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EASTERN PROMENADE TRAIL CORRIDOR AGREEMENT

Agreement executed this 3rd day of MAY, 1995, by and between the CITY OF PORTLAND, a body politic and corporate, located in Cumberland County, Maine (hereinafter referred to as the "CITY") and the STATE OF MAINE, acting by and through its Department of Transportation, located in Augusta, Kennebec County, Maine (hereinafter referred to as the "DEPARTMENT").

WHEREAS, the DEPARTMENT purchased a certain parcel of land (hereinafter the "Department's Property") in the City of Portland shown as Parcel C on a Plan entitled "Land Title Survey and Subdivision Plan in Portland, Maine, USA," (hereinafter the "Plan") made for The Trust For Public Land, the City of Portland, the Maine Department of Transportation and the Canadian National Railway Company, Sheets 1 through 7, dated February 19, 1993, as revised through June 28, 1993, and recorded in the Cumberland County Registry of Deeds in Plan Book 193, Pages 187 to 193; and

WHEREAS, the CITY purchased certain parcels of land shown on the Plan as Parcel A, Parcel B and Lot 2 (hereinafter the "City's Property"); and

WHEREAS, the DEPARTMENT purchased the Department's Property utilizing funds available under the Intermodal Surface Transportation Efficiency Act of 1991 which provided for, among other things, the use of federal highway dollars for: (1) the preservation of the railway corridor, (2) the conversion and use of portions of such corridor for pedestrian and bicycle trails and facilities, (3) the acquisition of scenic easements and scenic or

historic sites, (4) landscaping and other scenic beautifications, and (5) historic preservation; and

WHEREAS, the CITY purchased the City's Property in order to facilitate the construction of a shorefront pedestrian and bicycle trail and to provide for future transportation, economic development and recreational uses; and

WHEREAS, the DEPARTMENT desires to assure the ability to reestablish standard gauge rail service and to preserve a continuous rail corridor twenty-six (26) feet in width extending from the intersection of Commercial and India Streets in Portland at Railway Mile 0.0 to Railway Mile 1.43 on the former Atlantic and St. Lawrence Railroad Line at the location more particularly described on Exhibit A, attached hereto (hereinafter the "Rail Corridor"); and

WHEREAS, the CITY wishes to provide for a recreational and transportation pedestrian and bicycle trail and waterfront park over, under and along all of the Department's Property which is not within the Rail Corridor (hereinafter the "Eastern Promenade Trail Corridor"); and

WHEREAS, the CITY and the DEPARTMENT have agreed that landscaping, construction of improvements including, but not limited to, fencing, lighting, signage, and maintenance of improvements and provisions for public safety within the Eastern Promenade Trail Corridor are to be administered by the CITY; and

WHEREAS, the CITY and DEPARTMENT have agreed to provisions relating to construction and maintenance of the Eastern Promenade Trail Corridor as described in Exhibit B, attached hereto and incorporated herein; and

WHEREAS, the parties have agreed to the terms and conditions of this Agreement in an effort to achieve the various goals of the DEPARTMENT and the CITY and in consideration of the CITY's assuming responsibility for overseeing the landscaping, construction of improvements, development and maintenance of the trails and recreational facilities within the Eastern Promenade Trail Corridor; and

WHEREAS, the DEPARTMENT and the CITY have the benefit and protection of the Maine Tort Claims Act for those uses which are being granted to the CITY hereunder;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the CITY and the DEPARTMENT covenant and agree as follows:

1. The DEPARTMENT hereby reserves the right to install within the Rail Corridor a rail line, together with such appurtenances as may be necessary or appropriate for the operation of such line and the maintenance of public safety.

2. The DEPARTMENT hereby grants to the CITY the right and easement to use the Eastern Promenade Trail Corridor for the installation, maintenance, replacement, repair and relocation of one or more pathways for recreational and non-motorized (except as necessary for disabled and emergency access) transportation uses, including without limitation use by pedestrians, runners, hikers, bicyclists, persons using roller blades, and persons in wheel chairs. At such time as the DEPARTMENT reactivates standard gauge

rail service within the Rail Corridor then, if determined by the DEPARTMENT to be necessary in order to preserve public safety, the CITY shall install fencing with the cost of said fencing to be borne either by the CITY or the operator re-establishing rail service or both, at the edge of but outside of the Rail Corridor to segregate the public's use of the Eastern Promenade Trail Corridor from any rail activity uses.

3. Following the approval of the Eastern Promenade Trail Plan (hereinafter the "Trail Plan") by the DEPARTMENT, the CITY shall not install any structures or make any alterations or improvements not shown on the Trail Plan exceeding Twenty-five Thousand Dollars (\$25,000) in cost to the Eastern Promenade Trail Corridor, calculated as a combined cost over any three consecutive years without prior written approval from the DEPARTMENT. Said approval shall not be unreasonably withheld or delayed. The Twenty-five Thousand Dollar (\$25,000) cost shall be adjusted annually from base year 1994 by reference to the U.S. Consumer Price Index for all Items for Urban Wage Earners and Clerical Workers (1982/1984 = 100) ("CPI").

4. The CITY shall have the right to construct and maintain two "trail" crossings over the Rail Corridor, which, if necessary as determined by the DEPARTMENT, shall be actively protected; one from Lot 2 to Parcel B of the City's Property as shown on the Plan and the other to cross the Rail Corridor in the general vicinity of the westerly end of the railroad trestle. Separate, detailed agreements regarding the locations and uses of said "trail" crossings of the Rail Corridor shall be executed by the DEPARTMENT and the CITY at such time as the Trail Plan has been finalized and approved by the DEPARTMENT and prior to any use of such "trail" crossings by the CITY.

5. The CITY and the DEPARTMENT further acknowledge that the railroad trestle and swivel bridge (hereinafter the "Trestle") gives rise to a unique opportunity to provide for a pedestrian and bicycle trail connecting the Eastern Promenade Trail corridor with East Deering and the other communities north of the Portland Peninsula and agree that, if and when the Trestle is restored or funds are allocated for the Trestle's restoration, the CITY and the DEPARTMENT will enter into a separate agreement providing for use of the Trestle for pedestrian and bicycle users subject to such rail use as may be permitted or provided for, by the DEPARTMENT.

6. Until such time as the Trestle may be placed into full operation, the DEPARTMENT agrees that the CITY shall have the right, but not the obligation, upon written authorization by the DEPARTMENT, to expend funds, whether directly or as may be allocated from time to time from State or Federal funds for

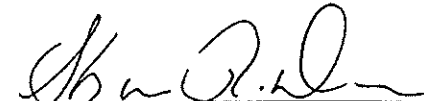
purposes of re-decking that portion of the Trestle which extends from its westerly end to the westerly end of the swivel bridge and to make such other improvements on the said portion of the Trestle as may permit use by the public for fishing, walking, strolling and other recreational purposes. In such event of re-decking, the CITY shall ensure that said portion of the Trestle is safe-guarded twenty-four (24) hours a day. At such time as the Trestle is placed into full operation for rail service, the CITY shall remove or relocate any re-decking as directed by the DEPARTMENT. Nothing in this paragraph shall be construed to extend the easement granted to the CITY in paragraph 2 of this Agreement onto the Trestle.

7. The DEPARTMENT further grants the CITY the right and easement to permit and allow the public to use portions of the Eastern Promenade Trail Corridor for such purposes as may be customarily permitted within public parks throughout the CITY.

8. The CITY and the DEPARTMENT further understand and agree that, except for providing periodic police presence and providing police response capability, the CITY's intention hereunder to construct trail and recreation improvements and amenities within the Eastern Promenade Trail Corridor is contingent upon receipt by the CITY of such funds as may become available from time to time from Federal, State, CITY and private sources and that the CITY by executing this Agreement is not committing to any specific timetable for the making of improvements thereto.

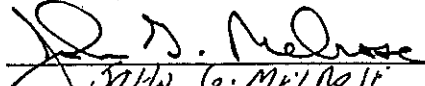
9. In the event that the DEPARTMENT condemns any of the area covered by this right and easement, the DEPARTMENT agrees to relocate improvements constructed under the approved Trail Plan, as amended from time to time, at its expense and the CITY agrees to waive any right to compensation for any value in improvements affected by the condemnation which were made with funds provided by or administered by the DEPARTMENT and for any value in any affected easement rights granted hereunder to the CITY at no cost.

IN WITNESS WHEREOF, the CITY and the DEPARTMENT have caused this instrument to be duly executed by their duly authorized representatives on the date first written above.



Witness

STATE OF MAINE, acting by and through its Department of Transportation

By: 

(type or print name)
Acting Commissioner

STATE OF MAINE
CUMBERLAND, ss.

MAY 3, 1995

Personally appeared the above-named JOHN G. MELNICKI, ~~Acting~~ Commissioner of the State of Maine Department of Transportation, and made oath that the foregoing instrument is his free act and deed in his said capacity and the free act and deed of the State of Maine Department of Transportation.

Before me,

[Signature]
~~Notary Public/Attorney-at-Law~~
Commission EXPIRES: 11/30/97

CITY OF PORTLAND

[Signature]
Witness

By: [Signature]
Robert Ganley
Its City Manager

STATE OF MAINE
CUMBERLAND, ss.

April 21, 1995

Personally appeared the above-named Robert B. Ganley, City Manager of the City of Portland, and made oath that the foregoing instrument is his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

[Signature]
~~Notary Public/Attorney-at-Law~~



CENTER LINE DESCRIPTION
TWENTY-SIX FOOT WIDE CORRIDOR
MAINE NARROW GAGE RAILROAD

A certain lot or parcel of land, being a twenty-six foot wide corridor, running from a point near the corner of Commercial Street and India Street, through land formerly of the Canadian National Railway Company, around the Eastern Promenade, to the existing abandoned railroad bridge at Back Cove in the City of Portland, County of Cumberland, State of Maine. The centerline of said twenty-six foot wide corridor being further described as follows:

Beginning at a point on the Easterly sideline of India Street, that is distant N-30°-35' W, 13.12 feet, measured by said sideline from the Southeast corner of India Street and Commercial Street.

Thence by said centerline on the following described courses, distances and curves;

N- 67°-18'-24" E, 91.46 feet to a point;

Thence N-56°-16' E, 619.76 feet to a point;

Thence N-62°-51' E, 202.07 feet to a point;

Thence N-74°-21' E, 173.72 feet to a point;

Thence N-68°-31'-30" E, 741.30 feet to a point;

Thence N-63°-18'-30" E, 1015.80 feet to a point of curve;

Thence by a concave curve to the Northeast having a radius of 766.00 a distance of 528.08 feet, measured on the arc thereof and a chord bearing and distance of N -43°-33'-30" E, 517.69 feet to a point of compound curve;

Thence by a concave curve to the Northeast having a radius of 947.00 feet a distance of 647.08 feet measured on the arc thereof and a chord bearing and distance of N-4°-14'-E, 634.57 feet to a point of tangent;

Thence N-15°-20'-30" W, 518.21 feet to a point of curve;

Thence by a concave curve to the Northwest having a radius of 1,330.82 feet a distance of 675.14 feet measured on the arc thereof and a chord bearing and distance of N-29°-52'-30" W, 667.92 feet to a point of tangent;



OWEN HASKELL, INC.

CENTERLINE DESCRIPTION
TWENTY-SIX FOOT WIDE CORRIDOR
MAINE NARROW GAGE RAILROAD

(page 2)

Thence N-44°-24'-30" W, 44.74 feet to a point;

Thence N-46°-34'-58" W, 557.78 feet to a point;

Thence N-43°-38'-05" W, 739.45 feet to a point;

Thence N-35°-38'-05" W, 571.82 feet to a point of curve;

Thence by a convex curve to the Northwest having a radius of 687.42 feet a distance of 204.58 feet measured on the arc thereof and a chord bearing and distance of N-27°-06'-33" W, 203.82 feet to a point of tangent;

Thence N-18°-35' W, 114.08 feet to a point at said abandoned railroad bridge.

The above described courses are magnetic 1967.

The twenty-six foot wide corridor herein described by its centerline contains 4.44 acres.

Louis T. Haskell

EXHIBIT B

PROVISIONS RELATING TO CONSTRUCTION AND MAINTENANCE
OF THE EASTERN PROMENADE TRAIL CORRIDOR

1. Specifications.

(a) The CITY shall, at its sole expense, and at all times during the terms of this Agreement maintain the Eastern Promenade Trail Corridor (hereinafter the "IMPROVEMENTS") in accordance with the design indicated on a plan approved by the DEPARTMENT and the provisions of applicable statutes, orders, rules, or regulations of any competent public authority. The CITY shall not proceed with any construction or maintenance except as provided in paragraph 3 of the Trail Corridor Agreement, without the prior written approval of the Director of the Rail Transportation Division of the DEPARTMENT, which approval shall not be unreasonably withheld or delayed.

(b) If, in any particular, said specifications conflict with any statutes or with any orders, rules, or regulations of any competent public authority having jurisdiction in the matter, then such statutes, orders, rules, or regulations shall prevail, but in all remaining particulars said specifications shall govern.

2. Construction and Maintenance.

(a) The CITY, in constructing and maintaining the IMPROVEMENTS, shall avoid interference with the operation of trains and locomotives and with the use and enjoyment by the DEPARTMENT of its property. The CITY shall, except in emergency, give not less than 10 days written notice to the Director of the Rail Transportation Division of DEPARTMENT and to any rail operators designated by the DEPARTMENT of the day and hour the CITY proposes to construct, reconstruct, remove or maintain the IMPROVEMENTS. In the event the Director of the Rail Transportation Division of DEPARTMENT considers the time specified in such notice unsatisfactory or inconvenient he shall, within 5 days after receipt of such notice, notify the CITY to that effect in writing and shall specify a time satisfactory or convenient to DEPARTMENT.

Should emergency work be necessary the CITY shall notify DEPARTMENT by telephonic or facsimile communication that such work is to be done.

(b) If the CITY shall fail to properly maintain its IMPROVEMENTS or if the IMPROVEMENTS interfere with drainage or

other uses of DEPARTMENT's property, then DEPARTMENT may order changes in the IMPROVEMENTS at the CITY's expense or may (but shall have no obligation to do so) make such repairs to the facilities of the CITY as may be immediately necessary for the safety of trains and property of DEPARTMENT. DEPARTMENT shall promptly notify the CITY of the making of such repairs. DEPARTMENT shall not incur any liability as a result of performing such repairs and the provisions of Paragraph 6 shall apply.

The CITY agrees to pay to DEPARTMENT the cost of such repairs on or before the fifteenth day of the month next succeeding that in which a bill therefore is rendered.

3. Use.

The CITY shall use the IMPROVEMENTS solely for those purposes specified in the Use Agreement. The CITY shall be solely responsible for acquiring and complying with federal, state and local permits required for its intended use.

It is expressly agreed that no hazardous waste, as defined in Title 38 M.R.S.A. Section 1303(5), shall be deposited in any portion of the IMPROVEMENTS under any circumstances.

4. Protection of Other Utilities.

The CITY shall protect the power, communication, signal and other utility lines on, over, or under the property of DEPARTMENT from damage of any kind by or because of the IMPROVEMENTS, maintenance, or use of said IMPROVEMENTS, and shall construct, maintain and use said IMPROVEMENTS in such a manner as will not damage or injuriously affect the use of power, communication, signal or other utility lines of DEPARTMENT or other companies which may have under contract the right to maintain such utilities on the property of DEPARTMENT.

5. Liability and Risk.

(a) The CITY and DEPARTMENT agree that all cost or expense resulting from any and all loss of life or property, or injury or damage to the person or property of any person, firm or corporation (including the parties hereto and their respective officers, agents and employees), and any and all claims, demands or actions for such loss, injury or damage, caused by or growing out of the presence or use, or the construction, maintenance, renewal, change, relocation, or removal of the IMPROVEMENTS, shall be borne by the CITY. The

CITY also shall bear the cost of inspections performed by DEPARTMENT to determine whether the CITY is in compliance with this agreement during all phases of construction and maintenance of the IMPROVEMENTS. Said cost to CITY for annual inspections shall be limited to the actual cost of an inspector for a period not to exceed eight (8) hours. Costs of inspections related to alterations shall be negotiated by parties and included in CITY's project budget at such time as DEPARTMENT approves of any alterations or maintenance activities.

(b) The CITY assumes all risk of loss or damage to the CITY's property, inclusive of free or unused materials, supplies and equipment, however caused, resulting directly or indirectly, by reason of the installation, maintenance, use, existence or removal of the IMPROVEMENTS, and hereby releases DEPARTMENT from any and all liability on account of such loss or damage, except for loss or damage caused by the negligence of DEPARTMENT.

(c) Notwithstanding the above provisions, neither the CITY nor the DEPARTMENT hereby waive any immunities or rights it may have under the Maine Tort Claims Act, 14 M.R.S.A. Section 8101, et seq, or any other law granting immunity or limitations on liability.

6. Changes or Relocation.

CITY shall, at its sole expense, pay all costs of changes to or relocation of the IMPROVEMENTS if such change or relocation is made at the request of CITY. DEPARTMENT may request that CITY change or relocate the IMPROVEMENTS in order to protect or maintain the rail corridor and such requests shall not be unreasonably denied. If such change or relocation is required, directly or indirectly, by statute or by any order of any competent public authority having jurisdiction in the matter or if the change or relocation is required because of any action by CITY or any CITY authority, including but not limited to alterations of city streets or developments approved by CITY, such change or relocation shall be at expense of CITY. In other cases, DEPARTMENT shall either pay for the expense of the change or relocation or assess all or part of it to a third party.

Nothing in this section shall prevent either DEPARTMENT or CITY from assessing the cost of a change or relocation to a third party whose activities have led to the necessity for the change or relocation.

7. Discontinuance.

The CITY shall, at its sole expense, upon termination of this agreement, or upon the abandonment or discontinuance of use of the IMPROVEMENTS, promptly remove its property from the premises of DEPARTMENT after receiving a written request from DEPARTMENT and restore such premises disturbed by the IMPROVEMENTS to a condition satisfactory to the Director of the Rail Transportation Division of DEPARTMENT, and upon the completion of such work this agreement shall terminate.

8. Cost of Changes.

If, after abandonment or discontinuance of use, CITY fails to remove the IMPROVEMENTS or its property from the trail corridor, within a reasonable period of time following the receipt of a written request from the DEPARTMENT, the DEPARTMENT may remove the IMPROVEMENTS or property and may render bills for the costs of such removal to CITY, which bills the CITY agrees to pay within thirty (30) days.

9. Taxes.

The CITY shall pay all taxes and other amounts assessed upon the IMPROVEMENTS, or on account of the existence of the IMPROVEMENTS, and shall indemnify DEPARTMENT against the payment of such taxes or other amounts.

10. Additional Obligations of the City.

10.1 Compliance with Laws. The CITY agrees to perform the IMPROVEMENTS pursuant to this Agreement in compliance with all applicable federal, state and local laws, regulations and administrative policies. This shall include without limitation compliance with the requirements of the Clean Air Act (42 USC 18570-9), the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9601 et seq.), the Resource Conservation and Recovery Act (33 USC 1318), the Maine Uncontrolled Hazardous Substance Site Law (38 M.R.S.A. §1361-§1371), 23 M.R.S.A. §5005, all as amended from time to time, and all of the regulations issued thereunder. The CITY will notify the DEPARTMENT of the receipt of any communication indicating that the CITY has not complied with such laws or regulations, including without limitation providing the DEPARTMENT with a copy of any notice from the Environmental Protection Agency and/or the Maine Department of Environmental Protection, which indicates that the Line is under consideration

for inclusion on the Environmental Protection Agency's or the Maine Department of Environmental protection's list of violating facilities.

10.1.1 All costs and penalties relating to any contamination requiring clean-up under federal or state solid or hazardous waste law caused or contributed as a result of the CITY's operation shall be the responsibility of the CITY.

10.1.2 The construction, use and maintenance of the trail corridor shall not infringe, impact or prejudice the ability of the DEPARTMENT to contribute air emissions or pollutants within the same air quality planning area.

Notwithstanding the foregoing, the CITY reserves the right to pursue enforcement against any other party contributing air emissions or pollutants within the same air quality planning area.