission expires Feb. 10, 2015)

**2017 LETTER TO REQUEST
LEASE AMENDMENT & EXTENSION**

Town of Swanton
OFFICE of the SELECTBOARD
P.O. Box 711, 1 Academy Street
Swanton, VT 05488

January 17, 2017

Mr. Joe Flynn
Secretary of Transportation
Vermont Agency of Transportation
1 National Life Drive
Montpelier, VT 05633-5001

Dear Secretary Flynn:

This letter is in regard to a lease between the Vermont Agency of Transportation and the Town of Swanton that was entered into on April 25, 2013. The subject of the lease is a railbanked rail corridor formerly owned by the Lamoille Valley R.R. Company. The purpose of the lease is to lease the Town interim use of a portion of the rail line as a roadway connecting U.S. Route 7 and Robin Hood Drive (TH#69). Section 1.3, b of Article 1 of the lease agreement requires the Town to complete all phases of road construction for this portion of the rail line “no later than August 11, 2017.” Please see an enclosed copy of the lease agreement.

The Town has been diligently working on plans for construction of the final phase from Bushey Street to U.S. Rt.7 for the past year. The Town has hired Cross Engineering to prepare the plans and apply for the state permits that are required. Due to some delays in getting plans prepared and obtaining the required state permits, it is not possible to have the road construction completed by August 11th of this year. Therefore, we are respectfully requesting an extension of the deadline to August 11, 2018 to complete the final phase of Robin Hood Drive road construction.

The lease agreement is renewable by the Town every five (5) years. The end of the current 5 year period is set to expire on April 24, 2018. The lease’s renewal clause requires the Town to give the state “written notice at least ninety (90) days before the expiration of each existing term” of five years. Thus, in conjunction with the above request, the Town is giving the state this written notice to extend the lease agreement for another 5-year term from April 24, 2018 to April 24, 2023. If the road construction extension request above is granted, the approval by the state of this additional 5-year term will provide the time needed to complete the final phase of Robin Hood Drive in 2018 and to make use of it for the remainder of the next term.

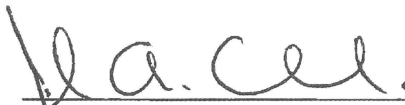
The Town anticipates that the completion of Robin Hood Drive will provide a byway for heavy truck traffic and smaller vehicles to travel from Rt. 7 to Exit 21 on VT Rt. 78,

thereby avoiding travel in the more densely populated downtown area of Swanton. We eagerly await your response.

Thank you for your consideration.

Respectfully,

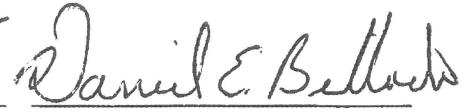
The Swanton Selectboard



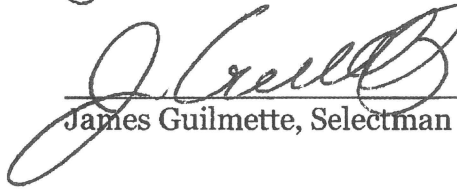
Joel Clark, Chair



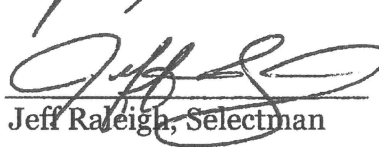
John Lavoie, Vice Chair



Daniel Billado, Selectman



James Guilmette, Selectman



Jeff Raleigh, Selectman

VTRANS ROBIN HOOD DRIVE
AGREEMENT/LEASE EXTENSION

2017

SW TOWN ADMIN

Subject: FW: Lease Amendment 1
Attachments: 20170302080033115.pdf

From: Fitzgerald, Mark [<mailto:Mark.Fitzgerald@vermont.gov>]
Sent: Thursday, March 02, 2017 12:23 PM
To: SW TOWN ADMIN
Cc: Maguire, Jo Ann; Delabruere, Daniel
Subject: Lease Amendment 1

Good Morning Swanton Select board,

Please find the attached Amendment #1 to your April 25, 2013 lease with the State of Vermont. This Amendment 1 addresses the requests from the Town of Swanton's Select Board letter to Secretary Flynn on January 17, 2017. Please review the Amendment at your next board meeting and if everything is in order, please have each member sign the agreement and return it to our office with the appropriate fees.

Please send a check made out to The State of Vermont in the amount of \$200.00 along with the signed Amendment to the address listed below. I will send you a copy of the fully executed Amendment once signed by Secretary Flynn. Please let me know if you have any questions. Thank you..

Mark S. Fitzgerald

State of Vermont Agency of Transportation
Rail Property Management Section Chief
One National Life Drive
Montpelier, VT. 05633-5001
Cell; 802-461-5971
mark.fitzgerald@vermont.gov

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2016.0.7998 / Virus Database: 4756/14068 - Release Date: 03/06/17

ROBIN HOOD DRIVE EXTENSION
2017

AMENDMENT NO. 1
TO
APRIL 25, 2013
LEASE #B04066
BETWEEN
STATE OF VERMONT, AGENCY OF TRANSPORTATION,
AND
TOWN OF SWANTON

THIS AMENDMENT, made and entered into on this ____ day of _____, 2017, by and between the State of Vermont, a sovereign state, acting by and through its Agency of Transportation (the "LANDLORD"), and the Town of Swanton, a municipal corporation with its principal place of business at P.O. Box 711, Swanton, Vermont 05488 (the "TENANT");

WITNESSETH:

WHEREAS, the LANDLORD is the owner of a railroad corridor extending from St. Johnsbury to Swanton, Vermont ("the Line"); and

WHEREAS, the Line is railbanked and is to be used for interim trail use, in accordance with 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); and

WHEREAS, the Line also has been railbanked under 5 V.S.A. § 3408(a); and

WHEREAS, in Sec. 16(f) of Act No. 141 of 2002 (eff. June 21, 2002), the General Assembly authorized the LANDLORD to enter into a long-term lease with the TENANT for use of a portion of the Line in the Town of Swanton; and

WHEREAS, 5 V.S.A. §§ 3406(a) and 3408(b) authorize the LANDLORD to enter into leases and agreements with municipalities for interim use of State-owned railroad properties that have been railbanked; and

WHEREAS, on April 25, 2013 the parties entered into a long-term lease for the TENANT's interim use of a portion of the Line as a roadway connecting U.S. Route 7 and Robin Hood Drive (TH #69); and

WHEREAS, the April 25, 2013 lease requires the TENANT to complete all phases of construction no later than August 11, 2017.

NOW, THEREFORE, the parties, agree as follows:

1. Extension of Deadline for Completion of Road Construction. The parties agree to extend the deadline to complete the final phase of Robin Hood Drive road construction, as set

forth in Section 1.5(b) of the April 25, 2013 Lease Agreement by one year, from August 11, 2017 to to August 11, 2018

2. Lease Renewal. The LANDLORD acknowledges and accepts the TENANT's exercise of its option to extend this lease for an additional five-year period beginning April 24, 2018 and extending through April 23, 2023.

3. Relationship to Lease. Except as modified by this Amendment No. 1, the parties' April 25, 2013 Lease shall remain in full force and effect.

[Remainder of this page deliberately left blank]

IN WITNESS WHEREOF, the STATE OF VERMONT has caused this instrument to be subscribed, this ___ day of _____, 20___, by Joe Flynn, its Secretary of Transportation and duly authorized agent.

STATE OF VERMONT
("LANDLORD")

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

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

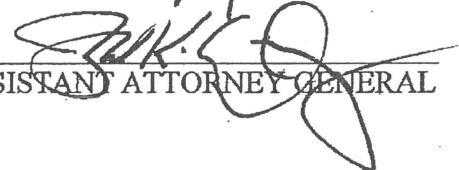
At Montpelier, this ___ day of _____, 20___, personally appeared Joe Flynn and acknowledged the foregoing instrument, by him/her as Secretary of Transportation and duly authorized agent of the STATE OF VERMONT subscribed, to be his/her free act and deed and the free act and deed of the STATE OF VERMONT.

Before me,

Notary Public
(My commission expires Feb. 10, 2019)

APPROVED AS TO FORM:

DATED: 3/1/2017

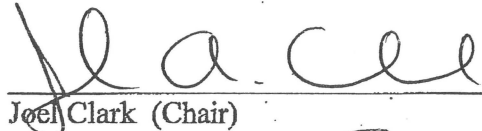


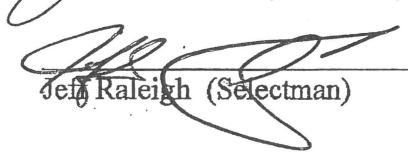
ASSISTANT ATTORNEY GENERAL

IN WITNESS WHEREOF, the TOWN OF SWANTON has caused this instrument to be subscribed this 9th day of March, 2017, by the members of its Selectboard and duly authorized agents.

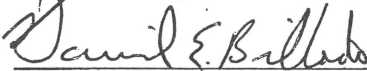
TOWN OF SWANTON
("TENANT")


James Guilmette (Selectman)


Joel Clark (Chair)


Jeff Raleigh (Selectman)

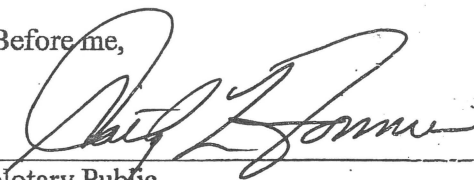

John Lavoie (Vice Chair)


Daniel Billado (Selectman)
Its Board of Selectman and Duly Authorized Agent

STATE OF VERMONT)
FRANKLIN COUNTY, ss.)

At Swanton, this 9 day of March, 2017, personally appeared the members of the Swanton Selectboard and acknowledged the foregoing instrument, by them as Seclectboard members and and duly authorized agents of TOWN OF SWANTON subscribed, to be their free act and deed and the free act and deed of the TOWN OF SWANTON.

Before me,


Notary Public
(My commission expires Feb. 10, 2019)

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND ORIGINAL DOCUMENT SECURITY SCREEN ON BACK WITH PADLOCK SECURITY ICON.

TOWN OF SWANTON

1 ACADEMY STREET P.O. BOX 711
SWANTON, VT 05488



CHECK NO. 21768
CTRL NO. 21768

58-2/0116

PAY

Two hundred & 00/100 Dollars

DATE

03/06/17

AMOUNT

*****200.00

TO THE
ORDER OF

STATE OF VT
1 NATIONAL LIFE DRIVE-MAIN 2ND FL
MONTPELIER VERMONT 05620-8660

AUTHORIZED SIGNATURE

MP

Security features included. Details on back.

⑈021768⑈ ⑆011600020⑆ ⑈400047748⑈

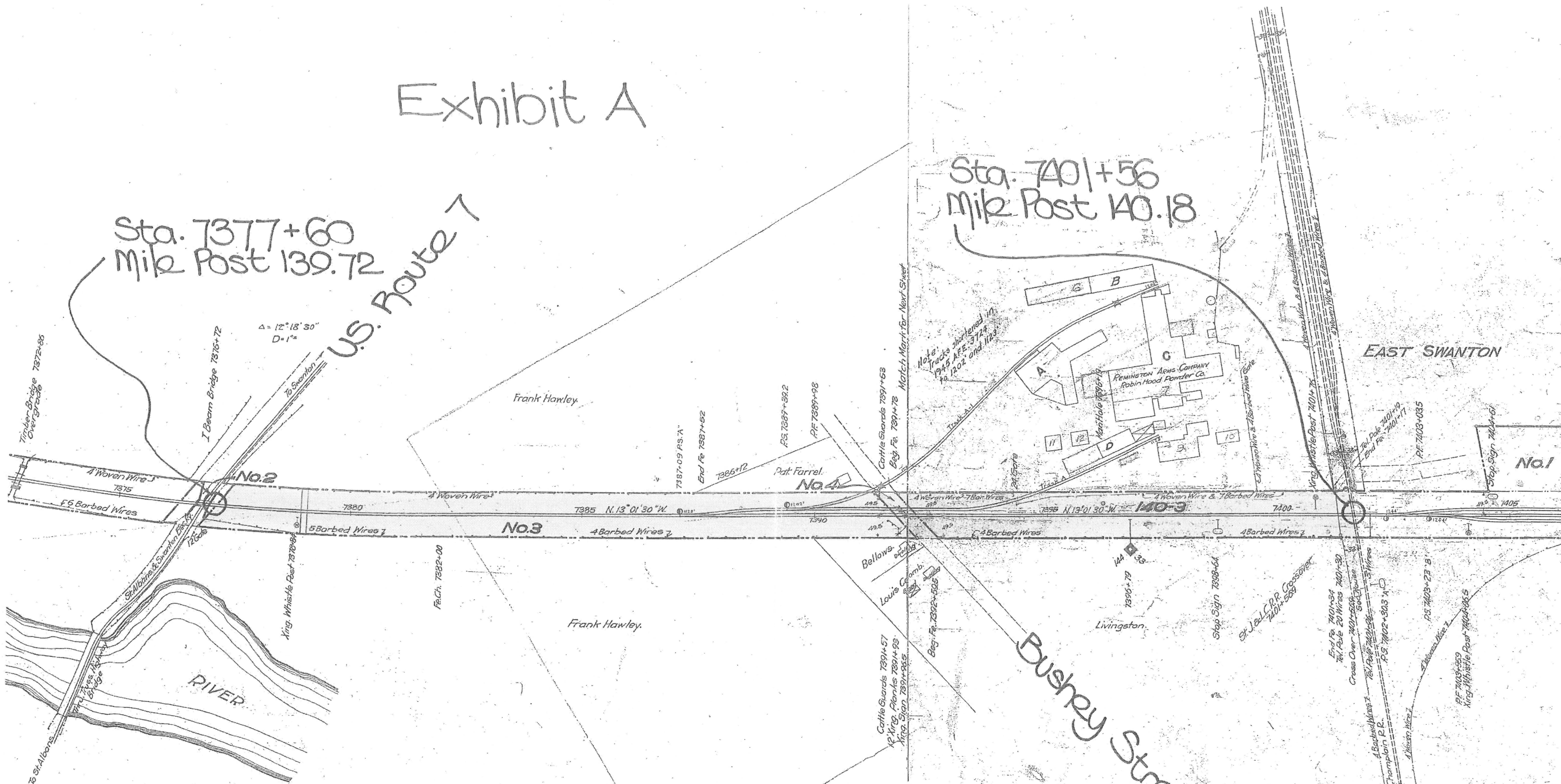
ROBIN HOOD DRIVE MAP
From Bushey Street to U.S. Rt. 7

Exhibit A

Sta. 7377+60
Mile Post 139.72

U.S. Route 1

Sta. 7401+56
Mile Post 140.18



RIGHT-OF-WAY AND TRACK MAP
CENTRAL VERMONT RY. CO.
OPERATED BY THE
CENTRAL VERMONT RY. CO.
STATION 7339+20 TO STATION 7392+00.
SCALE: 1 IN. = 100 FT. JUNE 30, 1917.
OFFICE OF VALUATION ENGINEER,
ST. ALBANS, VERMONT.

RIGHT-OF-WAY AND TRACK MAP
CENTRAL VERMONT RY. CO.
OPERATED BY THE
CENTRAL VERMONT RY. CO.
STATION 7392+00 TO STATION 7444+80.
SCALE: 1 IN. = 100 FT. JUNE 30, 1917.
OFFICE OF VALUATION ENGINEER,
ST. ALBANS, VERMONT.

Sheet No. 140. Valuation Section, D, Central Vermont Railway Company,
Main Line, from Survey Station 7339+20 to Survey Station 7392+00.
W. D. [Signature]
Valuation Engineer.

9B V8 140

9B V8 141