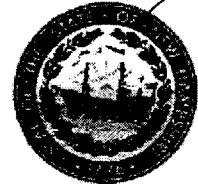




**THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION**



**CHRISTOPHER D. CLEMENT, SR.  
COMMISSIONER**

**JEFF BRILLHART, P.E.  
ASSISTANT COMMISSIONER**

Bureau of Rail & Transit  
July 2, 2014

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Pursuant to RSA 228:57 and RSA 228:68, authorize the Department of Transportation to enter into an Operating Agreement with the Milford-Bennington Railroad Co. (Vendor # 156441), 62 Elm Street, Milford, New Hampshire upon Governor and Council approval through December 31, 2023, with a provision for renewal for an additional ten-year period, subject to Governor and Council approval through December 31, 2033. 100% Agency Income.

Income from the agreement will be credited as follows:  
Special Railroad Fund 04-96-96-964010-2991-009-407323 Agency Income.

**EXPLANATION**

The Department of Transportation owns the Hillsboro Branch Railroad, which travels through Wilton, Lyndeborough, Greenfield, Hancock and Bennington, and negotiated a 10-year Operating Agreement with the Milford-Bennington Railroad to provide freight service on the state-owned line.

The Department of Transportation Bureau of Rail & Transit undertook the task of selecting an operator to provide rail service on the Hillsboro Branch Railroad. The Bureau prepared and issued a request for proposals (attached) in October 2013 and solicited proposals by certified mail from freight railroads. Public notices were also made available in the Union Leader and on the Department of Transportation website. Four proposals were received by the November 21, 2013 deadline, however one was considered to be non-responsive and subsequently only three proposals were scored and further evaluated by the evaluation committee. The evaluation committee members that independently reviewed proposals and participated in consensus scoring of the three responsive proposals were Louis Barker (NH DOT Railroad Planner), Mark Richardson, PE (NH DOT Bridge Design Bureau Administrator), and Shelley Winters (NH DOT Rail & Transit Bureau Administrator). The evaluation committee convened on January 10, 2014 to conduct their consensus scoring and evaluated the proposals, on a scale of 1 to 100, based on the six criteria included in the request for proposals with each criterion having an assigned scoring weight. The criteria, as listed in the request for proposals, were:

1. Maintenance plan (10%)
2. Business and marketing plan (20%)
3. Operating plan (10%)
4. Operating equipment provided (10%)
5. Financial ability to operate short line service and financial references (20%)

6. Operating and management experience and overall ability to perform the required services, including its ability to provide freight service to the existing shipper on the line (30%)

Rating Scale (0-100 scale)	
Point Value	Explanation
0	None. Not addressed or response of no value
1 – 25	Fair. Limited applicability
26 – 50	Good. Some applicability
51 – 75	Very Good. Substantial applicability
76 – 100	Excellent. Total applicability

Based solely on the content of the submitted proposals and in accordance with the defined criteria, the consensus scoring of the evaluation committee members resulted in the following:

- |                                  |           |                                |
|----------------------------------|-----------|--------------------------------|
| • New Hampshire Central Railroad | 83 points | Excellent: Total applicability |
| • Milford-Bennington Railroad    | 77 points | Excellent: Total applicability |
| • Iowa Pacific Holdings, LLC     | 30 points | Good: Some applicability       |

The New Hampshire Central Railroad and the Milford-Bennington Railroad proposals were both within the “Excellent” rating category and worthy of additional consideration. After subsequent review of the top two proposals, the Department recommends entering into agreement with the Milford-Bennington Railroad as it is in the best interest of the State and the shipper (Granite State Concrete), as follows:

- Milford-Bennington Railroad currently operates on the line under a modified certificate issued by the US Surface Transportation Board (STB) for the only shipper currently requiring service;
- Over the last four years (2010-2013), the Milford-Bennington Railroad has expended approximately \$25,000 in order to make repairs above and beyond normal maintenance requirements; and
- Milford-Bennington Railroad and the shipper, Granite State Concrete, have enjoyed a good working relationship for over 20 years and allowing Milford-Bennington Railroad to continue to operate the line would provide seamless rail service to the shipper.

Per the agreement, each operating year the Milford-Bennington Railroad shall pay 5% of its gross revenue to the State and this revenue shall be credited to the NH Special Railroad Account. Additionally, the Milford-Bennington Railroad is required, annually, to invest at least 20% of its revenue in the maintenance of the State-owned Hillsboro Branch Railroad line.

This Agreement has been reviewed and approved by the Office of the Attorney General for form and execution. Copies of the fully executed Agreement have been provided to the Secretary of State’s Office and the Department of Administrative Services. Subsequent to the Governor and Council approval, a copy of the Agreement will be on file with the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,

Christopher D. Clement, Sr.  
Commissioner

**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
REQUEST FOR PROPOSALS:**

**SHORT LINE OPERATION OF THE  
HILLSBORO BRANCH RAILROAD LINE**

**1. Introduction**

The New Hampshire Department of Transportation (NHDOT) requests proposals for a railroad operator (Operator) to provide rail service on the State-owned Hillsboro Branch Railroad Line between Wilton and Bennington, NH. The NHDOT wishes to select a railroad operator to enter into an agreement with NHDOT for the rail operating rights and maintenance responsibilities for this line, for a term of up to 10 years, with an option for an additional 10-year extension that requires notice one year in advance and is subject to negotiation

The Proposal is intended to permit NHDOT to determine each Respondent's ability to provide operating services on this line.

The Agreement to be executed between the NHDOT and the Operator will define the parameters of the Operator's use of the rail line and may include, without limitation, provisions on liability, insurance, maintenance standards, service levels, indemnification, termination, affirmative action and environmental impact.

The State retains all other property rights and management responsibilities, including revenue from all easements, crossings, etc. The 45G Tax Credit does apply. Information on actual credits taken is not available to NHDOT.

No car storage, other than that as required to provide service on the Line, will be permitted.

**2. Description of the Line**

To better understand the Hillsboro Branch Railroad Line NHDOT Rail staff will schedule a Site Visit (to be conducted via hi-rail vehicle) with interested Operators so that all interested parties will have first-hand knowledge and an opportunity to view the line. In the interim, please refer to the information provided below:

The active portion of the Hillsboro Branch Railroad line extends from Milepost 16.36 in the Town of Wilton, identified as Station 12+00 on V18 Map 1, to Milepost 62.00 at Station 1197+06 on V 34 Map 9 in the Town of Bennington. There is one rail customer on the line, which requires rail shipment of stone from a quarry at MP 18.62 on the state-owned line to a processing plant at MP 13.54, on a portion of the line owned by Pan Am Railways/Boston & Maine Corporation. The remainder of the state-owned line is not in active rail service at this time.

In accordance with Federal Railroad Administration (FRA) standards, NHDOT would classify the track conditions as follows:

- |                                   |             |                        |
|-----------------------------------|-------------|------------------------|
| • MP N-16.36 - MP N-18.60         | FRA Class 2 |                        |
| • MP N-18.60 - MP N-20.00         | FRA Class 1 |                        |
| • MP N-20.00 - MP N-29.76         | FRA Class 1 |                        |
| • MP N-29.76 - MP N-32.36         | FRA Class 1 | Not recently certified |
| • MP N-32.36/W-59.39 - MP W-62.00 | FRA Class 1 | Not recently certified |

Please note that the section of track referenced as MP N-32.36/W-59.39 - MP W-62.00 is not actually 30 miles long as there was a merging of two rail lines and the distance between these mileposts is approximately 3 miles.

The current mileage operated over Pan Am trackage is approximately 2.8 miles (MP 13.5 – MP 16.3).

The last track inspection by the FRA was in 2007 and it extended to Mile Post 22.90 with no exceptions taken. A copy of this track inspection is available to view and copy at the NHDOT (7 Hazen Drive, Concord, NH).

There are a total of 23 crossings on the entire line; 15 passively protected public crossings, 2 actively protected public crossings, and 6 private crossings. On the active section of the Line there are 2 actively protected public crossings and 1 private crossing.

- There are existing Temporary Use Agreements, Crossing Agreements and Leases on this Line, but none impact railroad operation and all are handled by the NHDOT Bureau of Rail & Transit.
- Installation of crossing gates would require the petition process to establish change of protection and apportionment of cost.

Railroad Valuation plans are available for viewing at NHDOT (7 Hazen Drive, Concord, NH).

An annual memorandum of agreement is signed with the New Hampshire Department of Resources and Economic Development (Bureau of Trails), allowing snowmobile access during winter shutdown of railroad operations on the Line from MP 18.66 to MP 62.0.

On the active section, MP 16.36 to MP 19.5, of the Line north of Howard Street in Wilton and the siding at Pike's pit there are 5 bridges. On the inactive section of the Line, between MP 19.5 and Bennington, there are 12 bridges.

- The State does not have ratings or weight limit information on any of the bridges on this Line.
- The State has bridge plans available for this Line and they are available for viewing at NHDOT (7 Hazen Drive, Concord, NH).
- A full engineering inspection of all of the bridges was completed in 1997 by Gordon, Bua and Reed, Inc. These inspection reports are available for review at NHDOT (7 Hazen Drive, Concord, NH). The Department has completed cursory inspections of the bridges on the active section of the Line annually with the exception of 2011. There are no written reports related to these inspections.
- The FRA 49 CFR Part 237 requires that this Line comply with the Bridge Management Program on September 13, 2012. The Department has established its Bridge Management Program for this Line. The Operator will be required to provide inspection and analysis services to comply with the Department's Bridge Management Program including bridge ratings and establishing weight limits if state funding is not available for that purpose. Inspection reports, bridge ratings, plans, and any other information obtained or prepared by the Operator shall be provided to the State.

There are no current weight or dimensional restrictions on the active section of the Line based on the service provided to date. The bridges on the inactive section of the Line need to be inspected and evaluated by the Operator to determine their weight limits prior to moving equipment over that section of the Line. If the operator wants to haul heavy or wide loads on the Line, then they will need to inspect and evaluate the Line to determine if the traffic can pass over the Line. All information related to evaluations, ratings, inspections and reports shall be provided to the State.

The capital and capitalized maintenance work that has been performed to the Line over the last seven years includes:

- 2007: Weed Spray Line; Provide 250 cross ties, 22 50# kegs of spikes and 400 bolts, nuts and washers; Install 1,170 track ft of 115 lb rail owned by the NH DOT to replace the 75 lb rail in the curve west of Conrad's Crossing; Install 250 new ties; Tamp the new track, new ties and 3 mi of track east to Howard Street in Wilton.
- 2008: Weed Spray Line, Provide 250 cross ties and 22 50# kegs of spikes to RR
- 2009: Weed Spray Line, Replace collapsed 36" cmp with 36"rcp in Lyndeborough
- 2010: Weed Spray Line, Provide 250 cross ties and 30 50# kegs of spikes to RR
- 2011: Weed Spray Line
- 2012: Weed Spray Line
- 2013: Weed Spray Line

No baseline analysis of the property has been completed for underlying environmental conditions. The liability for preexisting conditions will be established in accordance with State Law.

NHDOT has historic track charts on file from the Boston & Maine Railroad and they are available to view and copy at NHDOT (7 Hazen Drive, Concord, NH).

There are no known rail tests (Sperry or equivalent) conducted during the State's ownership.

There is one existing customer on the line, which generally operates from April – November. The State has not pursued other potential customers and will defer to the selected operator to do so. The State has no current agreements with any customers. The product is shipped from approximately MP 18.6 to a facility located at approximately MP 13.5.

### 3. Scope of Services: Operating Requirements

The selected Operator will be required to provide the services, described below, on the Hillsboro Branch Railroad Line:

- The selected Operator will maintain and operate freight service over the line referenced above, at the Operator's sole expense.

The annual carloads on this Line have varied. The Applicant is responsible for coordinating carload quantities and rates with the existing shipper.

Historic carloads, as known by NHDOT, are as follows:

April - November 2005:	2,925 carloads
April - November 2006:	2,913 carloads
April - November 2007:	2,880 carloads
April - November 2008:	2,370 carloads
**April - November 2009:	1,310 carloads
**Partial year	

- Level of service requirement:
  - The Operator shall provide adequate service to satisfy the existing and future customers on the line. If the Operator does not provide adequate service, as determined by the customer and the State, and provides less than 60 days of operations per operating calendar year, then the Operating Agreement may be terminated by the State.
  - Note: 60 days is the minimum service level. If there are no customers, should the existing customer decide to use other forms of transportation or cease to exist, the Operator is responsible for finding other business to achieve the minimum required level of operation, as referenced above, or the Operating Agreement may be terminated by the State.
- The Operator will furnish appropriate locomotive power to maintain operations and furnish fuel, crews, maintenance and supplies. All equipment and crews must meet Federal Railroad Administration (FRA) qualifications and licensing requirements at all times.
  - Cars presently in this service: 10 covered hoppers (Cars are privately owned and it will be the obligation of the Operator to provide cars).
- The Operator will be responsible for maintaining track to the classification as noted in the Physical Description of the Line section; the Operator will continue to maintain the Line and not let it deteriorate to a lower Class.
  - There is no State-owned maintenance equipment available to the Operator.
  - There is some State-owned rail of all required nominal weights and various joint bars, tie plates and other track material (OTM) located on the property that will be available for maintenance work on the State-owned Line. The State will be under no obligation to provide additional materials.
- The Operator will be responsible for maintenance of track, bridges, culverts, highway grade crossings including signal systems, brush cutting and weed control, ditching, and other rail facilities required for safe operation of the railroad.
  - The Operator will be required to control the vegetation in compliance with FRA regulations. The State will customarily pay 80% of the cost when at the sole discretion of the State, the State determines: 1) the work is required and 2) funds are available.

- The Operator will be responsible for car hire, car accounting, and record keeping according to the Association of American Railroads, and other pertinent standards. The Operator must provide necessary car and other equipment for the service.
- The Operator is responsible for providing the required service and may subcontract portions of the service as outlined in the Operating Agreement (See Draft Operating Agreement attached). Subcontractors are subject to approval of NHDOT.

#### 4. Contract Requirements

The selected Operator will be subject to the following State contracting requirements:

1. The Operator must pay the State a User Fee equal to 5% of gross quarterly revenue, 10% if passenger/tourist-excursion, and conduct maintenance work on the State-owned Line not less than 20% of gross annual revenue.
2. The Operator will be required to submit reports as follows: (1) quarterly marketing reports, (2) monthly operations reports, which includes traffic, revenues, and maintenance expenditures, and (3) inspection reports in accordance with CFR 49 Part 213-233.
3. The Operator will provide inspection and maintenance reports to NHDOT in accordance with the terms of the Operating Agreement, which states, in part, that, "The Contractor shall patrol the active service area and formally inspect the track as per FRA Track Safety Standards subpart F (49 CFR 213.233) and submit an inspection report in a timely manner but no more than one (1) month after each inspection. Should any defects be found, the Contractor shall take the appropriate remedial action and notify the Contracting Officer in writing of said remedial action. The Contractor shall patrol the inactive service area at least six (6) times per year with at least six (6) weeks between patrols and submit a patrol report within one (1) month after each patrol."
4. Any incident that meets the NHDOT Bureau of Rail & Transit's Notification Requirement for Incidents Involving Railroads, per RSA 367:56, must be immediately reported to NHDOT and service resumed within 48 hours.
5. The selected Operator will be required to obtain a decision from the Surface Transportation Board (STB) declaring that the Operator is authorized to operate as a railroad common carrier.
  - Upon the expiration of the terms of the Agreement or upon any breach thereof by the Operator, the selected Operator will be required to terminate its operations, relinquish the property, and file any required STB documents for discontinuance of service. Any expenses incurred will be at the Operator's sole expense.
6. The Operating Agreement shall not be effective until Governor and Council approval. Note: Governor & Council approval is the State's formal contract approval process.
7. The Operating Agreement will be for a term of up to 10 years and with an option for one 10-year extension with notice one year in advance and subject to negotiation (See Draft Operating Agreement attached). Operator's rights could be revoked for the following reasons: failure to perform the Service satisfactorily or on schedule; failure to submit any report required in the Operating Agreement; failure of the Contractor to maintain the records required in the Operating Agreement, or to permit access thereto; failure to perform any other covenant, term or condition in the Operating Agreement; operation of the Service fewer than sixty (60) days during any Operational Year; failure to meet the conditions of the Operating Agreement.
8. State railroad tax (RSA 82) still applies to the state-owned line, but there is no municipal property tax liability.
9. The Operator must be registered with the Secretary of State's Office to do business in the State of NH.
10. Operators are required to carry a minimum of \$3 Million in Railroad and Commercial Liability Insurance, or, if providing passenger rail, a minimum of \$10 Million in Railroad and Commercial Liability Insurance.

11. The operator must fully comply with all applicable State and Federal regulations.
12. Operator will be responsible for contacting Pan Am and acquiring trackage rights information including any fee(s) paid.

## 5. Submission Requirements: Content of Proposals

The following information shall be included in the proposal. If the firm proposes to use any subcontractors in its operation, this same information shall be provided for the proposed subcontractors. Please provide detailed responses for the following and label your responses and attachments accordingly:

### 1. Respondent's Contact Information

- A. Name of the Corporation
  - I. Location of incorporation
  - II. Date of incorporation
- B. Respondent's Contact Person
  - I. Name
  - II. Address
  - III. Telephone Number
  - IV. Email Address
- C. Stockholder Information
  - I. Name & place of residence for any Stockholder owning more than 5% of corporation's stock
- D. Corporation Officers (provide for all officers):
  - I. Names
  - II. Titles
  - III. Resumes

### 2. Proposed Maintenance Plan (10%)

- A. Detailed Maintenance plan to cover the proposed length of the operating agreement for the items referenced in the Scope of Services.
- B. List maintenance equipment to be used and indicate if the equipment is Operator-owned or leased.

### 3. Proposed Business & Marketing Plan (20%)

- A. Business and marketing plan for maintaining service to the existing customer and developing new customers on the line.
  - I. Include sufficient detail to demonstrate commitment to long-term operation of existing service and growth of service on the line.
- B. Proposed Cost & Revenue Structure
  - I. Detailed cost & revenue information, including, at a minimum:
    - a. All expenses incurred to operate this service, per year, for initial 10-year operating period
      - i. Labor, equipment, maintenance, taxes, fees, etc
    - b. Anticipated number of carloads, per year, for initial 10-year operating period
      - i. Rates to be charged
      - ii. Anticipated annual revenue generated, per year, for initial 10-year operating period
        - Anticipated annual State User Fees paid, per year, for initial 10-year operating period
          1. Note: State User Fee = 5% of gross freight revenue or 10% of gross passenger/tourist/excursion revenue

### 4. Proposed Operating Plan (10%)

- A. Operating Plan providing a detailed narrative describing actual train consist and movements to service the existing customer.

- I. How many trips and carloads are anticipated during a normal workday and annually.
- B. Description of the status of operating rights or trackage or interchange agreements, if any, on connecting lines to be used for proposed operations.
  - I. Provide copies of current operating rights or trackage or interchange agreements as referenced above

**5. Proposed Operating Equipment Provided (10%)**

- A. Description of the means of accomplishing the following:
  - I. Supplying motive power for the line
  - II. Supplying freight car needs

**6. Financial ability to operate short line service & financial references (20%)**

- A. A detailed annualized cash flow statement and balance sheet; published financial statement
- B. Letters of reference:
  - I. From an officer of a financial institution with whom the Respondent does business;
  - II. From another operating railroad with knowledge of the Respondent's ability to provide rail service.
- C. Funding available
  - I. Indication of the amount of funds currently available, as well as funds that will become available upon selection, to sustain rail service for at least 10 years.
  - II. If funding is contingent upon selection as Operator, Respondent must provide documentation as to the availability of funding if selected.
- D. Insurance
  - I. Letter of insurability from an insurer qualified to do business in the State with details of the proposed insurance coverage, including general liability, Federal Employee's Liability Act (FELA), cargo and foreign rolling stock liability, workmen's compensation, fire coverage, etc.
    - a. If any of the insurance policies has a deductible, identify the source of funds to cover deductible amounts.
      - i. Note: Operator's insurance policy must name the NHDOT as an additional insured, and the operator shall indemnify, defend, and hold harmless the state and its officers, agents, representatives and employees harmless from any and all claims, actions, causes of actions, losses, expenses, damages and liabilities.
- E. Pro-forma financial statement for the proposed operation, clearly indicating all expenses and revenues for the service, and clearly includes, at a minimum:
  - I. Anticipated revenues and costs, per year, for initial 10-year operating period
  - II. Carloads, per year, for initial 10-year operating period
  - III. Personnel required for initial 10-year operating period

**7. Operating and management experience and overall ability to perform the required services, including its ability to provide freight service to the existing shipper on the line (30%)**

- A. Name, location and characteristics of other railroad property, if any, presently operated
  - I. If other railroad property is operated, provide a copy of the two most recent annual reports from that property.
- B. Description of the experience and skill level of each key management employee and each officer to be assigned to operate and maintain the property, and to perform the following functions:
  - I. Operation of trains
  - II. Maintenance of rail facilities
  - III. Performance of timekeeping, billing, interline settlement, demurrage, accounting and other administration functions, including a proposed tariff schedule
  - IV. Negotiation and implementation of contracts and agreements
  - V. Development and maintenance of performance standards
  - VI. Marketing
- C. Providing experienced railroad supervision, sufficient track laborers, track tools and equipment for initial start-up and continued maintenance of track to permit rail operation at the track conditions (FRA Class Standards) as indicated in the Physical Description of the Line.

Respondents shall ensure that all information required herein is submitted with the proposal. Failure to provide a complete and detailed response to all information, inaccuracy or misstatement shall be sufficient cause for rejection of the proposal or



withdrawal of an award. Respondents are encouraged to provide any additional information describing abilities. Responses to each requirement listed above should be in order and be clearly marked with the section number to which they respond.

## 6. Evaluation Criteria and Selection Procedure

**Incomplete proposals will be considered non-responsive and will not be evaluated.**

For the Respondent’s proposal to be considered responsive, and therefore scored and further evaluated, the Respondent must provide: (1) complete responses for all requirements listed in the Content of Proposals, and (2) proof of operating or trackage rights or ability to obtain rights on the portion of the Hillsboro Branch owned by Pan Am Railways in Milford to the existing shipper’s facility.

The Department of Transportation will evaluate responsive proposals, that have met the first-tier evaluation noted above, based on the following criteria:

- 10% Maintenance plan
- 20% Proposed business and marketing plan
- 10% Proposed operating plan
- 10% Operating equipment provided
- 20% Financial ability to operate short line service and financial references
- 30% Operating and management experience and overall ability to perform the required services, including its ability to provide freight service to the existing shipper on the line

Respondents submitting responsive proposals may be requested to appear for an interview and/or to supply further information at the request of the Department.

## 7. Submittal Information & Details

Proposals must be submitted on or before **3:00pm on Thursday, November 21, 2013** to:  
Shelley Winters, Administrator  
NHDOT –Bureau of Rail & Transit  
P.O. Box 483  
Concord, NH 03302-0483

All proposals must be date-stamped by NHDOT staff by the stated time to be considered. NHDOT does not accept facsimile or email submitted proposals. Proposals received after the due date will not be considered and any proposal that does not contain all requested information may be rejected.

Proposals shall be submitted in a sealed package and contain: one (1) original (identify as such) plus four (4) copies of all materials required for acceptance of their proposal. Printed copies should be typed and submitted on 8.5”x11” paper and be bound securely.

All proposals, upon submission, become the property of NHDOT. The information contained in proposals submitted for the NHDOT’s consideration will be held in confidence until all evaluations are concluded and contract approval has been reached. At that time, procurement documents, including proposals, will be available for public inspection pursuant to NH RSA 91:A.

The expense of preparing and submitting a proposal is the sole responsibility of the Respondent. NHDOT reserves the right to reject any or all proposals received, to negotiate with any qualified Respondent, or to cancel in part or in its entirety this RFP. This solicitation in no way obligates NHDOT to award a contract.

Top-scoring Respondents, based on the evaluation of the written proposal, may be required to have interviews/presentations to support or clarify their proposals, if requested by NHDOT. Failure of the Respondent to complete a scheduled interview/presentation to NHDOT may result in rejection of that Respondent's proposal. Interviews/presentations, if scheduled, will be part of the final selection process.

NHDOT reserves the right to negotiate the terms of the Operating Agreement with the selected Respondent prior to entering into a contract. If contract negotiations cannot be concluded successfully with the highest-ranked Respondent, NHDOT may negotiate an Operating Agreement with the next-highest Respondent and so on until a contract is awarded.

NHDOT Rail staff will schedule a Site Visit (to be conducted via hi-rail vehicle) with interested Operators so that all interested parties will have first-hand knowledge and an opportunity to view the line. **Site Visits** will be conducted on **November 1, 2013** and must be scheduled via email with NHDOT Bureau of Rail & Transit Administrator Shelley Winters ([swinters@dot.state.nh.us](mailto:swinters@dot.state.nh.us)) no later than **October 29, 2013**.

Questions about the project should be directed to NHDOT Bureau of Rail & Transit Administrator, Shelley Winters, via email; phone calls will not be accepted. Final questions and requests for clarification must be received **at least two weeks prior** to the proposal due date (November 7, 2013). Please email Ms. Winters at: [Swinters@dot.state.nh.us](mailto:Swinters@dot.state.nh.us)

All clarifications and interpretations of the proposal specifications, individual questions and supplemental instructions will be in the form of written Addenda to the proposal documents which will be posted on the Bureau of Rail & Transit website (<http://www.nh.gov/dot/org/aerorailtransit/railandtransit/index.htm>) with the Final Addenda being posted no later than one week before the proposal due date (November 14, 2013).

**Attachments Provided:**

- Draft operating agreement (subject to final negotiations)
- NHDOT Bureau of Rail & Transit's Notification Requirement for Incidents Involving Railroads

**Hillsboro Branch Railroad RFP**  
**Addenda #1**  
**Questions & Answers**  
**Published 11/14/2013**

- Q1: Please clarify what is required by Section 6.A of the RFP relating to detailed annualized cash flow statement and balance sheet, as well as published financial statement. Are these documents intended to be on a going forward basis reflecting actual operations on the line or based on Respondent's existing operations? Since this information is generally not made available to the public, confidentiality could be a concern.**
- A1: Financial information requested under Section 6.A of the Content of Proposals is based on the Respondents' existing operations at the time of submittal. Per Section 7, Submittal Information & Details, proposals will only be available for public inspection pursuant to NH RSA 91:A.
- Q2: Please clarify the statement, "No car storage, other than that as required to provide service on the Line, will be permitted." Often times, customers will order multiple cars that cannot always be unloaded immediately and need to be placed on demurrage at another location by the rail carrier until unloading is permissible. Is this acceptable? Also, long-term car storage is prevalent in the railroad industry as a means to derive revenue from light density lines. This practice is generally considered part of a railroad's service, but seems to not be allowed by the RFP.**
- A2: The restriction on car storage is on main line storage as car storage makes track inspection, routine maintenance, and seasonal recreational use impossible. Should any demurrage cars need temporary storage, the 1,050-foot passing siding at MP N18.9 should offer ample accommodation. Per this RFP, no long-term car storage will be allowed and short-term car storage, needed to provide service on the line, will require that cars be stored on the siding.
- Q3: We request reconsideration of requirement to maintain to Track Class 1 for Out-of-Service and Non-Active track segments.**
- A3: Subject to contract negotiations with the State, consideration may be given to delineate active and inactive track segments for maintenance purposes.
- Q4: In reference to Item 2 of Contract Requirements, are monthly, quarterly and annual signal system inspection reports available? Will current Operator be required to certify condition of systems and compliance with 49 CFR Part 234?**
- A4: Reports can be made available upon request. Yes, these reports would serve to certify conditions.
- Q5: Are Track Inspection Reports available?**
- A5: Inspection reports through 2011 can be made available upon request.
- Q6: Who is Contact Person at Bureau to arrange viewing of Val Plans, Track Charts, Bridge Info, etc?**
- A6: Brian Lombard, NHDOT Railroad Engineer. 603-271-3465
- Q7: Are cost figures available for capital and capitalized maintenance work shown on Page 2?**
- A7: Specific costs are unavailable at this time. The railroad typically pays 20% of the cost of Weed Spraying on the line and the State pays 80%. The State provided the capital items (cross ties, spikes, pipe, etc) noted in this section and the railroad paid for the installation of these items. Additionally, the State paid for the materials and work required to install 1,170-track ft in 2007.

- Q8: **Please clarify the intent of the following items contained in Section 3 Scope of Services:**
- **Operating Day**
  - **"...Operator is responsible for finding other business to achieve the minimum required level of operation..."**
    - **Does this requirement mean 1 car for 60 days; 10 cars for 60 days; or same revenues for 60 days?**
    - **Is there a time limit on restoring or replacing lost traffic?**
- A8: Clarification is provided as follows:
- Operating Day is calendar day in which a rail service (pick-up, drop-off, or switch rail cars) is provided or a revenue producing activity is conducted.
  - The selected Operator, not the State, is responsible for marketing the service and locating other shippers in order to achieve the minimum number of days of operations per calendar year.
    - There are no car minimums required for a day to be considered an operating day. The State would encourage higher car counts, if that level of service is required by the shippers, however the contract requirement is for a minimum of 60 days of operation per operating calendar year.
    - There is no time limit in restoring or replacing lost traffic, however the contract may be terminated if a minimum of 60 days of operation per operating calendar year is not achieved.
- Q9: **Please list the inspection reports required per Section 4.2 on Page 2?**
- A9: Inspections must be conducted in accordance with 49 CFR 213.233 - TRACK INSPECTIONS. Records shall specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. ~~Rail inspection records shall also specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested per § 213.237(d). The owner shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken. The State could supply, if necessary, an inspection form which the Operator could use to conduct and submit their information to the State.~~ (Above struck, per NHDOT Rail Inspector John Robinson on 11/18/13)
- Q10: **Section 4.3 requires Patrol of active service area, formal FRA track inspections, submission of reports and, if any defects are found, take appropriate remedial action and notify Contract Officer and requires, in the inactive service area, patrols 6 times per year and submission of reports. Is this the correct interpretation?**
- A10: Yes. In-service track is to be inspected to § 213.233 standards and the required frequency must also adhere to § 213.233 Paragraph C (once per calendar week with at least a three-day interval between inspections.) Records of inspection must be in accordance with § 213.241, which includes being prepared on the day the inspection is made and signed by the person making the inspection. Inactive service area requires six (6) inspections per year with 6-week intervals between inspections. Per § 213.239, special inspections after extreme weather are also recommended.
- Q11: **The RFP asks for a number of items to be provided for the initial 10-year period, which requires a measure of speculation. Will the Bureau, in their review process, recognize that that speculation exists and to a great extent is based on the experience and judgment of the Proposer?**
- A11: Yes, it is understood that there is a measure of speculation in projecting out 10 years, however it is presumed that all Proposers will employ sound business judgement and forecasting based on the service they propose to perform on the line.
- Q12: **Section 5.4.B asks for a description of trackage/operating and Section 6 requires proof of the operating or trackage rights agreement. Does this mean that the Agreement must be fully executed or will an intent to agree be sufficient?**
- A12: An intent to agree will be sufficient.

Q13: **Section 5.6.A asks for several forms of financial information. As a Private entity we are concerned with disclosure of our Financial Information. Will alternate methods of providing that info to the bureau be entertained?**

A13: Alternative methods will not be entertained. Per Section 7, Submittal Information & Details, proposals will only be available for public inspection pursuant to NH RSA 91:A.

Q14: **Section 5,7.A,I asks for copies of Annual Reports which we do not prepare. What information are you looking for?**

A14: Change Section 5 (Submission Requirements: Content of Proposals), Item 7.A.I. to read, **“If other railroad property is operated, provide a copy of the two most recent annual reports from that property or, at a minimum, provide a narrative (summary) of the last two years of operations from that property.”**

Q15: **Is the Selection Committee make-up public information?**

A15: No

Q16: **DRAFT OPERATING AGREEMENT: Request that Article 3.5 FREIGHT RATES AND TARIFFS be modified to remove the State from the approving rates; leave the process of settling disputes, if any, in the jurisdiction of the STB.**

A16: No change. As the track owner, the State reserves the right to reasonable discretion.

Q17: **Has the railroad been dormant? What was the last date the railroad was in active service? Who provided the service?**

A17: The railroad has not been dormant and portions are still in active service and being provided by Milford-Bennington Railroad (MBRX) under a modified certificate provided by the Surface Transportation Board (STB).

Q18: **Is it the State’s interest to develop the railroad beyond the single customer it serves?**

A18: Yes

Q19: **What were the gross revenues associated with the carload information provided on page 3?**

A19: The gross revenues associated with the carload information provided is as follows:

Year	Carload Count	Gross Revenue	User Fee Paid to State
2005	2,925	\$219,375.00	\$10,968.75
2006	2,913	\$238,475.00	\$11,923.75
2007	2,880	\$236,000.00	\$11,800.00
2008	2,370	\$201,450.00	\$10,072.50
2009	1,310	\$111,350.00	\$ 5,567.50

Q20: **Why does not the state permit car storage? Especially on the inactive portion of the line? Aren’t other state-owned lines in NH allowed to have car storage?**

A20: Though car storage on other lines has been allowed, the State does not want to allow car storage on this line for the reasons provided in Answer A2.

Q21: **Does the state recognize an existing operator on the line? Did the existing operator supply its car totals for years after 2009?**

A21: Under a modified certificate issued by the Surface Transportation Board (STB), Milford-Bennington Railroad (MBRX) is currently operating on the line. Carloads were reported partially through the 2009 operating season since that is the timeframe in which the State's contract with the railroad operator was terminated.

Q22: **Who did the maintenance work described in Section 2 (Description of the Line)?**

A22: A contractor, Railroad Weed Control (RCW) conducted the weed control and other work was conducted by the Milford-Bennington Railroad (MBRX) and their subcontractors.

Q23: **Section 2 (Description of the Line) states, in part, "There is one existing customer on the line, which generally operates from April – November." As clarification, does the customer operate its facility from April to November, or does the customer get railroad service from April to November? If service, who provides the service?**

A23: The general railroad operating service timeframe of the existing customer is April to November. The State has no knowledge of the customer's overall facility operating season. Rail service, traditionally provided April to November, has been provided by MBRX.

Q24: **Section 3 (Scope of Services: Operating Requirements) includes the following: "Note: 60 days is the minimum service level. If there are no customers, should the existing customer decide to use other forms of transportation or cease to exist, the Operator is responsible for finding other business to achieve the minimum required level of operation, as referenced above, or the Operating Agreement may be terminated by the State."**

- **What if for some other reason no traffic is operated for a total of 60 days?**
- **What if service is provided for 59 days and then no other day that year, due to a reason other than the customer decided 'to use other forms of transportation,' or 'ceased to exist'?**
  - **For example, suppose the customer decided only to furnish loads for only 59 days. That possibility is not one of those addressed by #3.**
  - **What if Pan Am, the connecting railroad, decides to arbitrarily not permit the operator to enter its track to reach the processing facility after 59 days? As the RFP notes, the existing customer requires service between a quarry on the state line and a processing facility on Pan Am, so the operator could not provide service on the 60th day.**

A24: Per the terms of the Operating Agreement, draft attached to RFP for review, the State *may* terminate the agreement if less than 60 days of service is provided, for any reason. If reasons other than those explicitly listed in the RFP and negotiated Operating Agreement were cited by the railroad as the reason they are unable to meet the minimum number of operating days, the State would review the details of these reasons.

Q25: **Paragraph 2 of Section 2 of the RFP states the 'active portion' begins at MP16.36 in Wilton, runs to the quarry at MP18.62, and ends at MP62.00. According to my calculations, MP62.00 is actually about [32.36-18.60=13.76 miles] plus 2.8 miles or 16.56 miles past MP18.62. Am I correct? If so, that would make the total 'active track' [18.62-16.36=2.26 miles]+16.56 = 18.82 miles, right?**

A25: By our calculations the length of track on the State line between Wilton and Bennington is 18.61 miles: [MP16.36-MP32.36=16 miles] + [MP 59.39-62.00=2.61] → 16 miles + 2.61 miles = 18.61 miles.

Paragraph 2 of Section 2 (Description of the Line) should read, "The State-owned portion of the Hillsboro Railroad line extends from Milepost 16.36 in the Town of Wilton..." instead of "The active portion..."

- Q26: I noticed later in Section 2 the RFP states 'On the active section, MP 16.36 to MP 19.5...' which seems to conflict with Paragraph 2 in Section 2. So, which is the actual active track end point? The term 'remainder of the state-owned line' refers to the line from MP62.00 to which point?
- A26: The active section is currently between MP13.36 – MP19.5 and the “remainder of the state-owned line” refers to MP19.5 – MP62.00

**Modifications made to the RFP, as noted in the Answers provided above:**

1. **Section 5 (Submission Requirements: Content of Proposals), Item 7.A.I.** shall be changed to read, “**If other railroad property is operated, provide a copy of the two most recent annual reports from that property or, at a minimum, provide a narrative (summary) of the last two years of operations from that property.**”
2. **Paragraph 2 of Section 2 (Description of the Line)** shall be changed to read, “**The State-owned portion of the Hillsboro Railroad line extends from Milepost 16.36 in the Town of Wilton...**” instead of “The active portion...”





**OPERATING AGREEMENT  
ON THE  
STATE-OWNED PORTION OF THE HILLSBORO BRANCH RAILROAD LINE  
BETWEEN**

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

**AND**

**MILFORD - BENNINGTON RAILROAD COMPANY, INC.  
62 ELM STREET  
MILFORD, NH 03055**

**April 30, 2014**

Contractor Initials PPC  
Date 6/17/14

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## ARTICLE I – GENERAL CONDITIONS

- 1.1 DEFINITIONS – As used herein, the following terms have the meanings indicated:
- a. “Agreement” – means the Operating Agreement dated April 30, 2014.
  - b. “Monthly Gross Operating Revenue” – means those revenues derived monthly by the Contractor from providing Service to shippers on the Line.
  - b. “Commencement Date” – means the date on which the Contractor commences Service.
  - c. “Completion Date” – means December 31, 2023 unless this Agreement is otherwise extended or renewed.
  - d. “Contractor” – means Milford-Bennington Railroad Company, Inc.
  - e. “Contracting Officer” – means Commissioner, New Hampshire Department of Transportation (NHDOT), or his duly authorized representative having an address of 7 Hazen Drive, P.O. Box 483, Concord, NH 03302-0483. The Contracting Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement and the resolution of any disputes by the Contracting Officer shall be final.
  - f. “Contractor’s Representative” means representative of the Contractor responsible for making contract decisions and will be the Contractor’s contact for the State’s Contract Officer
  - g. “Effective Date” means the date this Agreement is approved by the Governor and Council of the State of New Hampshire.
  - h. “FRA” means the Federal Railroad Administration.
  - i. “Line” – means the State owned railroad line beginning in Wilton at MP 16.36 and heading west to MP 62 in Bennington as more particularly described in Section 2.1.
  - j. “Major Maintenance Expenditure” – means any expenditure to address a condition on the Line that prevents Service on the Line while the condition exists. Major Maintenance Expenditures include, but are not limited to, bridge failures/rehabilitation, major washouts, crossing rehabilitation/reconstruction.
  - k. “Operating Year” – means January 1 to December 31.
  - l. “Operations Manager” means the Contractor’s representative responsible for day-to-day operation and maintenance on the State owned line who will be the contact for the Bureau of Rail and Transit personnel.
  - m. “OTM” – means Other Track Materials including, but not limited to joint bars, bolts, tie plates, spikes and rail anchors.
  - n. “Service” – means revenue freight trains carrying goods or returning from delivering goods on behalf of shippers and receivers on the Line.
  - o. “State” – means the State of New Hampshire, through the Department of Transportation
  - p. “STB” means the Surface Transportation Board.
  - q. “Subcontractor” – means an individual, partnership, firm, corporation, or any combination thereof, or joint venture, to whom the Contractor sublets any part of this Agreement.

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- r. "Rail facility and rail facilities" collectively means the track, bridges, signals, switches, structures, buildings, and related railroad transportation property located on the one or more segments over which service is to be provided.
- s. "User Fee" – means fee to be paid by the Contractor to State for the use of the Line to provide the Services, as more particularly defined in Section 4.3.1.

1.2. EFFECTIVE DATE/COMPLETION OF SERVICES.

1.2.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approves this Agreement ("Effective Date").

1.2.2 Any Service performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor.

1.2.3 After termination of the Agreement the parties shall be relieved of all obligations hereunder, except the Contractor shall terminate its operations, relinquish the property, and file documents for discontinuance of service with the Surface Transportation Board, any expenses incurred will be at the Contractor's expense, and submit the final User Fee payment, a Final Report in the format of monthly reports described in Exhibit A and the Contractor's continuing duty to maintain financial records per Section 4.5 paragraph 4.5.1.

1.3. RENEWAL OF AGREEMENT.

1.3.1 The Contractor shall notify the State by certified mail no later than one year prior to the Completion Date that the Contractor wishes to enter into renegotiations for a new agreement for an additional ten (10) year period beginning January 1, 2024. If the Contractor and the State cannot agree upon a new Operating Agreement by July 1, 2023 or the State is not satisfied with the Contractor's level of service during the term of this Agreement, the State may at that time solicit new Requests for Proposals to operate the Line and have no further obligations for renewal of this Agreement with the Contractor.

1.4. CONTRACTOR'S REPRESENTATION AND WARRANTIES.

1.4.1 The Contractor represents and warrants the following:

- a. The Contractor is a corporation duly organized, validly registered with the Secretary of State, and in good standing under the laws of the State, and is duly qualified to do business in each jurisdiction where its business or the ownership of its property requires such qualification;
- b. The Contractor has the full power and authority to enter into this Agreement and to carry out the functions, which it has undertaken in this Agreement;

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- c. All corporate and other proceedings required to be taken by or on the part of the Contractor to authorize it to enter into this Agreement and perform the Service have been duly taken; and
- d. The execution of this Agreement and the operation of the Service will not violate any statute, rule, regulations, order, writ, injunction or decree of any court, administrative agency or governmental body.
- e. The Contractor's Representative is  
Peter Leishman  
Milford-Bennington Railroad Co. Inc.  
62 Elm Street  
Milford, NH 03055  
Tel: (603) 365-0621
- f. The Contractor's Operation Manager is:  
Peter Leishman  
Milford-Bennington Railroad Co. Inc.  
62 Elm Street  
Milford, NH 03055  
Tel: (603) 365-0621

1.5. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/  
EQUAL EMPLOYMENT OPPORTUNITY.

1.5.1 In connection with the performance of the Service, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities with appropriate jurisdiction which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

1.5.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

1.5.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

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1.6. PERSONNEL.

1.6.1 The Contractor shall at its own expense provide all personnel necessary to perform the Service. The Contractor warrants that all personnel engaged in the Service shall be qualified to perform the Service, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

1.6.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Service to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

1.6.3 The Contracting Officer or his or her successor shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision in his/her reasonable discretion shall be final for the State.

1.7. EVENT OF DEFAULT/REMEDIES.

1.7.1. Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

1.7.1.1. failure to perform the Service satisfactorily or on schedule as reasonably determined by the State.

1.7.1.2. failure to submit any report required hereunder;

1.7.1.3. failure of the Contractor to maintain the records required hereunder, or failure to permit access thereof; and/or

1.7.1.4. failure to perform any other covenant, term or condition of this Agreement.

1.7.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

1.7.2.1. give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, the State may terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

1.7.2.2. treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

1.8. TERMINATION.

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1.8.1 In the event of an early termination of this Agreement for any reason, the Contractor shall comply with Section 1.2.3 and deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") containing all information required by the various reporting provisions of the Agreement, from the date of the last such reports through and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

1.9. CONTRACTOR'S RELATION TO THE STATE.

1.9.1. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

1.9.2. All railroad or corporate taxes assess by the State of New Hampshire, including those specified in New Hampshire RSA 82, and the Federal Government as a result of the Operating Agreement are not included in the user fee and are the responsibility of the Contractor.

1.10. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

1.10.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the Contracting Officer, which shall not be unreasonably withheld. None of the Service shall be subcontracted by the Contractor without the prior written consent of the State, which shall not be unreasonably withheld.

1.11. INDEMNIFICATION.

1.11.1 The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in Section 1.11.1 shall survive the termination of this Agreement.

1.12. INSURANCE.

1.12.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

1.12.1.1 Railroad Liability and Contractual Liability Insurance shall be purchased with the State named as co-insured in the following amounts

a. three million dollars (\$3,000,000) for normal freight service

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b. five million dollars (\$5,000,000) if hazardous materials are shipped each occurrence, with a deductible of twenty-five thousand dollars (\$25,000) maximum.

1.12.2 The policies described in subparagraph 1.12.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

1.12.3 The Contractor shall furnish to the Contracting Officer, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer, or his or her successor, no less than ten (10) days prior written notice of cancellation of the policy. Provided further that the Contractor shall be obligated to notify the Contracting Officer within ten (10) days of any modification of the policy.

1.12.4 Within ten (10) days prior to the start of operation and annually thereafter, the Contractor shall provide the Contracting Officer with a certificate evidencing the continual existence of required insurances.

#### 1.13. WAIVER OF BREACH.

1.13.1 No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

#### 1.14. NOTICE.

1.14.1 Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given above.

#### 1.15. AMENDMENT.

1.15.1 This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

#### 1.16. CONSTRUCTION OF AGREEMENT AND TERMS.

1.16.1 This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties

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to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

1.17. THIRD PARTIES.

1.17.1 The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

1.18. HEADINGS.

1.18.1 The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

1.19. SEVERABILITY.

1.19.1 In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

1.20. ENTIRE AGREEMENT.

1.20.1 This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**ARTICLE II - PHYSICAL DESCRIPTION**

2.1. PHYSICAL DESCRIPTION. The Line consists of the State-owned portion of the Hillsboro Branch railroad line as specifically described as follows:

Being all the property of every kind and description, real, personal and mixed that was acquired by the State of New Hampshire from the Boston and Maine Corporation by a Release Deed recorded at the Hillsborough County Registry of Deeds on January 17, 1989, Book 5080, Pages 1086 through 1103 and from a Bill of Sale dated June 29, 1989, and said demised property being located in the Towns of Wilton, Lyndeborough, Greenfield, Hancock and Bennington, NH, County of Hillsborough; including all real property, rail facilities on, within and appurtenant to the line formerly owned by the Boston and Maine Corporation located between MP 16.36 also known as Engineering Station 12+00 as shown on Valuation Map V18/1 in Wilton to Engineering Station 573+90.3 as shown on Valuation Map V18/11 in Greenfield; thence between Engineering Station 1376+56 as shown on Valuation Map V14/1 in Greenfield to Engineering Station 1659+54 as shown on Valuation Map V14/6 in Hancock; thence between Engineering Station 1335+06.5 as shown on Valuation Map V34/11 in Hancock to MP 62.00, also known as Engineering Station 1197+06 as shown on Valuation

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Map V34/9 in Bennington, on file in the records of the New Hampshire Department of Transportation's Bureau of Rail & Transit.

2.2 All rail facilities remain the property of the State which reserves to itself the right to grant further easements, contracts, leases, and other rights therein which do not, in the judgment of the State, unreasonably interfere with the performance of the Service by the Contractor. The State reserves to itself all rents, fees and revenues derived from such grants. Provided, however, that Contractor shall not be responsible for performing any physical alterations to the Line to accommodate such uses and Contractor shall not be responsible for the cost of repairing any damage to the Line resulting from such third party use.

2.3 The Contractor shall make no alterations to the State's property, both real and personal, or construct any building or make other improvements on the State's property beyond normal maintenance without the prior written consent of the State. All alterations, changes, and improvements built, constructed, or placed on the State's property by the Contractor, shall unless otherwise provided by written agreement between the State and the Contractor, be the property of the State and remain on the State's property at the expiration or sooner termination of this Agreement. Salvageable materials generated, as a part of normal maintenance shall become the property of the Contractor.

2.4 The State may provide the Contractor with State-owned railroad equipment under the jurisdiction of the Bureau of Rail and Transit, which it may declare available to the Contractor. Said equipment shall be used solely for the provision of Service under this Agreement and shall be insured by the Contractor to the State's reasonable satisfaction.

2.5 The Contractor agrees that all rail and OTM currently located on the State railroad property and similar materials that may be provided to the Contractor by the State in the future shall only be used on the State's railroad line.

2.6 Except where otherwise provided by shippers, the Contractor agrees to provide cars, locomotives and all other things as necessary to afford the degree and quality of service reasonably requested by its shippers on the Line.

### ARTICLE III - OPERATIONS

#### 3.1 SERVICE AREAS:

3.1.1 The Contractor shall, between the Commencement Date and the Completion Date of December 31, 2023, manage and operate the Service in the in-service area from MP 16.36 in Wilton to MP 19.67 in Lyndeborough. The in-service area being a portion of the Line described in Article 2.1. The Contractor shall be solely responsible for all phases and requirements of its operation, including, but not limited to, dispatching of trains, assignment of power and cars, scheduling, workforce, equipment, advertising, and marketing. The Contractor may manage and operate Service in the out-of-service area from MP 19.67 in Lyndeborough to MP 62.00 in Bennington should new business warrant Service, said out-of-service area being a portion of the Line described in Article 2.1.

Contractor Initials JKL  
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3.1.2 Upon commencement of Service, the Contractor shall provide a minimum of 60 days of Service during that and subsequent operating years.

3.1.3 Notwithstanding any other provisions of this Agreement, the Contractor agrees to allow provision of temporary Service by others in the event that the Contracting Officer reasonably determines that the Contractor is unable to provide Service for reasons other than inability to reach agreement with shippers and/or the Contracting Officer regarding rates and terms of service on the Line. Notice of Service by others must be given to the Contractor in writing and such temporary Service shall cease when Contractor has shown to the reasonable satisfaction of the Contracting Officer that Contractor has regained the ability to provide the Service.

3.1.4 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws. Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date, the Contractor shall not hire, and it shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services, to hire, any person who is a State employee or official, who is materially involved in the procurement, administration, or performance of this Agreement. This provision shall survive termination of this Agreement.

3.1.5 The State shall provide, and the Contractor shall conform to the State's most current "Guidelines Governing the Operation of On-Track Equipment on State-owned Railroad Lines," Exhibit B and shall incorporate these Guidelines and updates to the guidelines into its current Time Table for the Line.

3.1.6 The Contractor shall report all incidents as required by RSA 367:56 and in "Rail Safety Section Notification Requirements".

3.1.7 No long-term car storage will be allowed and short-term car storage, needed to provide service on the line, will require that cars be stored on the sidings provided that no cars will be stored beyond foul points of the Mainline.

## 3.2 MAINTENANCE.

3.2.1 EQUIPMENT - The Contractor shall be responsible for proper upkeep and maintenance of all equipment it uses, either supplied by the State or the Contractor, and shall ensure that equipment is in compliance with all current applicable FRA regulations. State equipment shall be returned to the State in as good condition as when received except for ordinary wear and tear.

3.2.2 TRACK - The Contractor shall be responsible for the proper upkeep and maintenance of all track and facilities. Said upkeep and maintenance shall include but not be limited to:

- a. Surface and alignment
- b. Brush and vegetation control (all brush to be chipped)

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- c. Drainage and ditches
- d. All operating signals to be kept in good operating condition
- e. Crossing and switches to be kept in good operating condition. The Contractor shall provide a flagman during the passage of trains for the protection of any crossing protected by signals where the signal is not operating for any reason.
- f. Snow removal and winter maintenance when needed for service.

3.2.2.1 The Contractor shall be responsible to perform all routine maintenance work necessary to maintain the in-service area from MP 16.36 to MP 18.62 in Wilton at FRA Class 2 Track Safety Standards and from MP 18.62 in Wilton to MP 19.67 in Lyndeborough at FRA Class 1 Track Safety Standards. All other remaining track from MP 19.67 in Lyndeborough to MP 62 in Bennington shall meet FRA Class 1 Track Safety Standards **prior to use**. In any event, the Contractor shall expend no less than twenty (20%) percent of Annual Gross Operating Revenue on actual track maintenance, exclusive of inspections, and shall include a report of maintenance expenses on a form and according to a schedule to be specified by the State (See EXHIBIT A). The Contractor's performance shall satisfy all obligations required on the owner of a railroad, set forth in Part 213 of the FRA Track Safety Standards (49 CFR 213).

3.2.2.2 The Contractor shall obtain the State's permission regarding any work performed on the Line excluding the routine maintenance listed above. The State shall have no responsibility to pay for any maintenance work performed on the Line by the Contractor that did not have the State's authorization prior to the work being performed.

3.2.2.3 The Contractor shall comply with all requirements of 49 CFR, Part 234, Subpart E per the FRA's Telephonic Notification Program for the Hillsboro Branch, including providing contact information and response protocol. This may include signage and installation thereof if the State is unable to provide them.

3.2.3 STRUCTURES (BRIDGES & CULVERTS) – Subject to the cost limitation set forth in Section 3.2.4, the Contractor shall be responsible for maintaining structures and shall make needed repairs necessary to keep structures safe for their intended use in providing the Service. Said maintenance shall include, but not be limited to, the cleaning and removal of debris, lubrication of bearing surfaces, scour and erosion protection.

3.2.3.1 The Contractor shall comply with all requirements of 49 CFR, Part 237 per the State's Bridge Management Program for the Hillsboro Branch, including providing bridge ratings, weight limits and inspections if the State is unable to perform these services.

3.2.4 In the event a Major Maintenance Expenditure is required the Contractor shall assist in all necessary repairs, but be limited in its direct financial contribution to five thousand (\$5000.00) dollars per operating year in the aggregate. However, the Contractor waives any claims to damages for any delays in repairing or reopening the line after such an occurrence and the State reserves to itself the decision whether, when and how such repairs and reopening will

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Date 6/17/14

be done, in its reasonable discretion. Provided further that priority shall be given to Major Maintenance Expenditures in the active service area or other areas on the Line in which the Contractor provides the Service.

### 3.3 INSPECTION.

3.3.1 The Contractor shall patrol the in-service area and formally inspect the track as per FRA Track Safety Standards subpart F (49 CFR 213.233) and record the inspection per 213.241. The inspection report shall be submitted within 30 days of each inspection. Should any deviations from the requirements be found, the Contractor shall take immediate appropriate remedial action and notify the Contracting Officer in writing of said remedial action.

3.3.1.1 The Contractor shall patrol the out-of-service area at least six (6) times per year with at least four (4) weeks between patrols and submit a patrol report within 30 days of each patrol. Should problems be found, particularly those that may threaten the integrity of the infrastructure, the Contractor shall notify the Contracting Officer in writing of the problems, which shall be addressed pursuant to Sections 3.2.2 b. and 3.2.2.c.

3.3.1.2 In the event of service restoration over any portion of the out-of-service area, the Contractor shall patrol the area and formally inspect the track as per FRA Class 1 Track Safety Standards subpart F (49 CFR 213.233) and submit an inspection report prior to commencing service. Should any deviations from the requirements be found, the Contractor shall take immediate appropriate remedial action and inform the Contracting Officer in writing of said remedial action prior to use.

3.3.2 The Contracting Officer has the right to monitor the Contractor to ensure that the Contractor complies with the conditions of this Agreement. The Contracting Officer shall be granted full access to the operations and shall have the authority to direct the Contractor, through its General Manager or his designee, to remedy deviations from the requirements of FRA Part 213 Track Safety Standards as they apply to those classifications established in this Agreement.

3.3.3 The State will conduct their own Hy-rail inspections of the Line from time to time as they deem necessary and the Contractor shall authorize access dates and times for these inspections.

3.3.4 The Contracting Officer may take any action, including the field inspection of any project site and the inspection of the rail facilities, equipment, and all books and records of Contractor relating to Service on the Line and of any contractor or subcontractor relating to any project or task accomplished under this Agreement.

3.3.4.1 Such inspection shall include, but not be limited to:

- a. Ensure that work complies with the contract specifications.
- b. Verify quantitative measures of materials installed, such as tie counts.
- c. Verify labor and materials charges for contracts providing for payment on an actual cost basis ("force account work").

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- d. Verify the quantities of uninstalled State-owned materials and the security of same against damage, theft, or use other than for approved projects.
- e. Provide any other information requested by the Contracting Officer.

### 3.4 CONSTRUCTION PROJECTS.

3.4.1 The Contracting Officer reserves the right to advertise and let construction rehabilitation projects within the confines of the Line, provided that such projects do not unreasonably interfere with Contractor's ability to provide Service. The construction contractor to whom this work may be awarded shall have the right to perform the work so described in the contract. The Contracting Officer shall have the right to adjust trips not published in the regular railroad schedule to accommodate the construction schedule.

3.4.2 The Contracting Officer will from time to time allow utility projects to be constructed within the railroad right-of-way. Construction contractors for these projects will be required to enter into a license with the State, which will require certain conditions such as liability insurance, and to cooperate with the Contractor in assuring that the work be performed in such a manner that the tracks, operations and appurtenances of the rail facility will be safeguarded. The Contractor may require a flagman and/or railroad inspector at a construction site if it deems it necessary at the expense of the construction contractor.

3.4.3 The Contractor may be called upon to construct sidings to new shippers on the line. The construction of sidings and appurtenances thereto may be billed to the shipper after the State reviews the proposed plans, including, but not limited to location, alignment, materials, safety appliances, and the State issues its approvals.

### 3.5 FREIGHT RATES AND TARIFFS

3.5.1 The Contractor shall negotiate mutually acceptable tariffs, rates, divisions and terms of service with shippers. The Contractor shall submit the agreed upon tariffs, rates, divisions and terms of service to the State for review. Said tariffs, rates, and divisions shall apply to the rail freight service provided pursuant to this Agreement, until such tariffs, rates or divisions are changed in accordance with law. All proposed divisions shall be subject to the approval of the State. All proposed rates and tariffs shall be subject to review of the State and if found to be detrimental to the State's interests, may be disapproved by the State.

3.5.2 The Contractor will be responsible for contacting Pan Am Systems and acquiring trackage rights information including any fee(s) to be paid.

### 3.6 FORCE MAJEURE

The parties hereto will be excused from performance of any of their respective obligations hereunder occasioned by any event beyond their respective control, including, without limitation, any action of any federal, state or local agency or instrumentality; by government authorities including compliance with environmental quality, energy conservation and occupational safety requirements adopted or effected after the date of this Agreement; by acts of God; by strikes or other labor trouble; by explosions, fires, or vandalism until such events are remedied.

Contractor Initials PKL  
Date 8/17/14

## ARTICLE IV - USER FEE PAYMENTS, ACCOUNTING AND AUDITS

### 4.1 PAYMENTS AND REPORTING

The Contractor shall make User Fee payments and submit reports required under this article directly to the State of New Hampshire, Department of Transportation, Bureau of Rail and Transit.

### 4.2 SCHEDULE OF PAYMENTS AND REPORTS

Payments shall be paid monthly, based upon the level of operation, as explained below. Payments shall be made no later than thirty (30) days after the end of each calendar month that the revenue producing carload is moved and will include a report of freight traffic on a form and according to a schedule to be specified by the State. (See EXHIBIT A)

### 4.3 USER FEE PAYMENT:

4.3.1 The Contractor shall pay five (5%) percent of Monthly Gross Operating Revenue as a Users Fee to the State, payable to: "Treasurer, State of New Hampshire".

4.3.2 The Contractor may, where directed in writing by the Contracting Officer, deduct from payments the cost of specific expenditures including but not limited to major maintenance projects in track work or structure repair.

### 4.4 LATE PAYMENT.

Should any payment be received more than five (5) days after the due date, the State shall be entitled to a five (5%) percent late charge on that month's users fee.

### 4.5 ACCOUNTING AND AUDITS.

4.5.1 The Contracting Officer shall have access, during regular working hours, for the purpose of audit and examination, to any books, documents, papers, and records of the Contractor which may be related or pertinent to this Agreement during the period of this Agreement and for a period of five (5) years after the termination of this Agreement. The Contractor shall impose this requirement of each of its subcontractors.

4.5.2 If, as a result of any audit, the Contracting Officer determines that the amount paid to the State is less than the amount owed, the Contractor shall pay the difference to State within thirty (30) days of the determination.

4.5.3 If, as a result of any audit, the Contracting Officer determines that the amount paid to the State is more than the amount owed, State will make repayment or credit the Contractor accordingly, so far as appropriations allow, the overpayment to the State.

4.5.4 The Contractor shall be responsible for collecting revenues and for delivering monthly traffic reports, monthly revenue reports, quarterly maintenance cost reports, and

Contractor Initials PRC  
Date 6/17/14



quarterly marketing reports on forms and according to a schedule to be specified by the State.  
(See EXHIBIT A)

#### ARTICLE V - MARKETING EFFORT

5.1 The Contractor will make every effort to market the line in order to make it profitable and to maintain good business and working relationships with local businesses, State and local government officials, employees, and other railroads, and will report on the marketing effort on a form and according to a schedule to be specified by the State. (See EXHIBIT A)

#### ARTICLE VI - OTHER OPERATORS

6.1 In all of its operations and use of the property indicated herein, the Contractor will cooperate with other potential operators in the use of rail facilities. Provided, however, that all other potential operators shall be required to enter into a mutually acceptable agreement with Contractor regarding the terms and conditions relating to the use of rail facilities, including, without limitation, commercially reasonable terms and conditions relating to liability protection for Contractor and compensation due to Contractor relating to the use of the rail facilities. Notwithstanding the foregoing, at all times Contractor provision of the Service shall have priority over all other users and Contractor shall retain dispatching control of the Line. Any compensation earned by Contractor arising from other potential operators of the rail facilities shall be included in Contactor's Monthly Gross Operating Revenue.

#### ARTICLE VII - TERMINATION OF AGREEMENT

##### 7.1 OBLIGATIONS

- 7.1.1 The parties will be excused from the performance of any of their obligation under this Agreement if performance becomes impossible due to any event beyond their control, including acts of God, explosions, fires and vandalism.
- 7.1.2 If at any time after the commencement of Service pursuant to Sections 3.1.2 the Contractor operates the Service fewer than sixty (60) days during that or subsequent Operating Calendar Years, this Agreement may be terminated and upon termination the parties shall be subject to Article I, Section 1.2.3.

Contractor Initials PRC  
Date 6/17/14

IN WITNESS WHEREOF, we have hereunto set our hands on the 17 day of June, 2014.

MILFORD-BENNINGTON RAILROAD CO, INC.

BY: [Signature]  
Name Peter R. Leishman Title President

THE STATE OF NEW HAMPSHIRE  
COUNTY OF Hillsborough

On this 17 day of June, 2014, before me, Peter R. Leishman the undersigned officer, personally appeared Peter R. Leishman known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.

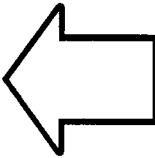
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]  
NOTARY PUBLIC

MORGAN A. HOLLIS  
★ NOTARY PUBLIC - NEW HAMPSHIRE ★  
My Commission Expires May 12, 2015

THE STATE OF NEW HAMPSHIRE

BY: [Signature]  
Christopher D. Clement, Sr.  
Commissioner



THE STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

On this 15th day of July, 2014, before me, DAWN M. DOSSETT the undersigned officer, personally appeared Christopher D. Clement, Sr. known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.

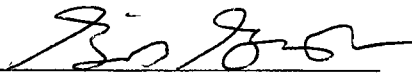
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]  
NOTARY PUBLIC

Contractor Initials PRL  
Date 6/17/14

This is to certify that the Operating Agreement shown above has been reviewed by this office, and is approved as to form and execution on July 18, 2014.

OFFICE OF ATTORNEY GENERAL

BY:   
Attorney

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

ATTEST: \_\_\_\_\_  
Secretary of State

Contractor Initials PRC  
Date 6/12/14

EXHIBIT A			
MILFORD-BENNINGTON RAILROAD COMPANY: STATE-OWNED HILLSBORO BRANCH			
REPORT AND PAYMENT DUE DATES			
JANUARY	FEBRUARY	MARCH	APRIL
1st - NOVEMBER PAYMENT & REVENUE REPORT	1st - DECEMBER PAYMENT & REVENUE REPORT	1st - JANUARY PAYMENT & REVENUE REPORT	1st - FEBRUARY PAYMENT & REVENUE REPORT
30th - OCTOBER - DECEMBER MARKETING REPORT	28th - OCTOBER - DECEMBER MAINTENANCE COST REPORT		30th - JANUARY - MARCH MARKETING REPORT
30th - DECEMBER TRAFFIC REPORT	28th - JANUARY TRAFFIC REPORT	30th - FEBRUARY TRAFFIC REPORT	30th - MARCH TRAFFIC REPORT
MAY	JUNE	JULY	AUGUST
1st - MARCH PAYMENT & REVENUE REPORT	1st - APRIL PAYMENT & REVENUE REPORT	1st - MAY PAYMENT & REVENUE REPORT	1st - JUNE PAYMENT & REVENUE REPORT
30th - JANUARY - MARCH MAINTENANCE COST REPORT		30th - APRIL - JUNE MARKETING REPORT	30th - APRIL - JUNE MAINTENANCE COST REPORT
30th - APRIL TRAFFIC REPORT	30th - MAY TRAFFIC REPORT	30th - JUNE TRAFFIC REPORT	30th - JULY TRAFFIC REPORT
SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
1st - JULY PAYMENT & REVENUE REPORT	1st - AUGUST PAYMENT & REVENUE REPORT	1st - SEPTEMBER PAYMENT & REVENUE REPORT	1st - OCTOBER PAYMENT & REVENUE REPORT
	30th - JULY - SEPTEMBER MARKETING REPORT	30th - JULY - SEPTEMBER - MAINTENANCE COST REPORT	
30th - AUGUST TRAFFIC REPORT	30th - SEPTEMBER TRAFFIC REPORT	30th - OCTOBER TRAFFIC REPORT	30th - NOVEMBER TRAFFIC REPORT
Forms:			
A-i Traffic Report. Due 30 days after end of month cars moved.			
A-ii Payment & Revenue Report. Due 1st of the Month, Invoice created by NHDOT based on report (for accounting purposes).			
A-iii MOW Costs. Due quarterly, contribution based on 20% of Gross Revenue.			
A-iv Marketing Report due quarterly			

**Milford-Bennington Railroad Co.**

**TRAFFIC REPORT  
STATE-OWNED HILLSBORO BRANCH**

**Month, Year**

<b>Location/Town</b>	<b>INBOUND CARS</b>	<b>OUTBOUND CARS</b>
Wilton	—	—
Lyndeborough		
Greenfield		
Hancock		
Bennington		
<b>Totals</b>		

USERS FEE REPORT FOR Month, Year

**STATE-OWNED HILLSBORO BRANCH**

FREIGHT REVENUE FOR MONTH.....	\$	0.00
.....	\$	0.00
.....	\$	0.00

**Total**

**5% OF TOTAL AMOUNT DUE STATE OF NEW HAMPSHIRE....\$ 0.000**

**MILFORD-BENNINGTON RAILROAD  
COMPANY**

62 Elm Street

Milford, NH 03055

(P) (603) 365-0621 (F) (603) 924-0004

email: mbrxnh1@aol.com

**MAINTENANCE CONTRIBUTION REPORT  
Quarter/Month-Month**

Date	Location	Description of Services Performed (Labor/Equipment/Materials)	Amount
------	----------	--	--------

\_\_\_\_\_, Operations Manager  
\_\_\_\_\_, Railroad Corporation

Month Date, Year

**MILFORD-BENNINGTON RAILROAD  
COMPANY**

62 Elm Street

Milford, NH 03055

(P) (603) 365-0621 (F) (603) 924-0004

email: mbrxnh1@aol.com

**MARKETING REPORT  
Quarter/Month-Month**

**Shipper #:** example - SAND & GRAVEL

Estimated quantities/carloadings \_\_\_ month period.

**Shipper #:**

Estimated quantities/carloadings road salt \_\_\_ month period.

**Shipper #:**

Estimated quantities/carloadings for the \_\_\_ month period.

**Shipper #:** -

Estimated quantities/carloadings for the \_\_\_ month period.

**Shipper #:**

**Shipper #:** requested a rate quote to bring \_\_\_ to online facility. There has been no action.

**Shipper #:** A formal letter was sent to \_\_\_ inquiring about re-establishing rail use. To date, \_\_\_ has not replied.

Other customers, whether past or potential, are \_\_\_\_, \_\_\_\_, and several wood pellet and log businesses, are all inactive at the present time.

\_\_\_\_\_, Marketing Manager  
\_\_\_\_\_  
Railroad Corporation

Month Date, Year



**EXHIBIT B**

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

**GUIDELINES GOVERNING THE OPERATION OF  
ON-TRACK EQUIPMENT ON STATE-OWNED  
HILLSBORO BRANCH RAILROAD CORRIDOR**

**MILFORD-BENNINGTON RAILROAD COMPANY**

**EFFECTIVE AS OF  
04/07/2014**

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
BUREAU OF RAIL AND TRANSIT

GUIDELINES GOVERNING THE OPERATION OF  
ON-TRACK EQUIPMENT ON STATE-OWNED  
HILLSBORO BRANCH RAILROAD CORRIDOR

DEFINITIONS REGARDING THE OPERATION OF ON-TRACK EQUIPMENT

**On-Track Equipment:** includes hi-rail vehicles, motor cars, trailers or lorry cars, track maintenance equipment, hand cars, velocipedes and other units equipped for on-track operation.

**Railroad Operator:** the railroad designated by the New Hampshire Department of Transportation to have the right to manage and operate the State-owned Hillsboro Branch railroad corridor.

**Operator:** the person, approved by the Railroad Operator, who will be in charge of and qualified to operate on-track equipment.

**Crew:** all persons other than the operator who will ride in on-track equipment.

GUIDELINES FOR THE OPERATION OF ON-TRACK EQUIPMENT

1.0 A copy of the railroad operator's Time Table and flagging equipment must be carried on all on-track equipment. On-track equipment must have a radio or other means capable of communications with the Railroad Operator.

2.0 The operators of all on-track equipment must be qualified on these guidelines or be working under the immediate supervision of a qualified operator that has been approved by the Railroad Operator.

3.0 Before each use, the operator of the on-track equipment must carefully inspect it to make sure that the wheels, axles and brakes are in proper working order.

3.1 On-track equipment shall display at all times a white light forward and a red light to the rear.

3.2 On-track equipment shall maintain rail sweeps in good condition and in the operating position.

3.3 On-track equipment shall be checked to assure that there is an ample supply of fuel and that there are no leaks in the fuel tank or fuel line. When on-track equipment is being fueled, smoking or open flame is prohibited and the engine shall not be running.

3.4 Significant lube oil shall be applied to all required on-track equipment parts and if required, the coolant level shall be checked before being put into service.

4.0 Before occupying the main track, the operator of the on-track equipment must obtain a "Track Movement Permit" from the Railroad Operator and the operators and members of the crew not employed by the Railroad Operator must sign an "Indemnification and General Release Agreement. Employees of the Railroad Operator and the New Hampshire Department of Transportation personnel on railroad related work are exempt from signing an "Indemnification and General Release Agreement". A "Track Movement Permit" does not release the operator from taking all necessary precautions for the safe operation of the on-track equipment. The operator shall review the requirements, restrictions and limits of the "Track Movement Permit" to all other members of the crew.

5.0 On-track equipment must not be put in motion without the operator in position to control the on-track equipment.

6.0 On-track equipment must not exceed a speed of five (5) miles per hour when passing station platforms, persons working on or near the track, trains standing on adjacent track, over switches, frogs, bridges and all at-grade crossings. At all other points, the on-track equipment is restricted to a maximum speed of twenty (20) miles per hour or at a lower speed that will allow the on-track equipment to stop within one-half (1/2) the seeing distance in order to protect against collisions or accidents.

7.0 The operator and all members of the crew must keep a sharp lookout noting the position of switches, conditions of flange ways, obstruction and other track conditions.

8.0 At no time will the operator or crew of the on-track equipment be allowed to step on or off while on bridges or approaches to bridges. The operator and crew will confine all inspection activities that can be safely accomplished by remaining between the running rails. Activities outside the running rails will require the use of fall protection devices.

9.0 Except as indicated in **GUIDELINE 9.1**, all on-track equipment must come to a complete stop before entering an at-grade public or private crossing and then may proceed over the crossing only after clear view has been obtained in all directions. If the view is not clear or if vehicular traffic is heavy, a flag person must be sent to flag the crossing. **GUIDELINE 9.0** shall apply to all crossings between MP 16.32 in Wilton to MP 62.00 in Bennington.

9.1 A flag person must be sent out to flag the following crossings:

MILEPOST	DESCRIPTION
16.45	Burns Hills Road, Wilton
17.75	Route 31 (Conrad's Crossing), Wilton
27.50	Route 136, Greenfield

**10.0** On-track equipment shall clear for all trains not less than ten (10) minutes in advance of the time trains are due.

**11.0** The operator shall instruct the crew how to remove the on-track equipment when necessary from the tracks.

**12.0** On-track equipment shall not be left standing on the main track unless fully protected.

**12.1** On-track equipment left on a siding shall be clear of the switch and shall be secured to the rail with a lock and chain to prevent unauthorized use.

**12.2** When on-track equipment is not in use and is removed from the track, it must be placed at least six (6) feet from the nearest rail and secured with a lock so that it cannot be moved. On-track equipment shall not be set off or left within the limits of a crossing.

**13.0** The operator of the on-track equipment shall not allow the crew to ride in insecure or careless positions.

**13.1** The operator of the on-track equipment shall secure all tools and materials to prevent them from falling off.

**14.0** When trailers or lorry cars are used they must be coupled with standard drawbars or couplers and hauled from the rear of the on-track equipment. Within yard limits, the trailers or lorry cars may be pushed ahead of the on-track equipment for short moves only and at a speed not to exceed (5) miles per hour.

**14.1** The crew is prohibited from riding on the trailers or lorry cars.

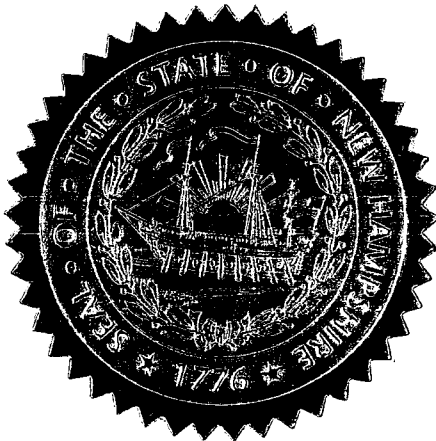
**15.0** When it is necessary to start on-track equipment by pushing, this shall be done from the rear.

# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that THE MILFORD-BENNINGTON RAILROAD COMPANY, INC. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on September 15, 1987. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 20<sup>th</sup> day of May, A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

**SECRETARY'S CERTIFICATE OF UNANIMOUS CONSENT  
WITHOUT MEETING OF THE BOARD OF DIRECTORS  
OF  
MILFORD-BENNINGTON RAILROAD COMPANY, INC.**

I, Morgan A. Hollis, being the Secretary of Milford-Bennington Railroad Company, Inc. (the "Corporation") do hereby certify that by unanimous consent of all members of the Board of Directors of Milford-Bennington Railroad Company, Inc. on May 5, 2014, pursuant to NH RSA 293-A:8.21, the following action was taken:

**VOTED:** That the Corporation shall enter into a certain "Operating Agreement on the State-Owned Portion of the Hillsboro Branch Railroad Line between the State of New Hampshire Department of Transportation Bureau of Rail and Transit and Milford-Bennington Railroad Company, Inc." dated April 30, 2014.

**VOTED:** That Peter Leishman be authorized, as President, to enter into such agreement on behalf of the Corporation and execute such necessary documents to bind the Corporation thereto.

I further certify that the above votes have not been rescinded or revoked and remain in full force and effect as of the date hereof, and the following are current officers and directors of the Corporation as of the date hereof:

**Directors:**

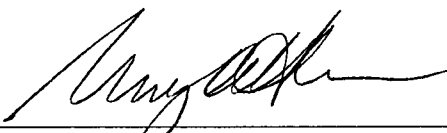
Peter Leishman

**Officers:**

President:	Peter Leishman
Treasurer:	Peter Leishman
Secretary:	Morgan A. Hollis

Dated: ~~May 5, 2014~~

*June 17, 2014*

  
\_\_\_\_\_  
Morgan A. Hollis, Secretary



# CERTIFICATE OF LIABILITY INSURANCE

MILBER1

OP ID: JP

DATE (MM/DD/YYYY)

04/11/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> United Shortline Insurance Services, Inc. 8265 North Van Dyke Port Austin, MI 48467 Louis Schillinger	<b>Phone: 989-738-6400</b> <b>Fax: 989-738-6557</b>	<b>CONTACT NAME:</b> Julie Pettit <b>PHONE (A/C, No, Ext):</b> 989-738-6400 <b>FAX (A/C, No):</b> 989-738-6557 <b>E-MAIL ADDRESS:</b> juliepettit@shortlineins.com
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Milford Bennington Railroad Co Mr. Peter Leishman 62 Elm Street Milford, NH 03055-4869	<b>INSURER A:</b> Liberty Surplus Insurance Corp <b>NAIC #</b> 10725	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			RRHV279099-3	04/15/2014	04/15/2015	EACH OCCURRENCE \$ 3,000,000
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	<input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						MED EXP (Any one person) \$
	<input checked="" type="checkbox"/> RR Liability						PERSONAL & ADV INJURY \$
GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE \$ 6,000,000
<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							PRODUCTS - COM/POP AGG \$
AUTOMOBILE LIABILITY							COMBINED SINGLE LIMIT (Ea accident) \$
<input type="checkbox"/> ANY AUTO							BODILY INJURY (Per person) \$
<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS							BODILY INJURY (Per accident) \$
<input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS							PROPERTY DAMAGE (Per accident) \$
							\$
UMBRELLA LIAB <input type="checkbox"/> OCCUR							EACH OCCURRENCE \$
EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE							AGGREGATE \$
DED <input type="checkbox"/> RETENTION \$							\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY							WC STATUTORY LIMITS    OTH-ER
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N    N/A							E.L. EACH ACCIDENT \$
If yes, describe under DESCRIPTION OF OPERATIONS below							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 The following Certificate Holder is an additional insured but only with respect to liability arising out of the operation of the Named Insured.

**CERTIFICATE HOLDER**

STAOFNH

State of New Hampshire  
 Dept of Transp/Bureau of RRs  
 PO Box 483, 1 Hazen Drive  
 Concord, NH 03302-0483

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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