

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT (“Agreement”) made as of this ____ day of _____, 2024, becoming effective upon the execution of both parties (the “Effective Date”), by and between the **CSX TRANSPORTATION, INC., a Virginia corporation, whose address is c/o Real Estate Department, 500 Water Street, J-180, 12th Floor, Jacksonville, Florida 32202, on behalf of all subsidiaries, predecessor entities and affiliate entities hereinafter called the "Seller"** (the "Seller") and the **CITY OF CONCORD** having a usual place of business at 41 Green Street, Concord, New Hampshire 03301 (the “Buyer” or “State”). The Seller and Buyer may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, this Agreement is for the purchase and sale of a portion of the Seller’s Northern Main Line making up approximately 81.73 acres of land (“Premises”), constituting an approximately 5.73-mile portion of a railroad corridor located in Concord, New Hampshire, which line was the subject of a decision of the Surface Transportation Board in Docket No. AB 32 (Sub-No. 107X). The relevant portion of the line is shown on Valuation Map 32.1, Sections 2 through 7 between stations 48+00 and 351+07.7 and is identified as “The Premises” on Exhibit A, dated 4/14/2025. A portion of the Premises being the subject of a condemnation with records on file at the Merrimack County Registry of Deeds and the New Hampshire Secretary of State. A portion of the Premises being further subject to the enactment of RSA 22:60-a, V (1991) and a subsequent Confirmatory Release Deed from the State of New Hampshire to Boston & Maine Corporation dated August 31, 1994 (Book 1968, Page 90).

WHEREAS, the Seller desires to sell the Premises and, the Buyer desires to purchase the Premises upon the terms and conditions hereinafter set forth for the purpose of constructing a rail trail on the Premises.

WHEREAS, the Buyer understands that it is the Buyer’s sole responsibility to acquire any of Seller’s non-fee owned parcels from the underlying fee simple land owner prior to the construction of a rail trail.

WHEREAS, the Seller hereby states and affirms that the railroad line on the Premises has been discontinued and abandoned in accordance with all applicable laws, rules, and regulations associated with the Surface Transportation Board, the State of New Hampshire and any other regulatory authority having jurisdiction over the railroad line on the Premises (“Regulatory Authorities”).

NOW, THEREFORE, the Parties hereby agree that the above recitals are true and correct and incorporated into this Agreement and agree as follows

I. NOTICES

Any notice required or permitted to be given in writing under this Agreement shall be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing.

Notices required to be in writing will be delivered by hand delivery, overnight delivery, or e-mail. Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter, by hand delivery, overnight delivery, unless confirmation of successful transmission is received, including by way of a reply to the e-mail by the receiving Party. A Party may change its address and contact information by providing notice of the same in accordance with the provisions of this section.

SELLER:

CSX Transportation, Inc.
c/o Real Estate Department – J180
500 Water Street, 12th Floor
Jacksonville, FL 32202
Attn: Yasmina White
E-mail: Yasmina_White@csx.com
Phone: (904) 359-1818

BUYER

City of Concord
41 Green Street
Concord, New Hampshire 03301
Attention: City Manager

Send a copy of any notice to:

City of Concord
41 Green Street
Concord, New Hampshire 03301
Attention: Beth Fenstermacher, Director of Special Projects & Strategic Initiatives

III. EXHIBITS

Exhibit A: Map of the Premises.

Exhibit B: Release Deed.

IV. PURCHASE PRICE

The purchase price for the Premises shall be FIVE HUNDRED THIRTY-FIVE THOUSAND and 00/100 Dollars (\$535,000 USD)

V. DEPOSIT

In lieu of a deposit, the Buyer shall provide the Seller with joint ownership of all boundary surveys, studies, and reports commissioned by the Buyer as part of the Buyer's due diligence. The Buyer makes no representations or warranties regarding the accuracy of boundary surveys, studies, and reports which the Seller

shall hold joint ownership as per the terms of this Agreement. The Seller hereby holds harmless, and releases the State and City from any liabilities, claims, or injuries associated with any inaccuracies or errors in said boundary surveys, studies, and reports commissioned by the Buyer as part of the Buyer's due diligence.

VI. CLOSING DATE

The closing shall be on a date mutually agreeable to all parties, contingent upon necessary approvals from the Concord City Council, and shall hereinafter be referred to as the "Closing or Closing Date." The Closing Date shall be no later than one hundred and eighty (180) days following execution of this Agreement. The Closing date may be extended as mutually agreed by the Parties.

VII. TITLE AND DEED

The conveyance shall be by quitclaim deed conveying all of Seller's right, title and interest in the Premises, if any. By the acceptance of the deed to the Premises and as part consideration therefor, Buyer acknowledges that the Premises so conveyed hereunder have been historically used for railroad industrial operations and Buyer intends that, from and after being conveyed to Buyer, the Premises will be used solely as a recreational trail. Buyer covenants and agrees that it, its successors, heirs, legal representatives and assigns shall not use the Premises for any purpose other than recreational use for a trail. Notwithstanding this language, nothing herein shall restrict the rights of the Buyer to use the Premises for utility corridors that do not interfere with the use of the Premises as a recreational trail. Further, the Buyer shall have the right to build, maintain and operate any appurtenant uses that support the overall function of the Premises as a recreational trail;

Prior to the use of the Premises as a recreational trail, Buyer agrees to ensure that the Premises are in an environmental condition suitable for recreational trail use as set forth in this Agreement. Buyer agrees to institute a soil management plan for the Premises consistent with the practices set forth in Exhibit C to this Agreement.

Buyer, by acceptance of the deed, covenants and represents that Buyer owns property adjoining the Premises and has access to the Premises through Buyer's adjoining property or through other property not owned by Seller. Buyer, on its behalf, its heirs, personal representatives, successors and assigns, releases Seller, its successors and assigns, from any responsibility, obligation or liability to provide access to the Premises through land now owned or subsequently acquired by Seller. Should Buyer ever convey the Premises, or any portion thereof, to a third party, Buyer will provide access to the Premises through Buyer's adjoining property or through other property not owned by Seller.

Buyer, by the acceptance hereof, hereby covenants and agrees with Seller that Seller shall not be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Seller or of any other company affiliated with Seller; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails or any part thereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails. Buyer assumes all liability and responsibility respecting fences, railings or guardrails, or the absence thereof.

Buyer hereby agrees, as additional consideration for the conveyance of the Premises, to defend, indemnify and hold Seller harmless from and against any and all liability, loss, cost and/or expense, including reasonable attorney fees, arising out of or in connection with any and all suits or causes of actions instituted by third parties against Seller or Buyer as a result of the conveyance of the Premises to Buyer or as a result of the failure of title to any portion of the Premises.

Buyer and Seller agree and acknowledge the covenants and easements contained in this Deed shall be covenants "in gross" and easements "in gross" which shall remain binding on Buyer, its successors, heirs, legal representatives and assigns regardless of whether Seller continues to own property adjacent to the Premises. Buyer acknowledges Seller will continue to have a substantial interest in enforcement of the said covenants and easements whether or not Seller retains title to property adjacent to the Premises.

EXCEPTING unto Seller the ownership of all railroad tracks and other track material (including switches, signals and ballast), hereinafter "the Track", within or on the Premises; and RESERVING unto Seller a temporary railroad easement in each direction from center of the Track, on the Premises more particularly described on Exhibit "A", for the continued location, maintenance, use, repair, replacement and removal of the Track, TOGETHER WITH the right of ingress and egress to and from the Track until removal. Said reserved railroad easement shall automatically terminate and all title in the Premises vest in Buyer upon cessation of use and removal of the Track by Seller.

Seller shall remove the Track, at its sole expense, within three hundred and sixty five (365) days after Closing. If Seller, despite best efforts, is unable to remove the equipment within that time period, they may request an additional one hundred and eighty (180) day extension which shall be automatically granted. Seller may request additional extensions of time from Buyer to remove Track which shall not be unreasonably denied. After removal of Track, Seller shall restore the Premises to materially the same condition as existed prior to removal of the Track. At the conclusion of time period granted for removal of Track, any Track, equipment or other personal property left at the Premises shall be considered abandoned and the Buyer shall have a right to either retain the property or have it removed from the Premises at Seller's expense.

After Closing and prior to removal of Track, Seller shall provide evidence of self-insurance and evidence of insurance for any contractors performing work on the Premises in the following amounts:

Commercial General Liability

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising	\$1,000,000
Each Occurrence Injury	\$1,000,000
Fire Damage (Any One Fire)	\$50,000
Medical Expense (Any One Person)	\$5,000

Commercial Automobile Liability

Combined Single Limit	\$1,000,000
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Workers Compensation

NH Statutory including Employers Liability
 - Each Accident/Disease-Policy Limit/Disease-Each Employee
 \$100,000/\$500,000/\$100,000

Commercial Umbrella

May be substituted for higher limits required above	\$5,000,000
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Other

1. Professional/Errors & Omissions \$5,000,000
2. Environmental Pollution Liability \$1,000,000
3. Property loss and damage coverage of all vehicles, equipment, and other property

brought onto the Property.

After Closing, Seller agrees that it will not access the Premises without advanced permission from the Buyer. Such permission shall not be unreasonably denied. Seller will be responsible for working conditions and safety measures within the Premises while performing Track removal. The work relating to Track removal shall be performed by Seller at Seller's sole cost and expense in accordance with all applicable laws, regulations, rules, and ordinances. Seller agrees that no activity shall be performed on the Premises other than activity related to removal of Track.

Seller shall be responsible to repair any damage caused as a result of removal of Track and shall remove all of its' property within the timeframes set forth in the Agreement for removal of Track.

Seller shall defend, indemnify, and hold harmless the Buyer and its officials, agents, and employees (collectively, the "Indemnified Parties") from and against all demands, claims, suits and actions seeking damages, penalties, attorney's fees, costs, expenses, equitable relief, statutory relief or any other relief on account of bodily injury, death, personal injury, property damage, economic injury and any other injury or loss, (collectively, "Liabilities") arising from or relating to the removal of Track on the Premises, unless the Indemnified Parties were solely negligent.

Seller agrees that it shall not permit any mechanics liens or similar liens for labor and material furnished to Seller or claimed to have been furnished to Seller in connection with Track removal work to encumber the Property.

All terms and conditions relating to Track removal work to be performed by Seller after Closing, including indemnification and insurance obligations, are intended to survive Closing.

As set forth in Section X, B, 2 below, the Buyer has the option of arranging and paying for such examination of title or title insurance on the Premises as Buyer may desire, at Buyer's sole cost to determine whether title to the Premises is good, marketable and insurable. Irrespective of whether Buyer obtains a title examination or insurance, Buyer shall, if Buyer closes on the Premises, accept the Premises in its AS-IS, WHERE-IS, WITH ALL FAULTS condition. The provisions of this Section shall survive Closing. Buyer shall obtain possession of the Premises at Closing, subject to the limitations, terms and conditions of Section VII of this Agreement and such other leases, licenses, easements, occupancies or other limitations which are identified by this section, or which are discovered by Seller during the term of this Agreement (which may not necessarily be stated in the deed), unless canceled by Seller or otherwise terminated (whether by notice, expiration, nonrenewal or any other reason) prior to Closing. The Quitclaim Deed shall not contain any mortgage or encumbrance not agreed upon by the Buyer and shall convey all of the Seller's right, title and interest in the Premises, if any, subject to the following:

1. Seller believes that the Premises is currently subject to the following leases, licenses, easements, occupancies and/or limitations (which may or may not be of record):
 - (i) Leases
 - (a) BM 0620784 dated 06/07/2019 with Scenic Railriders, Inc.
 - (ii) Licenses
 - (a) BM 033828 dated 01/31/1937 with Public Service of New Hampshire
 - (b) BM 058573 dated 05/31/1971 with State of New Hampshire
 - (c) BM 062655 dated 07/20/2006 with Public Service of New Hampshire
 - (iii) Other Occupancies or Limitations

- None
- (iv) Easements
- None

During the term of this Agreement, Seller will research its archives for, and shall advise Buyer if Seller discovers, any additional leases, licenses, easements, occupancies and limitations affecting the Premises. Likewise, during the term of this Agreement, should leases or licenses listed in (i) or (ii) above be determined to cover a continuing Seller obligation, said lease or license will be retained by Seller, after notice to Buyer. As to any items discovered as a consequence of such research, Seller may elect, in its sole discretion, to either cancel or otherwise terminate such items or, pursuant to Section VII B.2, to assign or to partially assign, if such item is applicable to an area greater than the Premises, to the Buyer at Closing.

2. At Closing, Seller shall assign to Buyer, and Buyer shall assume, Seller's right, title and interest in all items identified by Section VII B.1, or which are subsequently discovered by Seller, unless canceled or otherwise terminated, at or prior to Closing. However, if such item is applicable to an area greater than the Premises, the Buyer shall be included as party to a partial assignment of the item(s), which may be executed after Closing.
3. The provisions, conditions and covenants set forth in the Release Deed and hereby expressly incorporated by reference. The Buyer agrees to signify acceptance of such provisions, conditions and covenants contained in the Release Deed by executing the Release Deed at Closing;
4. Provisions of existing building, land use, subdivision control and zoning laws;
5. Such real property taxes for the then current tax year as are not yet due and payable on the Closing Date;
6. Any liens for municipal betterments assessed after the date of this Agreement; and,

VIII. DEED PLAN

A. The Parties hereby acknowledge that the Buyer may engage a New Hampshire Licensed Land Surveyor to complete an American Land Title Association (ALTA) boundary survey of the Premises (the "Survey").

B. The Seller agrees to cooperate with the Buyer or the Buyer's agents to furnish the information necessary for the Buyer to complete the Survey. The Seller agrees to assist the Buyer with this effort by providing the Buyer with all plans and boundary surveys of the Premises in the Seller's possession, within ten (10) days of the Effective Date of this Agreement.

C. Should the Buyer complete an ALTA survey of the Premises, the survey and legal description associated therewith, shall be attached to, and become the Exhibit "A" referred to in the Release Deed.

D. If the Buyer does not complete an ALTA survey, the Seller shall be responsible for providing the description of the Premises, subject to the Buyer's review, to be used as Exhibit "A" to the Release Deed.

IX. ACCESS TO PREMISES

A. The Seller hereby grants authorization to the Buyer, its employees, representatives, consultants, and agents to enter the Premises for the purpose of completing due diligence necessary to carry out the terms of this Agreement.

B. The Buyer and the Seller shall coordinate all access to the Premises by third parties working on behalf of the Buyer as part of the Buyer's due diligence.

C. During Buyer's inspection of the Premises, the Buyer shall require that any and all contractors whom it retains for the purpose of completing due diligence or for any other purpose necessary to carry out the terms of this paragraph, and who access the Premises, to obtain insurance, evidenced by a certificate of insurance to be provided to Seller, in the amount of \$2 million in the aggregate, \$1 million per occurrence naming the Seller as an additional insured. Railroad exclusions for such policies shall not be permitted.

X. BUYER'S DUE DILIGENCE

A. The Buyer shall complete any and all assessments, studies, surveys, and research, at its sole cost and expense, as the Buyer deems necessary or appropriate, including, but not limited to, real estate title reviews, boundary surveys, building and property inspections, flood zone reviews and certifications, reviews of all applicable governmental regulations and ordinances, economic and financial feasibility studies, engineering studies, geotechnical studies, and other similar studies to determine the condition of the Premises, as well as its suitability for the Buyer's intended usage ("Due Diligence"). Notwithstanding the foregoing, Buyer's due diligence regarding any environmental matters such as compliance with Environmental Laws or Releases of Hazardous Materials or Regulated Substances and remediation of same shall be limited to a Phase I Environmental Site Assessment in accordance with Section X.B.3 of this Agreement.

B. The Buyer shall have until a date mutually agreeable to all parties, subject to approval by the Concord City Council, but not later than 30 days prior to the Closing Date, to complete the Due Diligence, unless Buyer requests Seller to provide an additional thirty (30) days to complete, and which Seller shall not unreasonably deny (the "Due Diligence Period"), and the Closing Date shall be extended accordingly. The Due Diligence shall include:

1. REVIEW OF EXISTING AGREEMENTS

- a. During the Due Diligence Period, the Seller shall provide the Buyer with a copy of all existing leases, licenses, crossing agreements, covenants, easements, rights-of-way usage agreements, or any other encumbrance or agreement, whether recorded at the Registry of Deeds or not, relative to the Premises ("Existing Agreements"). Upon the Buyer's acquisition of the Premises, all Existing Agreement, rents and revenues associated therewith, which are in effect at the time of Closing, shall transfer and accrue to the Buyer, in full, and without limitation. This covenant shall survive Closing.
- b. In the event that any of the Existing Agreements are not acceptable to the Buyer, the Buyer, at its sole option, may terminate this Agreement, following which the

obligations of the Parties shall cease and neither Party shall have further recourse against the other.

2. TITLE RESEARCH

During the Due Diligence Period, the Buyer shall perform a title examination of the Premises, and shall be satisfied that title to the Premises is good, marketable and insurable, and not otherwise subject to any liens, encumbrances, covenants or other restrictions (including but not limited to existing building, land use, subdivision control and zoning laws), which would prevent the Buyer from using the Premises ("Title Defects"). In the event that the title to the Premises is not good, marketable and insurable, or is otherwise subject to any Title Defects, as determined by Buyer, prior to the expiration of the Due Diligence Period, Buyer shall provide written notice to Seller of such Title Defects. As part of its notice, the Buyer may 1) terminate the Purchase and Sales Agreement or 2) the Seller shall be provided a reasonable period of time, no less than one hundred eighty (180) days from the date of Buyer's notice, within which to resolve such Title Defects. In the event the Buyer affords the Seller the opportunity to cure title defects, and the Seller does not provide good, marketable and insurable title, or to remove the Title Defects within the one hundred eighty (180) day period, whether because Seller is unable or otherwise unwilling to do so, the Buyer, at its sole option, may terminate this Agreement.

3. ENVIRONMENTAL INSPECTION OF THE PREMISES

a. During the Due Diligence Period, the Buyer may, at its own expense, conduct environmental due diligences, provided, however, that such due diligence shall be limited to only a Phase 1 Environmental Site Assessment ("ESA") concerning the presence of Hazardous Materials and/or Regulated Substances (defined below) and/or other pollutants regulated by law on the Premises from a duly qualified, certified engineer currently engaged in the business of rendering such ESA ("Consultants"). The Parties agree that the ESA shall not include: test pits, soil borings, soil sampling, ground water monitoring wells or groundwater sampling.

b. In accordance with Section IX of this Agreement, the Seller shall provide the Buyer (or its agents, employees, consultants, contractors, and representatives) reasonable access to the Premises for the purpose of carrying out the ESA. The Buyer shall perform the ESA at its own risk and at its own expense.

c. The Seller shall, within ten (10) business days of the Effective Date of this Agreement, provide the Buyer, at no cost, with copies of all Valuation Plans (also known as Val Plans), environmental studies, assessments, or reports ("Reports") for the Premises that are within Seller's possession, without limitation.

d. The Buyer hereby acknowledges and agrees that it may not rely upon the representations, certifications, and statements contained in the Reports relative to the existence or non-existence of Hazardous Materials and/or Regulated Substances (defined below) and/or other pollutants regulated by law on the Premises without the express written consent of the person(s) who authored such reports or generated said data. Further, the Buyer acknowledges that the possession of such materials by the Seller does not constitute any representation or warranty by

the Seller related to the existence or non-existence of Hazardous Materials and/or Regulated Substances (defined below) and/or other pollutants regulated by law on the Premises.

e. “Regulated Substances” shall mean any hazardous substance, hazardous material, hazardous waste or oil, petroleum fraction, petroleum product, or petroleum byproduct as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 6901 et seq. (“CERCLA”), the Resource Conservation and Recovery Act, 42 U.S.C. 1251 et seq., the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. 2710 et seq., or under New Hampshire law, including but not limited to Hazardous Waste Clean-up Fund, RSA 147-B, Hazardous Waste Management, RSA 147-A, and the Oil Spillage in Public Waters Statute, RSA 146-A, and any regulations adopted pursuant to those laws.

f. “Environmental Laws” shall mean any federal, state, or local laws, statutes, regulations, rules, codes, injunctions, ordinances, judicial or administrative decrees or decisions and rules of common law, whether now existing or hereinafter enacted, promulgated or issued, with respect to (a) pollution or protection of the environment or natural resources, (b) any Release or threatened Release of, or any exposure of any person or property to, any Hazardous Materials and (c) the generation, manufacture, processing, distribution, use, treatment, storage, transport, or handling of any Hazardous Materials. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations, orders, decrees, permits, licenses, and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to the such statutes and regulations as may be enacted and promulgated from time to time and all regulations promulgated thereunder:

- i. The Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”);
- ii. The Resource Conservation and Recovery Act (“RCRA”);
- iii. The Hazardous Materials Transportation Act (“HMTA”);
- iv. The Toxic Substances Control Act (“TSCA”);
- v. The Clean Water Act (“CWA”);
- vi. The Clean Air Act;
- vii. The Safe Drinking Water Act;
- viii. The National Environmental Policy Act (“NEPA”);
- ix. The Superfund Amendments and Reauthorization Act of 1986;
- x. Title III of the Superfund Amendment and Reauthorization Act;
- xi. The Uranium Mill Tailings Radiation Control Act;
- xii. The Occupational Health and Safety Act;
- xiii. The Federal Insecticide, Fungicide, and Rodenticide Act;
- xiv. The Noise Control Act;
- xv. The Emergency Planning and Community Right to Know Act;
- xvi. Environmental Protection Agency Federal Regulations promulgated under any of the foregoing federal statutes, including but not necessarily limited to those codified in 40 C.F.R. Parts 206-265 and Parts 122-124;
- xvii. New Hampshire RSA Chapters 146-A, 146-C, 147, 147_A, and 147-B; and,
- xviii. Any federal, state, or local regulations, rules, or orders listed or promulgated under or pursuant to any of the foregoing or otherwise by any department, agency, or other administrative regulatory or judicial body.

g. “Hazardous Materials” shall mean each and every element, compound, chemical mixture, product, solid, liquid, byproduct, contaminant, pollutant, material, waste, or other substance which is hazardous, toxic, corrosive, carcinogenic or otherwise dangerous to human health, plant or animal life, or to the environment or which is defined or identified as such under any Environmental Laws, including, but not limited to materials defined as:

- i. Hazardous waste under RCRA;
- ii. Hazardous substances under CERCLA;
- iii. Pollutants under the CWA;
- iv. Toxic Substances or “chemical substance or mixture” under the SCA;
- v. Hazardous materials under the HMT; and,
- vi. Any other substance or material regulated by Environmental Laws.

For purposes of this Agreement, the term “Hazardous Material” also includes any building materials composed of asbestos, urea-formaldehyde, RCRA 8 metals which are incorporated into such materials, and any oil or petroleum products and creosote treated railroad ties.

h. “Release” shall mean any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping, or disposing (including the abandonment of discarding of barrels, containers, and other receptacles) of any Regulated Substance or Hazardous Materials.

i. The Seller warrants and covenants that it does not possess or have any knowledge of the actual or suspected presence of Hazardous Materials and/or Regulated Substances on the Premises other than the Hazardous Materials and/or Regulated Substances as identified in environmental studies, assessments, or reports for the Premises in the possession of the Seller which were completed prior to the date of this Agreement and provided to the Buyer in accordance with this Agreement. The Seller also warrants that the Seller has no knowledge of any past or present violations of Environmental Laws involving the Premises.

j. Notwithstanding the foregoing, the Buyer and Seller agree that the Seller may leave railroad ties on the Premises as of the date of the Closing and Seller shall not have any liability after the Closing should the railroad ties be found to be in violation of Environmental Laws or otherwise required to be removed or relocated. Seller warrants and agrees that it will not deposit, place, dispose of, or otherwise store or leave any additional railroad ties, or any other materials of any kind whatsoever, on the Premises after the effective date of this Agreement.

k. The Buyer may complete an ESA as part of the Buyer’s Due Diligence, as described in this Agreement. Except as otherwise stated in this Agreement, in the event the Buyer, upon completion of the Buyer’s Due Diligence, elects to proceed with Closing, the Buyer hereby warrants and covenants that the Buyer shall purchase the Premises in its “AS IS, WHERE IS” condition on the date hereof, with all faults, subject to ordinary wear and tear and without recourse to the Seller except as stated herein. The Buyer further warrants and covenants that the Seller has made no representations or warranties, either expressed or implied, as to the Premises or any improvements located thereon, if any. Without limiting the generality of the foregoing, all

representations and warranties of the merchantability and fitness for a particular purpose are expressly disclaimed.

l. Prior to the Closing, should the State of New Hampshire, or any other local, state, or federal agency with appropriate jurisdiction notify the Seller of a potential violation of Environmental Laws relating to the Premises, then the Seller shall promptly notify the Buyer.

m. Buyer will adhere to Seller's Exhibit C requirements for Soil Management and Capping Plan.

XI. BUYER'S TERMINATION RIGHT DURING DUE DILIGENCE

On or before the conclusion of the Due Diligence Period, the Buyer may terminate this Agreement for any of the following reasons:

- A. Existing Agreements are not acceptable to the Buyer;
- B. Title Defects on the Premises;
- C. Seller's failure to provide access to the Premises;
- D. Seller's failure to provide due diligence documents and related information to the Buyer;
- E. Existence, or suspected existence of Hazardous Materials and/or Regulated Substances (defined above in Section X) and/or other pollutants regulated by law on the Premises;
- F. Inability to secure adequate appropriation for funding or governmental approvals; or
- G. Seller's failure to prepare a Release Deed acceptable to the Buyer.

XII. TERMINATION DUE TO CASUALTY OR CONDEMNATION

A. In the event that the Premises, prior to Closing, is damaged by fire, flood, collapse, or other casualty, the Buyer may terminate this Agreement.

XIII. TERMINATION

In the event that either Party terminates this Agreement in accordance with any of the applicable sections herein, all other obligations of the Parties under this Agreement shall cease, and this Agreement shall thereupon be void and shall have no further force or effect.

XIV. FEES, COSTS, AND TRANSFER TAXES

The Parties shall pay their respective shares of normal and customary recording fees and transfer taxes customarily associated with real estate transactions. The parties acknowledge that the Buyer is exempt from the

Real Estate Transfer Tax pursuant to RSA 78-B:2, I. To the extent the Seller is not exempt from the real estate transfer tax; the Seller hereby agrees to pay its respective half of the transfer tax in the customary fashion.

XV. CLOSING

- A. Subject to the conditions set forth in this Agreement, as set forth in Section VI, the Closing Date shall be on a date mutually agreeable to all parties, subject to approval by the Concord City Council.
- B. Seller shall deliver the Quitclaim Deed and the Deed Plan of the Premises to Buyer.
- C. Buyer shall pay Seller the Purchase Price by certified or bank cashier's check, or by wire transfer on the Closing Date.

XVII. ACCEPTANCE OF DEED

The Buyer's acceptance of the Release Deed at the Closing shall be deemed to be a full performance and discharge of every agreement or obligation of the Seller therein contained, except for such as are, by the terms thereof, to be performed after the delivery of the Release Deed.

XVIII. BROKER

The Parties represent and warrant to each other that neither has engaged the services of a real estate broker with respect to the Premises. The Buyer and Seller each agree to hold the other Party harmless from and against all other claims for brokerage or commission on account of this Agreement.

XIX. WARRANTIES

The Buyer and Seller each acknowledge that they have not been influenced to enter into this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement. The Buyer hereby expressly waives any claims against the Seller for any matters of public record or matters which a visual inspection of the Premises would reveal. This paragraph shall survive the delivery of the Release Deed.

XX. RECORDING

The Parties agree that neither this Agreement nor any memorandum shall be recorded at the registry of deeds.

XXI. AUTHORITY OF SIGNATORY

If the Buyer executes this Agreement by agent or representative, such agent or representative hereby warrants and represents to the Seller that he/she is authorized to execute, acknowledge and deliver this Agreement on behalf of the Buyer and to thereby bind the Buyer to the same. This warranty shall survive the delivery of the Deed.

XXII. BINDING EFFECT; SUCCESSORS AND ASSIGNORS

A. The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees.

B. The Seller may not assign this Agreement, or any interest herein, without the prior written consent of the Buyer, which consent shall not be unreasonably withheld.

XXIII. SEVERABILITY AND SAVING CLAUSE

In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not affected thereby shall remain in full force and effect.

XXIV. WAIVERS

Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.

XXV. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

XXVI. CONSENT TO JURISDICTION AND VENUE

The Buyer and Seller submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court. The Parties hereby waive their right to a jury trial.

XXVII. ENTIRE AGREEMENT; AMENDMENTS

This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.

XXVIII. SECTION HEADINGS

The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit or expand the express provisions of this Agreement.

XXIX. COOPERATION

The Buyer and the Seller agree to cooperate with each other in order to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further documents as may reasonably be requested by the Seller, the Buyer, or their representatives, agents, and consultants.

XXX. EXHIBITS

All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.

XXXI. INDEPENDENT PARTIES

The Buyer and Seller are independent Parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.

XXXII. SURVIVAL OF AGREEMENT

All agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement and Closing.

XXXIII. NO RIGHTS CONFERRED UPON OTHERS

Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government, other than the Parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.

XXXIV. TIME OF THE ESSENCE

The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.

XXXV. GOOD FAITH AND FAIR DEALING

Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.

XXXVI. GOVERNMENTAL APPROVALS

A. This Agreement is specifically contingent upon the Buyer obtaining governmental approvals, including the Concord City Council holding a public hearing and voting in the affirmative to ratify this Agreement.

B. This Agreement is specifically contingent upon the appropriate governmental entity voting to appropriate the required funds to complete this transaction, including due diligence.

C. Other Municipal Approvals: The execution of this Agreement does not preempt or supersede the review process or powers of any City of Concord or other governmental board, committee, commission, or department, or excuse the Parties from the requirement to apply for and receive all necessary permits and approvals from all applicable governmental boards, committees, commissions or departments.

XXXVII. INTENTIONALLY OMITTED

XXXVIII. FORCE MAJEURE / EXCUSABLE DELAYS

For the purposes of any of the provisions of this Agreement, neither the Buyer nor the Seller, as the case may be, shall be considered in breach of or default in its obligations hereunder in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not limited to, acts of God, or of the public enemy, acts of the other party, fires, floods, or other casualties, epidemics, pandemics, quarantine restrictions, labor disputes, litigation, unexpected delays in approvals by other Local, State or Federal Governmental Agencies, freight embargoes, delays stemming from unusually severe weather, unforeseen conditions or delays encountered during construction by the Buyer or Seller, or delays of contractors and subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such Party shall be extended for the period of the enforced delay, provided, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other Party thereof in writing stating the cause or causes thereof and requesting an extension for the period of the enforced delay. In calculating the length of the delay, the Buyer and the Seller shall consider not only actual work stoppages, but also any consequential delays resulting from such stoppage as well.

XXXIX. CONTINGENCIES

This Agreement in its entirety is expressly contingent upon the Release of Preferential Rights (hereinafter "Release") pursuant to N.H. RSA 228:60-b, II. In the event that said Release is not granted for the entirety of the area prior to Closing, this Agreement shall be considered null and void in its entirety and the Deposit shall be refunded to Buyer.

XXXX. EXECUTION

IN WITNESS WHEREOF, the Parties execute this Agreement in two counterparts, effective as of the date of Governor and Executive Council approval.

SELLER:

CSX TRANSPORTATION, INC.

Witness

By: _____
Name: Christina M. Bottomley
Title: VP of Real Estate and Industrial Development

BUYER:

CITY OF CONCORD

Witness

By: _____
Name Thomas J. Aspell, Jr.
Title: City Manager

DRAFT

EXHIBIT A – MAPS

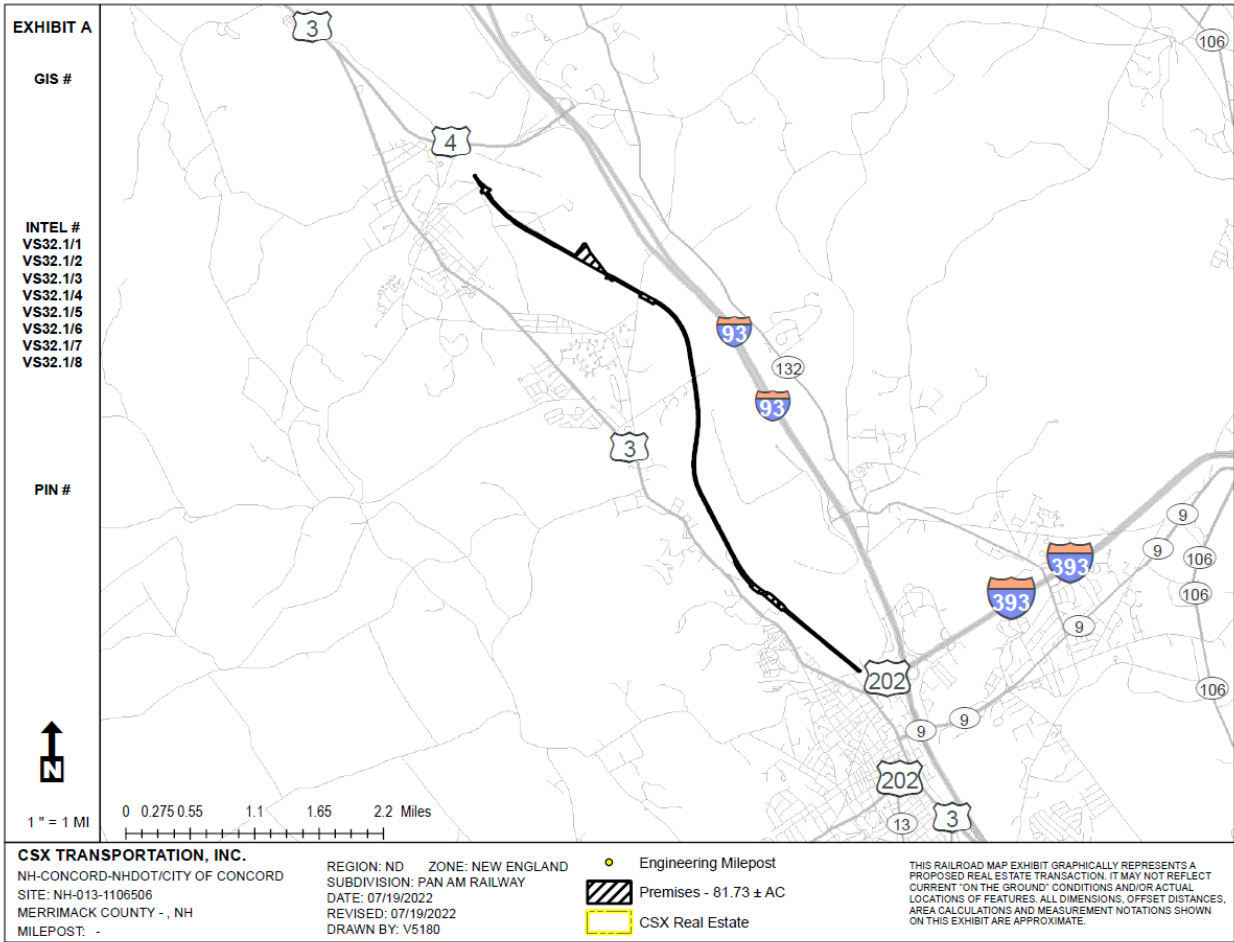


EXHIBIT B –QUIT CLAIM DEED

QUIT CLAIM DEED (DRAFT)

The **CSX TRANSPORTATION, INC., a Virginia corporation, whose address is c/o Real Estate Department, 500 Water Street, J-180, 12th Floor, Jacksonville, Florida 32202,** (referenced herein as the "Grantor") in consideration of FIVE HUNDRED THIRTY FIVE THOUSAND 00/100 Dollars (\$535,000.00) paid to it by **CITY OF CONCORD,** with a mailing address of 41 Green Street, Concord, New Hampshire 03301 (the "Grantee") hereby grants to the Grantee all the Grantor's right, title and interest, without any warranties or covenants of title whatsoever, in a certain parcel of land, and the buildings, bridges, structures, crossings, fixtures and improvements thereon, if any, situated in Concord, County of Merrimack, State of New Hampshire (the "Premises") described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND
MADE A PART HEREOF BY THIS REFERENCE.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

1. This conveyance is made without granting any right of way, either by necessity or otherwise, over any remaining land or location of the Grantor. Grantee acknowledges that the Premises conveyed hereunder has been historically used for railroad industrial operations and is being conveyed for use only as a recreational trail. Grantee, by acceptance of this deed, hereby covenants that it, its successors, heirs, legal representatives or assigns shall not use the Premises for any purpose other than a recreational trail and that the Premises will not be used for (a) any residential purpose of any kind or nature (residential use shall be defined broadly to include, without limitation, any use of the Premises by individuals or families for purposes of personal living, dwelling, or overnight accommodations, whether such uses are in single family residences, apartments, duplexes, or other multiple residential dwellings, trailers, trailer parks, camping sites, motels, hotels, or any other dwelling use of any kind), (b) any public or private school, day care, or any organized long-term or short-term child care of any kind, or (c) any agricultural purpose that results in, or could potentially result in, the human consumption of crops or livestock raised on the property (agricultural purpose shall be defined broadly to include, without limitation, activities such as food crop production, dairy farming, livestock breeding and keeping, and cultivation of grazing land that would ultimately produce, or lead to the production of, a product that could be consumed by a human). By acceptance of this deed, Grantee further covenants that it, its successors, heirs, legal representatives or assigns shall not use the groundwater underneath the Premises for human consumption, irrigation, or other purposes. Notwithstanding this language, nothing herein shall restrict the

rights of the Grantee to use the Premises for utility corridors or other uses that do not interfere with the use of the Premises as a recreational trail. Further, the Grantee shall have the right to build, maintain, and operate any appurtenant uses that support the overall function of the Premises as a recreational trail;

2. Grantee, by acceptance of this deed, covenants and represents that Grantee owns property adjoining the Premises and has access to the Premises through Grantee's adjoining property or through other property not owned by Grantor. Grantee, on its behalf, its heirs, personal representatives, successors and assigns, releases Grantor, its successors and assigns, from any responsibility, obligation or liability to provide access to the Premises through land now owned or subsequently acquired by Grantor. Should Grantee ever convey the Premises, or any portion thereof, to a third party, Grantee will provide access to the Premises through Grantee's adjoining property or through other property not owned by Grantor.
3. Grantee, by the acceptance hereof, hereby covenants and agrees with Grantor that Grantor shall not be required to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other company affiliated with Grantor; or be liable for or required to pay any part of the cost or expense of erecting or maintaining such fences, railings or guard rails or any part thereof; or be liable for any damage, loss or injury that may result by reason of the non-existence or the condition of any fences, railings or guard rails. Grantee assumes all liability and responsibility respecting fences, railings or guardrails, or the absence thereof.
4. Grantee hereby agrees, as additional consideration for the conveyance of the Premises, to defend, indemnify and hold Grantor harmless from and against any and all liability, loss, cost and/or expense, including reasonable attorney fees, arising out of or in connection with any and all suits or causes of actions instituted by third parties against Grantor or Grantee as a result of the conveyance of the Premises to Grantee or as a result of the failure of title to any portion of the Premises.
5. Grantee and Grantor agree and acknowledge the covenants and easements contained in this Deed shall be covenants "in gross" and easements "in gross" which shall remain binding on Grantee, its successors, heirs, legal representatives and assigns regardless of whether Grantor continues to own property adjacent to the Premises. Grantee acknowledges Grantor will continue to have a substantial interest in enforcement of the said covenants and easements whether or not Grantor retains title to property adjacent to the Premises.

6. EXCEPTING unto Grantor the ownership of all railroad tracks and other track material (including switches, signals and ballast), hereinafter "the Track", within or on the Premises; and RESERVING unto Grantor a temporary railroad easement in each direction from center of the Track, on the Premises more particularly described on Exhibit "A", for the continued location, maintenance, use, repair, replacement and removal of the Track, TOGETHER WITH the right of ingress and egress to and from the Track until removal. Said reserved railroad easement shall automatically terminate and all title in the Premises vest in Grantee upon cessation of use and removal of the Track by Grantor. **Grantor shall remove the Track, other than ballast, at its expense, within Three Hundred Sixty-Five (365) days after Closing.**
7. By the acceptance of this deed and as part consideration therefor, the Grantee hereby assumes any and all agreements, covenants, obligations and liabilities of the Grantor including but not limited to any underground facilities, drainage culverts, walls, crossings and/or other structures of any nature and description located in whole or in part within the Premises.
8. By the acceptance of this deed and as part consideration therefor, the Grantee agrees to irrevocably waive, give up and renounce any and all claims or causes of action against the Grantor in respect of claims, suits and/or enforcement actions (including any administrative or judicial proceedings and any remedial, removal or response actions) ever asserted, threatened, instituted or requested by any person and/or governmental agency on account of: (a) any release of oil or hazardous materials or substances of any description on, upon or into the Premises in contravention of any ordinance, law or statute (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq., as amended); and (b) any and all damage to real or personal property, natural resources and/or harm or injury to persons alleged to have resulted from such release of oil or hazardous materials or substances.
9. All rents and revenues associated with leases, licenses, crossing agreements, covenants, easements, rights-of-way usage agreements, or any other encumbrance or agreement in effect as of the date of recording of this Release Deed shall transfer and accrue to the Grantee in full and without limitation.
10. Whenever used in this deed, the term "Grantor" shall not only refer to the **CSX TRANSPORTATION, INC.**, but also its successors, assigns and affiliates and the term "Grantee" shall not only refer to the above-named Grantee, but also the Grantee's successors, assigns and grantees, as the case maybe.
11. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land and be binding upon the Grantee forever. In addition to the acceptance and recording of this deed, the

Grantee hereby signifies assent to the said several exceptions, reservations, conditions, covenants and agreements, by joining in its execution.

IN WITNESS WHEREOF, the said **CSX Transportation, Inc.** has caused this release deed to be executed in its name and its corporate seal to be hereto affixed by Christina M. Bottomley, its Vice President, Real Estate and Industrial Development thereunto duly authorized this _____ day of _____, 2024.

GRANTOR: CSX Transportation, Inc.

By: _____
Christina M. Bottomley,
VP Real Estate and Industrial Development

GRANTEE: CITY OF CONCORD N.H.

By: _____
Thomas J. Aspell, Jr., City Manager

STATE OF FLORIDA)
) SS.
COUNTY OF DUVAL)

I, _____, a Notary Public of the State of Florida and the County of Duval, do certify that, on the date below, before me in said County came Christina W. Bottomley (X) to me known, and/or () proven by satisfactory current evidence to be the person whose name is subscribed to the above instrument, who, being by me by means of (X) physical presence or () online notarization first duly sworn, did make oath, acknowledge and say that: she is Vice President of Real Estate of CSX Transportation, Inc., the corporation described in and which executed said instrument; she is fully informed of the contents of the instrument; she knows the seal of said corporation; the seal affixed to said instrument is such seal; it was so affixed by authority of the Board of Directors of said corporation; she signed her name thereto for said corporation pursuant to Board authority; and instrument is the free act and deed of said corporation; and the conveyance herein is not part of a transaction, sale, lease, exchange or other transfer or conveyance of all or substantially all of the property and/or assets of the Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this _____ day of _____, 20____.

My commission expires on: _____(SEAL)
Notary Public
Print Name: _____

DRAFT

Exhibit C
Minimum Sampling, Soil Management, and Capping Requirements
For Rails-to-Trails Conversion of Rail Corridors

Buyer Agrees to:

I. Sampling

Surface soils should be sampled as follows (please see attachments for typical sampling layout schematics):

- a. Adjacent to any existing or former buildings, bridges, signals, etc.
- b. At former switch or rail-to-rail crossings, collect a minimum of 3 composite samples. One composite sample should be obtained at the switch or crossing location, with additional composite samples obtained at 50-foot intervals in either directional along the corridor as illustrated in Figure 1. Each composite sample should consist of 5 specimens (i.e., each composite sample will consist of 5 discrete samples that are mixed together and analyzed as a single sample).
- c. Along the remaining rail corridor:
 - For corridor less than 0.5-mile long, collect a minimum of 10 composite samples.
 - For corridor 0.5 – 0.75 miles long, collect 15 composite samples.
 - For corridor 0.75 miles to 1 mile long, collect 20 composite samples. Space the sampling points evenly down corridor, i.e., 20 samples in one mile is one sample about every 250 feet.
 - For corridors greater than 1 mile in length, the number of evenly spaced samples to be collected should be calculated as follows:

$$\text{Number of Composite Samples} = 20 + 5x$$

Where x = total corridor length in excess of 1 mile

As an example, given a 4-mile length of corridor, the number of samples to be collected would equal $20 + 5 \times 3$ or 35 composite samples, which would be spaced approximately every 600 feet.

Each composite sample collected along the corridor should consist of 5 specimens. An illustration of the composite sample configuration for a rail corridor is provided in Figure 2.

- d. Samples should be collected from the upper 6 inches of soil taking into consideration State standards concerning direct exposure.
- e. Samples should be analyzed for arsenic (SW 846 Method 6010B), lead (SW 846 Method

6010B) and PAH (SW 846 Method 8270C SIM). If the corridor was utilized for electric rail, the samples should also be analyzed for PCB's using SW 846 Method 8082, Method 608 or appropriate state test method.

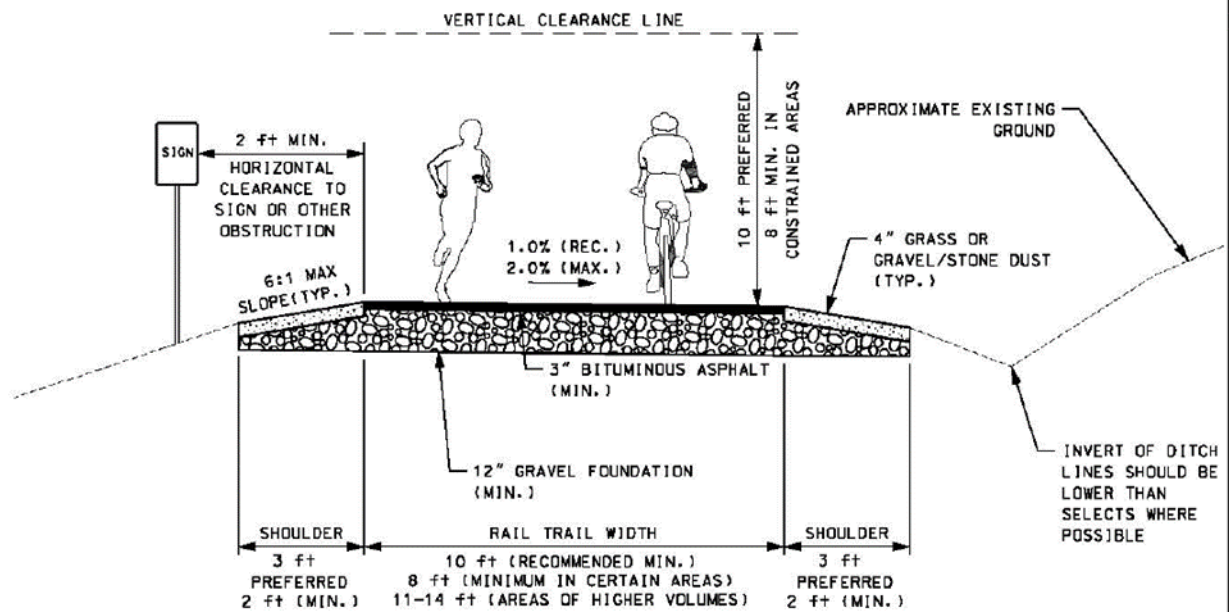
II. Soil Management Plan

The purchase sale agreement shall require buyer to provide a written soil management plan defining procedures for monitoring the corridor to ensure potential exposure pathways are controlled to reduce risk of exposure to the public to acceptable levels. The plan will utilize recommendations for Best Management Practices provided by the New Hampshire Department of Environmental Services (NHDES) for rail-trails. This plan may include:

- A site plan clearly showing “capped” vs. “un-capped” areas of the corridor
- A detailed description of the cap thickness and method of construction (i.e. soil, concrete, asphalt, etc.);
- A detailed description of methods and procedures to be utilized to prevent users from accessing uncapped areas of the corridor and potentially contacting site soils. This section should include a discussion of signage or other methods to be utilized to communicate to the public the past industrial use of the corridor and the potential for impacted soils to be present;
- A detailed description of methods to monitor the capped areas identify any deficiencies in the cap, and any corrective actions warranted to protect the public from exposure to site soils.;
- Defined procedures for the testing and management of soil that is excavated as part of a construction project on the property, such as culvert or underground utility installation;
- If required by NHDES based on the findings of the soil sampling, a discussion of inspection and reporting procedures to document (at least annually) the condition of the cap and to reaffirm that un-capped areas of the site are not being accessed or utilized by the public

III. Capping

The rail bed, defined as extending from opposite toes-of-slope of the ballast field, if present, or a minimum of 5 feet on either side of the centerline of the former track, shall be graded and capped with pavement or other suitable material to prevent contact with the surface soil. This cap should have a minimum thickness of 12 inches per the NHDES Paved Rail Trail Typical Section (shown below). Actual cap design should be developed on a project-specific basis taking into account specific requirements of State and Local environmental regulation.



PAVED RAIL TRAIL
TYP SECTION
 NOT TO SCALE