



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



VICTORIA F. SHEEHAN
COMMISSIONER

WILLIAM CASS, P.E.
ASSISTANT COMMISSIONER

Bureau of Highway Design
 May 24, 2019

His Excellency, Governor Christopher T. Sununu
 and the Honorable Council
 State House
 Concord, NH 03301

REQUESTED ACTION

Authorize the Department of Transportation to enter into certain **sole-source** Special, Supplemental, and Account Agreements (and their amendments) with utilities, municipalities and railroad entities that result from impacts to their facilities because of Department administered construction projects. Further, any adjustments to original estimates that result in changes to encumbrances be authorized based on justification to the Department of Administrative Services. It is requested that these Account Agreements be approved and effective upon Governor and Executive Council approval through June 30, 2021.

Funding for this Request is available based upon the source of funds for each particular project, and is contingent upon the availability and continued appropriation of funds for FY 2020 and 2021.

EXPLANATION

The Department historically, has contracted **sole-source** with utilities, municipalities, and railroad entities to provide proprietary services for equipment, material, and labor services. These services result from work required to relocate private and public infrastructure facilities from within the limits of construction projects which are either in the 10-Year Plan or street light removal program. Department administered construction projects routinely require utility work that only a utility, municipality, or railroad utility can both perform and provide necessary services. It is critical that these utility relocations be addressed prior to and during construction so that timely construction of the roadway and bridge projects can take place without halting construction that can add delay, increase costs, and have the potential to decrease public safety. In these examples, the utility, municipality, or railroad entity (vendor) is contracted and paid by the Department or the Department is contracted and paid by the vendor.

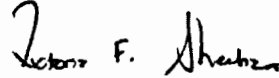
As a result of an audit finding, the Department of Transportation met with a representative of the Department of Administrative Services and specifically discussed the issue of Account Agreements. As part of this review, it was agreed by both Departments that the Department of Transportation request approval from the Governor and Executive Council for continued use of these type agreements. As part of this process, an informational item will be presented to the Governor and Executive Council on an annual basis listing the agreements which were entered into and used. The flexibility for these types of agreements is critical to the nature of the work performed and completed by the Department. The last informational item was submitted to Governor & Executive Council on 4/17/19 for FY 2018.

The Department's approach to using these agreements has worked well and the Account Agreements have been reviewed in substance and form by the Attorney General. The use of these agreements has allowed the Department to react quickly and in concert with the public utility, municipality, and railroad entity to decrease potential project delays and deliver construction improvements in a timely and efficient manner.

Approval of this method will ensure the timeliness of project work and improve the efficiency of project completion by allowing the Department to enter into agreements with a utility, municipality, and or railroad entity for which they are the only vendor(s) able to perform and complete the necessary work.

It is respectfully requested that this item be approved.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria F. Sheehan". The signature is written in a cursive style with a large initial "V".

Victoria F. Sheehan
Commissioner

Attachments: Force Account Agreement Templates

SUPPLEMENTAL AGREEMENT

Installation of Facilities for Highway Operation

This Agreement supplements the Master Agreement between the State and the Public Service Company of New Hampshire (Vendor #161261) dated July 18, 1986.

Description of Project:

A Federal-Aid _____ (Organization Code _) Project, _____, _____ for the construction of _____, in the City/Town of _____, County of _____, New Hampshire, which construction necessitates the installation/relocation/replacement of _____ to the extent required to permit construction of the Project.

Description of Work Desired of Public Service Company:

Method of Payment for Described Work:

Actual Cost estimated at and not to exceed \$ _____. (Work Class Code _____)
Fixed Cost estimate at \$ _____. (Work Class Code _____)
Lump Sum in the amount of \$ _____. (Work Class Code _____)

Billing for Cost of Installation submitted to:

Melodie A. Esterberg, P.E., Chief of Design Services
Bureau of Highway Design
New Hampshire Department of Transportation
7 Hazen Drive, PO Box 483
Concord, NH 03302-0483

Detailed billing should be submitted showing:

- State project Name & Number.
- Organization and Work Class codes.
- Brief description of work covered.
- Dates work was started & completed.
- Breakdown of quantities and costs for labor, equipment, materials and overhead expenses.
- Signed Utility Reports
- Whether billing is partial or final.
- PSNH bill or invoice number.
- Date of billing.

Billing for Cost of Operation {of Lighting}: [USE 4-LINE ADDRESS]

City/Town of _____/Company/Corporation/Department/
 _____, District _____ Engineer/Administrator, Bureau of Turnpikes
 New Hampshire Department of Transportation

Billing for Cost of Operation of Traffic Signals: [USE 4-LINE ADDRESS]

City/Town of _____/Company/Corporation/Department/
 _____, District _____ Engineer/Administrator, Bureau of Traffic/Tumpikes
 New Hampshire Department of Transportation

Additions to the Master Agreement:

- 8A. Periodic progress payments will be made to the Company upon presentation of invoices and substantiation of work performed (Utility Reports) provided the value of the work invoiced, other than the final invoice, is in excess of \$1,000.00.
- 8B. The Company shall submit a final invoice no later than two (2) months after completion of its work on all lump sum projects, and six (6) months after completion of its work on all actual cost projects. Unless otherwise approved by the Department

in advance the Company's work shall be completed no later than two (2) months after notification by the Department of Transportation that the State's construction Project is complete. Upon submission of the final invoice and issuance of the Final Audit of Agreement, no further charges will be accepted. The Department will make payment to the Company after submission of progress or final invoices provided that all substantiating documentation has been submitted to the Department for the work invoiced therein.

- 9A. In accordance with the **BUY AMERICA** requirements of the Federal regulations (23 U.S.C. 313 and 23 CFR 635.410), all manufacturing processes for steel and iron products or predominantly of steel or iron (at least 90% steel or iron content) furnished for permanent incorporation into the work on this project shall occur in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another country. Other than these exceptions, all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. must occur in the United States.
- a) Products of steel include, but are not limited to, such products as structural steel, piles, reinforcing steel, structural plate, steel culverts, guardrail steel supports for signs, signals and luminaires, and cable wire/strand. Products of iron include, but are not limited to, such products as cast iron frames and grates and ductile iron pipe. Coatings include, but are not limited to, the applications of epoxy, galvanizing and paint. The coating material is not subject to this clause, only the application process.
 - b) A Certificate of Compliance (available at www.NHDOT.com) shall be furnished for steel and iron products as part of the backup information with the billing. Records to be maintained by the Company for this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product affirming that every process, including the application of a coating, performed on the steel or iron product has been carried out in the United States of America, except as allowed by this Section. The lack of these certifications will be justification for rejection of the steel and/or iron product or non-payment of the work.
 - c) The requirements of said law and regulations do not prevent the use of miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above products, manufactured products that are not predominantly steel or iron or a minimal use of foreign steel and iron materials if the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.
 - d) Upon completion of the project, the Company shall certify in writing as to compliance with this Section and also provide the total project delivered cost of

all foreign steel and/or iron permanently incorporated into the work covered by this Agreement. The form for this certification entitled "Buy America Certificate of Compliance" can be found at www.NHDOT.com.

THE STATE OF NEW HAMPSHIRE
Department of Transportation

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE

By: _____
Peter E. Stamnas, P.E.
Director of Project Development

By: _____
(Signature)

(Typed or Printed Name)

(Title)

_____ JAM

(Date)

Attached Plans and Estimates Are a Part of This Agreement.

UTILITY (ENGINEERING)

Revised 2/03/2017, Supersedes 5/5/15

CITY/TOWN
FEDERAL NO.
STATE NO.
(Project Description)
(UTILITY WORK)

UTILITY AGREEMENT

This Agreement is made in duplicate this _____ day of _____, _____, by and between the STATE OF NEW HAMPSHIRE, by its Department of Transportation, party of the first part, hereinafter called the "State", and _____ (Vendor # _____), a Corporation duly organized and existing under the laws of the State of _____, and authorized to do business in the State of New Hampshire, party of the second part, hereinafter called the "*".[FOR AGREEMENT WITH COMPANY]

This Agreement is made in duplicate this _____ day of _____, _____, by and between the STATE OF NEW HAMPSHIRE, by its Department of Transportation, party of the first part, hereinafter called the "State", and _____ (Vendor # _____), a municipally owned utility/municipality, party of the second part, hereinafter called the "*".[FOR AGREEMENT WITH MUNICIPALITY]

WITNESSETH:

WHEREAS, the State has the approval of the United States Department of Transportation (USDOT), Federal Highway Administration (FHWA), for a {Federal-Aid _____/State-Aid _____/Betterment} Project (Organization Code _____), Project Name, Federal Number, State Number, for the construction of Project Description from ProMIS, in the City/Town of _____, County of _____, New Hampshire, which construction necessitates the {installation/relocation/replacement} of Description of Facility to the extent required to permit construction of the Project, and,

WHEREAS, the COMMISSIONER of the New Hampshire Department of Transportation (NHDOT), hereinafter called the "Commissioner", is preparing plans and specifications for such Project marked Project Name, Federal Number, State Number, which plans and specifications meet with the approval of the * and will be on file in the permanent records of said Department of Transportation, Concord, New Hampshire, and,

WHEREAS, the State is obligated to reimburse the * for _____ {relocation/replacement} due to the _____ facilities prior existence to the State Highway facility, and, [UTILITY PRE-EXISTED STATE ROADWAY]

WHEREAS, the State Attorney General's Office has issued its opinion that the State is obligated to reimburse the * for the costs incurred for _____ on _____, covered by the Project construction, and,

WHEREAS, said _____ facility(ies) is/are located on _____ (a municipally maintained roadway), the taking of which is compensable in eminent domain and therefore the costs of the relocations are the responsibility of the Project, and,[FOR MUNICIPAL FACILITIES ON MUNICIPALLY MAINTAINED ROADWAY or UTILITY HAS PROPERTY RIGHTS]

WHEREAS, it has been determined that the cost of the _____ will be borne by the State/Project, and,

WHEREAS, said _____ facility(ies) is/are located on _____ (a State maintained roadway), and therefore the costs of the relocations are the responsibility of the City/Town, and,[FOR MUNICIPAL FACILITIES ON STATE MAINTAINED ROADWAY]

WHEREAS, the */State desires the _____ to be included as part of the Highway Contract, and,[WORK INCLUDED IN STATE CONTRACT]

WHEREAS, the */State desires the assistance of the State/* in the engineering of the {installation/relocation/replacement} of the aforementioned facilities,[IDENTIFY RELATIONSHIP FOR WORK TO BE ACCOMPLISHED]

NOW THEREFORE, in consideration thereof, the parties hereto mutually agree as follows:

1. [INSERT DESCRIPTION OF WORK AND BEGIN PARAGRAPH #'S.]

#. Underground conduit, pull boxes, transformer pads, pull ropes, {and} concrete light pole bases {, and traffic signal poles and appurtenances} will be furnished and installed by the State's Contractor.

Method of Payment for Described Work:

Work will be paid for at {Actual Cost estimated at and not to exceed/Lump Sum cost of/Fixed Cost estimate at} \$xxxxx.xx (Work Class Code __{T135B Par Design/2250 Non-Par Construction/2260 Par Construction}__):as shown {below/in the attached estimate}:

Billing for Cost of Engineering submitted to:

Melodie A. Esterberg, P.E., Chief of Design Services
 Bureau of Highway Design
 New Hampshire Department of Transportation
 7 Hazen Drive, PO Box 483
 Concord, NH 03302-0483

Detailed billing shall be submitted showing:

- State Project Name & Number.
 - State Organization and Work Class codes.
 - Brief description of work covered.
 - Dates work was started & completed.
 - Agreement amounts, amounts invoiced to date, amounts paid to date, amount due this invoice.
 - Invoice Summary containing employee, generic position, hourly rate, hours worked, wages paid, total labor costs, { overhead rate and total overhead cost, } { fixed fee, } and direct expenses.
 - Whether billing is partial or final.
 - Bill or invoice number.
 - Date of billing.
- #. The work described in Paragraph __ above is shown in greater detail on the attached concept plans and in the attached scope of work and estimates being made a part of this Agreement.[WORK HIGHLIGHTED ON PLANS]
- # The work described in Paragraph __ above, will be done by * forces and/or under an existing continuing contract and/or by competitive negotiations contract using qualifications-based selection procedures. Continuing contracts shall be defined as a written contract between the * and an Engineer which regularly does work for the *. The * will have awarded the continuing contracts by a competitive negotiations process using qualifications-based procedures, the attached documentation of which being made a part of this Agreement.[UTILITY PERFORMED WORK]
- #. The * agrees to coordinate the work hereinbefore described with the State's Project and also agrees to complete the work prior to or concurrently with the Project's design completion date, provided the * is not delayed by acts of God, strikes, or late delivery of critical materials.[COORDINATION OF WORK WITH STATE PROJECT]

- #. The * agrees to perform the work hereinbefore proposed, in accordance with the concept plans mentioned above, including such additions or modifications hereafter approved, in writing, by the * and the Commissioner. The amount of work to be performed by the *, including any changes, shall be approved by the Commissioner and the duly authorized representatives of the Federal Government before the work is performed, and the * shall be reimbursed therefore, as hereinafter provided, except that the cost of any such work which is not approved as above indicated shall be borne by the *.[STATEMENT OF PRIOR APPROVAL OF WORK]
- #. The * agrees to notify the State of the starting and completion dates of the work hereinbefore described, and to provide an Invoice Summary showing the hours of labor, equipment and materials used with the invoice. The * and the State's Utility Coordinator shall resolve any possible discrepancies. The Invoice Summaries are not the basis for payment, but are required for verification of the work performed.[REQUIREMENT FOR INVOICE SUMMARY]
- #. Federal and State participation in the cost of the work done under this Agreement shall be computed on the basis of the provisions and regulations of 23 CFR, Part 645, Subpart A and/or Subpart B. The subject regulation, including all current amendments and/or revisions, is hereby made a part of this Agreement.[COST PARTICIPATION ACCORDING TO FEDERAL REQUIREMENTS]
- #. The * agrees to remit payment to the Treasurer, State of New Hampshire reimbursing the State for the total cost of the non-participating engineering of _____ work described in Paragraph __ plus __% for overhead expenses{ with the exception of _____ estimated at \$ _____ which the State will be responsible for}. Payment must be received prior to the beginning of the work, through:

Danielle Chandonnet, Finance Bureau Administrator
 Bureau of Finance and Contracts
 New Hampshire Department of Transportation
 7 Hazen Drive, PO Box 483
 Concord, NH 03302-0483

Should the funds (approximately \$ _____) not be provided, the work described in Paragraph __ will not be performed or will be deleted.[UTILITY REIMBURSEMENT FOR ENGINEERING]

- #. Upon completion of the work, the State will compute the quantities and costs of items related to the engineering of _____ installations/relocations/replacements plus __% for overhead expenses. If these costs exceed the amount paid, the State will bill the * for the balance due. If they are less, the State will forward a check in the amount of the balance to the *.[COST ADJUSTMENT FOR CHANGES DURING DESIGN]

- #. Upon the receipt of satisfactory detailed invoices without arbitrary percentage or lump sum addition for overhead expenses, the State agrees to reimburse the * {for ___% of/the agreed lump sum amount for} the costs of labor, equipment, and materials to perform the work described in Paragraph(s) ___ above, said costs being {estimated at }\$_____. However, the State shall be under no obligation to make payment for the costs of any work performed prior to the date the * is authorized in writing by the Commissioner to proceed with such approved work, or whenever the * violates the conditions set forth in this Agreement.
- #. Periodic progress payments will be made to the * upon presentation of invoices and substantiation of work performed (Invoice Summaries) provided the value of the work invoiced, other than the final invoice, is in excess of \$1,000.00.[PERIODIC PROGRESS PAYMENTS]
- #. The * shall submit a final invoice no later than two (2) months after completion of its work on all lump sum payments, or six (6) months after completion of its work on all actual cost payments. Unless otherwise approved by the State in advance, the *'s work shall be completed no later than two (2) months after notification by the Department of Transportation that the design of the State's Project is complete. Upon submission of the final invoice and issuance of the Final Audit of Agreement, no further charges will be accepted. The State will make payment to the * after submission of progress or final invoices provided that all substantiating documentation has been submitted to the State for the work invoiced therein.[FINAL INVOICES SUBMISSION REQUIREMENTS]
- #. The * agrees to record the costs paid by the State for the aforementioned facilities and maintain related accounting records in accordance with applicable provisions of the {Cost Accounting Standards prescribed by the Cost Accounting Standards Board as defined in 48 CFR Chapter 99 / Uniform System of Accounts prescribed by the State/Federal Energy Regulatory Commission}, and the costs paid by the State for facilities covered by this Agreement and the corresponding current and cumulative depreciation amounts will be eliminated from the rate determination process.[ACCOUNTING MEANS AND METHODS]
- #. Upon the receipt of a final invoice, so marked, showing the dates the work was started and completed, the State agrees to reimburse the * the {actual cost estimated at/agreed lump sum cost of} \$_____ as full compensation for costs of _____ complete. However, the State shall be under no obligation to make payment for the costs of any work performed prior to the date the * is authorized in writing by the Commissioner to proceed with such approved work, or whenever the * violates the conditions set forth in this Agreement.
- #. All cost records of the * pertaining to the Project will be subject at any time to inspection and audit by representatives of the State and the Federal Government for a period of not less than three (3) years from the date final payment is received by the *.[REQUIREMENT TO MAINTAIN RECORDS FOR FUTURE AUDITS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

THE STATE OF NEW HAMPSHIRE
Department of Transportation

COMPANY/MUNICIPALITY
X

By: _____
Peter E. Stamnas, P.E.
Director of Project Development

By: _____
(Signature)

(Typed or Printed Name)

(Title)

_____ JAM

(Date)

UTILITY (CONSTRUCTION)

Revised 2/03/2017, Supersedes 5/5/15, 8/1/13, 2/22/13, & 9/24/10

CITY/TOWN
FEDERAL NO.
STATE NO.
(Project Description)
(UTILITY WORK)

UTILITY AGREEMENT

This Agreement is made in duplicate this ___ day of ___, ___, by and between the STATE OF NEW HAMPSHIRE, by its Department of Transportation, party of the first part, hereinafter called the "State", and ___ (Vendor # ___), a Corporation duly organized and existing under the laws of the State of ___, and authorized to do business in the State of New Hampshire, party of the second part, hereinafter called the "*".[FOR AGREEMENT WITH COMPANY]

This Agreement is made in duplicate this ___ day of ___, ___, by and between the STATE OF NEW HAMPSHIRE, by its Department of Transportation, party of the first part, hereinafter called the "State", and ___ (Vendor # ___), a municipally owned utility/municipality, party of the second part, hereinafter called the "*".[FOR AGREEMENT WITH MUNICIPALITY]

WITNESSETH:

WHEREAS, the State has the approval of the United States Department of Transportation (USDOT), Federal Highway Administration (FHWA), for a {Federal-Aid ___/State-Aid ___/Betterment} Project (Organization Code ___), Project Name, Federal Number, State Number, for the construction of Project Description from ProMIS, in the City/Town of ___, County of ___, New Hampshire, which construction necessitates the {installation/relocation/replacement} of Description of Facility to the extent required to permit construction of the Project, and,

WHEREAS, the COMMISSIONER of the New Hampshire Department of Transportation (NHDOT), hereinafter called the "Commissioner", has prepared plans and specifications for such Project marked Project Name, Federal Number, State Number, which plans and specifications meet with the approval of the * and will be on file in the permanent records of said Department of Transportation, Concord, New Hampshire, and,

WHEREAS, the State is obligated to reimburse the * for ___ {relocation/replacement} due to the ___ facilities prior existence to the State Highway facility, and,[UTILITY PRE-EXISTED STATE ROADWAY]

WHEREAS, the State Attorney General's Office has issued its opinion that the State is obligated to reimburse the * for the costs incurred for ___ on ___, covered by the Project construction, and,

WHEREAS, said _____ facility(ies) is/are located on _____ (a municipally maintained roadway), the taking of which is compensable in eminent domain and therefore the costs of the relocations are the responsibility of the Project, and,[FOR MUNICIPAL FACILITIES ON MUNICIPALLY MAINTAINED ROADWAY or UTILITY HAS PROPERTY RIGHTS]

WHEREAS, it has been determined that the cost of the _____ will be borne by the State/Project, and,

WHEREAS, said _____ facility(ies) is/are located on _____ (a State maintained roadway), and therefore the costs of the relocations are the responsibility of the City/Town, and,[FOR MUNICIPAL FACILITIES ON STATE MAINTAINED ROADWAY]

WHEREAS, the State is obligated to reimburse the * for certain costs in accordance with RSA 228:22 (trench, backfill, and book value){ for the portion of work {on _____} {as shown in the attached estimate}, and,[MUNICIPAL UTILITY IN STATE ROW]

WHEREAS, the */State desires the _____ to be included as part of the Highway Contract, and,[WORK INCLUDED IN STATE CONTRACT]

WHEREAS, the */State desires the assistance of the State/* in the {installation/relocation/replacement} of the aforementioned facilities,[IDENTIFIES RELATIONSHIP FOR WORK TO BE ACCOMPLISHED]

NOW THEREFORE, in consideration thereof, the parties hereto mutually agree as follows:

1. [INSERT DESCRIPTION OF WORK AND BEGIN PARAGRAPH #'S.]

#. Underground conduit, pull boxes, transformer pads, pull ropes, {and} concrete light pole bases {, and traffic signal poles and appurtenances} will be furnished and installed by the State's Contractor.

Method of Payment for Described Work:

Work will be paid for at {Actual Cost estimated at{ and not to exceed}/Lump Sum cost of/Fixed Cost estimate at/Actual Contractor’s Bid estimate at [for an already bid upon project]} \$xxxxx.xx (Work Class Code {2250 Non-Par/2260 Par}) as shown {below/in the attached estimate}:

Estimated Non-Participating Items	\$xxx,xxx.xx
Construction Engineering (estimated at approximately ___%)	<u>\$xx,xxx.xx</u>
Subtotal	\$xxx,xxx.xx
Fuel Adjustment	<u>\$xx,xxx.xx</u>
Asphalt Adjustment	<u>\$xx,xxx.xx</u>
Subtotal	\$xxx,xxx.xx
10% Department Overheads	<u>\$xx,xxx.xx</u>
Subtotal	\$xxx,xxx.xx
Less Reimbursement for RSA 228:22	<u>\$x,xxx.xx</u>
Estimated Total Actual Cost due	\$xxx,xxx.xx

Billing for Cost of Installation submitted to:

Melodie A. Esterberg, P.E., Chief of Design Services
Bureau of Highway Design
New Hampshire Department of Transportation
7 Hazen Drive, PO Box 483
Concord, NH 03302-0483

Detailed billing shall be submitted showing:

- State Project Name & Number.
- Organization and Work Class codes.
- Brief description of work covered.
- Dates work was started & completed.
- Breakdown of quantities and costs for labor, equipment, materials and overhead expenses.
- Signed Utility Reports
- Whether billing is partial or final.
- Bill or invoice number.
- Date of billing.

Billing for Cost of Operation {of Lighting}: [USE 4-LINE ADDRESS]

Contact Person , Title /District _____ Engineer, Bureau of Highway
 Maintenance/Administrator, Bureau of Turnpikes
Company/Agency /New Hampshire Department of Transportation/
Mailing Address
City/Town , State Zip Code

Billing for Cost of Operation of Traffic Signals: [USE 4-LINE ADDRESS]

Contact Person , Title /Administrator, Bureau of Traffic
Company/Agency /New Hampshire Department of Transportation/
Mailing Address
City/Town , State Zip Code

- #. The work described in Paragraph __ above is shown in greater detail on the approved plans and in the attached plans and estimates being made a part of this Agreement.[WORK HIGHLIGHTED ON PLANS]

[Use 1 of the 3 Following Paragraphs] [DEFINES REIMBURSEMENT, INSPECTION, ACCEPTANCE, OPERATION AND MAINTENANCE RESPONSIBILITIES OF STATE CONTRACT PERFORMED WORK]

- #. The work described in Paragraph __ above will be accomplished under the Highway Contract, in accordance with the plans and specifications for same. The State/* agrees to reimburse the */State for the design engineering, construction engineering and inspection services incurred in the _____. The * agrees to accept the operation, use, and maintenance of the facilities, as constructed.
- #. The work described in Paragraph ___ above will be accomplished under the Highway Contract, in accordance with the plans and specifications for same. The */State agrees to reimburse the State/* for the actual costs (plus approximately __% construction engineering and ___% overhead expenses), and also agrees to accept the operation, use, and maintenance of the facilities, as constructed.
- #. The work described in Paragraph _____ above will be accomplished under the Highway Contract, in accordance with the plans and specifications for same, at no cost to the *. The * agrees to accept the operation, use, and maintenance of the facilities, as constructed.
- #. The * agrees to permit the State, its agents, and contractors to enter upon said premises, easement and land of the * for the purpose of performing the work described in Paragraph __ above.[ALLOWS ACCESS TO UTILITY'S PROPERTY]

- #. In order to assure a proper installation, the * {shall/will} assist the State in the inspection of the Contractor's work described in Paragraph(s) __ as required by the Project. Any issue shall be brought to the attention of the State's Contract Administrator immediately and he/she shall resolve it. The Contract Administrator will require the Contractor to take corrective action as necessary to provide an acceptable installation, relocation, and/or adjustment.[INSPECTION BY UTILITY]
- #. The work described in Paragraph __ above, will be done by * forces and/or under an existing continuing contract and/or by competitive bid contract. Continuing contracts shall be defined as a written contract with * and the contractor which regularly does work for the *. The * will have awarded the continuing contracts using a competitive bid process, the attached documentation of which being made a part of this Agreement. Competitive bid contracts must be solicited by the * from at least three (3) contractors and authorized by the State before the work can be awarded.[UTILITY PERFORMED WORK]

[Use 1 of the 2 Following Paragraphs] [COORDINATION OF WORK WITH STATE PROJECT]

- #. The * agrees to coordinate the work hereinbefore described with the State's Project and also agrees to complete the work prior to or concurrently with the Project's completion date, provided the * is not delayed by acts of God, strikes, or late delivery of critical materials.
- #. The * agrees to coordinate the work hereinbefore described with the State's Project and also agrees to complete the utility relocation work prior to the Project's completion date and to avoid construction conflicts with the State's Contractor.[FOR TREE CLEARING AGREEMENTS]
- #. The * agrees to perform the work hereinbefore proposed, in accordance with the plans mentioned above, including such additions or modifications hereafter approved, in writing, by the * and the Commissioner. The amount of work to be performed by the *, including any changes, shall be approved by the Commissioner and the duly authorized representatives of the Federal Government before the work is performed, and the * shall be reimbursed therefore, as hereinafter provided, except that the cost of any such force account or contract work which is not approved as above indicated shall be borne by the *.[STATEMENT OF PRIOR APPROVAL OF WORK]
- #. In accordance with the **BUY AMERICA** requirements of the Federal regulations (23 U.S.C. 313 and 23 CFR 635.410), all manufacturing processes for steel and iron products furnished for permanent incorporation into the work on this project shall occur in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another country. Other than these exceptions, all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. must occur in the United States.[INCLUDE THIS PARAGRAPH AND A – D BELOW ON A FEDERALLY FUNDED PROJECT WHERE UTILITY PERFORMS WORK]

- A. Products of steel include, but are not limited to, such products as structural steel, piles, reinforcing steel, structural plate, steel culverts, guardrail steel supports for signs, signals and luminaires, and cable wire/strand. Products of iron include, but are not limited to, such products as cast iron frames and grates and ductile iron pipe. Coatings include, but are not limited to, the applications of epoxy, galvanizing and paint. The coating material is not subject to this clause, only the application process.
- B. A Certificate of Compliance (available at www.NHDOT.com) shall be furnished for steel and iron products as part of the backup information with the billing. Records to be maintained by the * for this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product affirming that every process, including the application of a coating, performed on the steel or iron product has been carried out in the United States of America, except as allowed by this Section. The lack of these certifications will be justification for rejection of the steel and/or iron product or non-payment of the work.
- C. The requirements of said law and regulations do not prevent the use of miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above products, manufactured products that are not predominantly steel or iron or a minimal use of foreign steel and iron materials if the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.
- D. Upon completion of the project, the * shall certify in writing as to compliance with this Section and also provide the total project delivered cost of all foreign steel and/or iron permanently incorporated into the work covered by this Agreement. The form for this certification entitled "Buy America Certificate of Compliance" can be found at www.NHDOT.com.
- #. The * agrees to notify the State's Contract Administrator daily when performing the work hereinbefore described, and to complete Utility Reports showing the work performed, the classes and hours of labor, equipment and materials used, and the disposition of the materials replaced, along with the time and place abandoned or scrapped materials will be available for inspection. The * further agrees to obtain the signature of the State's Contract Administrator on the Project on the completed Utility Reports for work being done daily and deliver them weekly to the State's Contract Administrator or mail them to the New Hampshire Department of Transportation, Bureau of Construction/Turnpikes/Highway Design/Maintenance-District ____, 7 Hazen Drive/_____, PO Box 483/2950/_____, Concord/_____, NH 03302-0483/2950/_____, at the end of the week following that in which the work was performed. The * and the State's Contract Administrator/Utility Coordinator shall resolve any possible discrepancies. The Utility Reports are required for verification that the work was performed.[Send Utility Reports with Authorization to Proceed letter] [REQUIREMENT FOR UTILITY REPORTS]

- #. The * agrees to aid in the inspection of the installation and backfill operations for the underground conduit and cables in order to assure a safe and proper installation of said conduit and cables.[INSPECTION BY UTILITY FOR LIGHTING INSTALLATION]
- #. It is agreed that the * will own and maintain the underground electrical cables and will provide service under the terms and conditions of its Tariff for Electric Service on file with the Public Utilities Commission with the cost of service being borne by the State.[DEFINES OWNERSHIP OF ELECTRIC CONDUCTORS]
- #. It is agreed that the * will own and maintain the installations hereinbefore described, except as specified in Paragraph ____, and will provide service under the terms and conditions of its Tariff for Electric Service on file with the New Hampshire Public Utilities Commission, with the cost of service being borne by the New Hampshire Department of Transportation, Bureau of _____ / City/Town of _____ / _____ Company/Corporation/Department. The * further agrees, in the interest of securing an adequate lighting installation for this Project and in order to meet Federal requirements concerning the investment of public funds, that should the * or its successors be unwilling to provide lighting service through such installations, the State will be paid by the * or its successors an amount equal to the difference between (a) the then current salvage value of the facilities owned by the * with respect to which the State made a contribution hereunder and (b) the cost of removal of such facilities; multiplied by the ratio of the State's payment hereunder to the total cost of such facilities.[DEFINES OWNERSHIP AND MAINTENANCE RESPONSIBILITY OF UTILITY INSTALLED LIGHTING FACILITIES]
- A. The term of this specific Agreement (Outdoor Lighting Service) shall be for an initial period of one (1) year with automatic one (1) year extensions thereafter unless canceled by either party by giving to the other notice in writing at least thirty (30) days prior to the expiration of any contract year for luminaries.
- #. It is further agreed that the State and/or City/Town will pay the * the total excess cost of such facilities as specified under the special provisions of its Tariff for Electric Service and, in addition, the * will be paid annually ___% (or the applicable percentage in effect at the time) of the excess cost to cover the operation and maintenance thereof. For the purposes of this paragraph, excess cost is defined as being the cost in excess of that which would have been incurred had the *'s standard bracket arms been mounted on existing poles and supplied from existing conductors. These costs are included in the operational costs of the utility. [DEFINES EXCESS COST REIMBURSEMENT PER UTILITY'S PUC TARIFF. THIS PARAGRAPH SHOULD NOT BE PRESENT IN NHEC AGREEMENTS]
- A. Excess cost for the new facilities described in Paragraph 1 above will be based on actual costs.

B. One twelfth (1/12) of the ____% annual charge (or applicable percentage in effect) of total excess cost will be included with the *'s monthly billing for electric power.

C./A. The term of the specific Agreement (Operation and Maintenance Charge) shall be for an initial period of ten (10) years with automatic one (1) year extensions thereafter unless canceled by either party by giving to the other notice in writing at least thirty (30) days prior to the expiration of the initial period or any extension thereof.

[A., B. AND C. TO BE INCLUDED WITH UNITIL ENERGY SYSTEMS AGREEMENTS ONLY, OTHERWISE C/A. IS A.]

- #. Upon completion and acceptance by the State, of the installations hereinbefore described, the * will own, maintain, and provide electrical power to the installed equipment, including the luminaires, wiring, and light standards with bracket arms, except the State, its successors, or assigns, will own and maintain the conduits, pull boxes, {and} concrete light pole bases, {and} traffic signal poles and appurtenances}. [DEFINES OWNERSHIP OF LIGHTING FACILITIES]
- #. The State agrees to reserve/obtain and/ or convey to the * the right of easement as shown on the approved plans to accommodate the new/relocated _____ facilities. This constitutes the replacement of existing rights and facilities. [WHEN STATE IS REPLACING AN EASEMENT]
- #. Federal and State participation in the cost of the work done under this Agreement shall be computed on the basis of the provisions and regulations of 23 CFR, Part 645, Subpart A and/or Subpart B. The subject regulation, including all current amendments and/or revisions, is hereby made a part of this Agreement. [COST PARTICIPATION ACCORDING TO FEDERAL REQUIREMENTS]
- #. The * agrees to remit payment to the Treasurer, State of New Hampshire, through:

Danielle Chandonnet, Finance Bureau Administrator
Bureau of Finance and Contracts
New Hampshire Department of Transportation
7 Hazen Drive, PO Box 483
Concord, NH 03302-0483

in the amount of the bid item totals, plus construction engineering estimated at __% and __% for overhead expenses{, minus the reimbursement amount,} for the non-participating _____ work described in Paragraph __ prior to the award of the Contract. The actual payment total required will be determined at the time of receipt of bids for the Project. Should the funds (approximately \$ _____) not be provided, the _____ work in excess of that length required to be relocated due to construction conflicts will be deleted from the

Contract; and the * will be billed for the costs of the required relocated length, minus State reimbursement.

[ALTERNATE WORDING FOR NEW INSTALLATION / IMPROVEMENT REQUESTED BY UTILITY.]

to reimburse the State for the total cost of the non-participating _____ work described in Paragraph __ plus construction engineering estimated at __% and __% for overhead expenses{ with the exception of _____ estimated at \$_____ which the State will be responsible for}. Payment must be received prior to the award of the Contract. The actual payment total required will be determined at the time of receipt of bids for the Project. Should the funds (approximately \$_____) not be provided, the work described in Paragraph __ will be deleted from the Contract.

#. During the final audit of the work, the State will compute the final costs based on the actual quantities of items related to _____ installations/relocations/replacements, along with any additional required _____ installations/relocations/replacements needed to resolve construction conflicts, plus a percentage for construction engineering based upon actual costs and __% for overhead expenses. If these costs exceed the amount paid, the State will bill the * for the balance due. If they are less, the State will forward a check in the amount of the balance to the *.[COST ADJUSTMENT FOR CHANGES DURING CONSTRUCTION]

#. The facilities being replaced or adjusted are a segment of service, distribution, or transmission lines; therefore, no credits are due for accrued depreciation. [FOR ALL RELOCATIONS]

[Use 1 of the 2 Following Paragraphs when State is reimbursing]

#. Upon the receipt of satisfactory detailed invoices (with applicable credit shown for salvage or scrap, betterments, and accrued depreciation) without arbitrary percentage or lump sum addition for overhead expenses, the State agrees to reimburse the * for the trench and backfill necessary to accomplish the work described in Paragraph(s) _____ above and for the book value of the facilities being retired. The amount of the payment shall be computed by the method shown in the attached estimate. However, the State shall be under no obligation to make payment for the costs of any work performed prior to the date the * is authorized in writing by the Commissioner to proceed with such approved work, or whenever the * violates the conditions set forth in this Agreement.[ELIGIBLE FOR REIMBURSEMENT UNDER RSA 228:22]

#. Upon the receipt of satisfactory detailed invoices (with applicable credit shown for salvage or scrap, betterments, and accrued depreciation) without arbitrary percentage or lump sum addition for overhead expenses, the State agrees to reimburse the * {for ____% of/the agreed lump sum amount for} the costs of labor, equipment, and materials to perform the work described in Paragraph(s) _____ above, said costs being {estimated at }\$_____. However, the State shall be under no obligation to

make payment for the costs of any work performed prior to the date the * is authorized in writing by the Commissioner to proceed with such approved work, or whenever the * violates the conditions set forth in this Agreement.[NOT ELIGIBLE FOR REIMBURSEMENT UNDER RSA 228:22]

- #. Periodic progress payments will be made to the * upon presentation of invoices and substantiation of work performed (Utility Reports) provided the value of the work invoiced, other than the final invoice, is in excess of \$1,000.00.[PERIODIC PROGRESS PAYMENTS]
- #. The * shall submit a final invoice no later than two (2) months after completion of its work {and all charges are in, [FOR UNITIL ENERGY SYSTEMS ONLY]} on all lump sum payments, or six (6) months after completion of its work on all actual cost payments. Unless otherwise approved by the State in advance, the *'s work shall be completed no later than two (2) months after notification by the Department of Transportation that the State's construction Project is complete. Upon submission of the final invoice and issuance of the Final Audit of Agreement, no further charges will be accepted. The State will make payment to the * after submission of progress or final invoices provided that all substantiating documentation has been submitted to the State for the work invoiced therein.[FINAL INVOICES SUBMISSION REQUIREMENTS]
- #. The * agrees to furnish a Certificate of Compliance from the manufacturer, along with its final invoice, certifying that the light poles described in this Agreement conform to the requirements of the AASHTO "Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals", including revisions in effect on the date of this Agreement.[CERTIFICATE OF COMPLIANCE FOR MATERIALS ON LIGHTING FACILITIES]
- #. The * agrees to record the costs paid by the State for the aforementioned facilities and maintain related accounting records in accordance with applicable provisions of the {Cost Accounting Standards prescribed by the Cost Accounting Standards Board as defined in 48 CFR Chapter 99/[for Power Companies]Uniform System of Accounts prescribed by the State/Federal Energy Regulatory Commission}, and the costs paid by the State for facilities covered by this Agreement and the corresponding current and cumulative depreciation amounts will be eliminated from the rate determination process.[ACCOUNTING MEANS AND METHODS]
- #. Upon the receipt of a final invoice, so marked, showing the dates the work was started and completed, the State agrees to reimburse the * { ___% of the actual cost estimated at/ the agreed lump sum cost of } \$ _____ as full compensation for costs of _____ complete. However, the State shall be under no obligation to make payment for the costs of any work performed prior to the date the * is authorized in writing by the Commissioner to proceed with such approved work, or whenever the * violates the conditions set forth in this Agreement. [PAYMENT WHEN STATE IS REIMBURSING FOR WORK]

- #. The State agrees to reimburse the * the amount of \$_____ for trench and backfill. The State also agrees to reimburse the * for the book value (original cost less allowable depreciation) of the _____ which will be retired, the amount of \$_____. Said payment(s) {are/is} computed per the attached estimate. The * agrees that these amounts, {included in/deducted from} the payments described above, fulfill the State's obligation of RSA 228:22 (trench, backfill, and book value). [PAYMENT IN ACCORDANCE WITH RSA 228:22]

- #. All cost records of the * pertaining to the Project will be subject at any time to inspection and audit by representatives of the State and the Federal Government for a period of not less than three (3) years from the date final payment is received by the *.[REQUIREMENT TO MAINTAIN RECORDS FOR FUTURE AUDITS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

THE STATE OF NEW HAMPSHIRE
Department of Transportation

COMPANY/MUNICIPALITY
X

By: _____
Peter E. Stamnas, P.E.
Director of Project Development

By: _____
(Signature)

(Typed or Printed Name)

(Title)

_____ JAM

(Date)

RAILROAD (FLAGGING)

Revised 03/07/2019, Supersedes 12/08/2017, 02/03/17, 10/6/16

CITY/TOWN(S)
FEDERAL NO
STATE NO
(STREET/ROUTE NO)
(RAILROAD COMPANY
NAME - RAILROAD
FLAGGING AND
INSPECTION)

RAILROAD AGREEMENT

This Agreement is made in duplicate this _____ day of _____, 20___, by and between the STATE OF NEW HAMPSHIRE, by its Department of Transportation, party of the first part, hereinafter called the "State", and _____ (Vendor # _____), a Corporation duly organized and existing under the laws of the State of _____, and authorized to do business in the State of New Hampshire, party of the second part, hereinafter called the "Railroad".

WITNESSETH:

WHEREAS, the State has the approval of the Federal Highway Administration (FHWA), for a Federal-Aid _____ Project (Organization Code _____), PROJECT NAME, FED. NO, STATE NO, STREET/ROUTE NO, in the City/Town of _____, County of _____, New Hampshire, which construction requires the Railroad to protect its property on the _____ Line to the extent required to permit construction of the project.

WHEREAS, the COMMISSIONER of the New Hampshire Department of Transportation (NHDOT), hereinafter called the "Commissioner", has prepared plans and specifications for such Project marked PROJECT NAME, FED. NO, STATE NO, which plans and specifications meet with the approval of the Railroad and are on file in the permanent records of said Department of Transportation, Concord, New Hampshire, and,

WHEREAS, the New Hampshire Department of Transportation, Bureau of Rail and Transit concurs with the aforementioned project and, (INCLUDE THIS PARAGRAPH ONLY ON STATE OWNED RAILROADS).

WHEREAS, the State desires the assistance of the Railroad in the rehabilitation of the aforementioned facilities,

NOW THEREFORE, in consideration thereof, the parties hereto mutually agree as follows:

1. The Railroad shall furnish the labor, materials, and equipment to perform the following:

- A. Protect its property by whatever means deemed necessary.
 - B. A Flagger shall be furnished for the protection of the Railroad's traffic, an Inspector shall be furnished for the protection of the Railroad's property. Said Flagger and Inspector shall be at the expense of the State.
 - C. Coordinate with the State's or Contractor Forces so it can provide proper and timely detours.
 - D. Will strive to adjust its train schedule so as to allow as much time as possible for construction.
 - E. Flagger / Inspector upon arrival on site shall check in with the State's {Survey Crew Chief/Engineer and Contractor} as well as complete utility reports as described below.
2. The State shall accordingly furnish the labor, materials, and equipment for the following work:
- A. Cold Plane and Inlay the crossings as shown on the plans and estimates.
 - A. Crack seal the crossings as shown on the plans and estimates.
 - A. Install protective screening and perform partial and full deck repairs as shown on the plans and estimates.
 - A. Survey the existing detail of the rail crossing.
 - B. Maintain highway traffic which will consist of providing competent flagmen with vests, furnishing, erecting and maintaining traffic signs and delineators at the required locations{, and maintain a detour, should one be established, including signing, lighting, etc.}.
 - C. Reconstruct sidewalks and curbing as needed.

Method of Payment for Described Work:

Actual Cost estimated at \$ _____ for ___ days of Railroad Flagging and Inspection (Work Class Code {1300 for Design/2280 for Construction}).

Billing for Cost of Railroad Flagging and Inspection submitted to:

Melodie A. Esterberg, P.E., Chief of Design Services
 Bureau of Highway Design
 New Hampshire Department of Transportation
 7 Hazen Drive, PO Box 483
 Concord, NH 03302-0483

Detailed billing shall be submitted showing:

- State Project Name & Number.
 - Organization and Work Class codes.
 - Brief description of work covered.
 - Dates work was started & completed.
 - Breakdown of quantities and costs for labor, equipment, materials and overhead expenses.
 - Signed Utility Reports
 - Whether billing is partial or final.
 - RAILROAD COMPANY NAME bill or invoice number.
 - Date of billing.
3. The Railroad agrees that the State may let a contract or contracts for the construction of the work described in Paragraph 2 above.
 4. The work described in Paragraph 1 above, which will be done by Railroad forces is shown in greater detail, along with the lines of work, on the approved plans, specifications and in the attached estimates, said plans, specifications and estimates being made a part of this Agreement. The Railroad may engage a qualified consultant to perform their required services and may have any required maintenance-of-way performed under an existing continuing contract and/or by competitive bid contract. Continuing contracts shall be defined as a written contract with the Railroad and the contractor, which periodically does work for the Railroad. The Railroad will have awarded the continuing contracts using a competitive bid process, the attached documentation of which being made a part of this Agreement, and in compliance with 23 CFR 646.216 (f). Contracts must be authorized by the State before work can be awarded.
 5. The Railroad agrees to notify the State of the starting and completion dates of the work hereinbefore described, and to provide the State's Contract Administrator on the Project with Utility Reports showing the work performed, the classes and hours of labor, equipment and materials used. The Railroad further agrees to complete the Utility Reports for work being done daily and deliver them weekly to the State's Contract Administrator or mail them to the New Hampshire Department of Transportation, Highway Design 7 Hazen Drive, PO Box 483 Concord, NH 03302-0483 at the end of the week following that in which the work was performed. The Railroad and the State's Contract Administrator/Utility Coordinator shall resolve any possible discrepancies. The Utility Reports are not the basis for payment, but are required for verification that the work was performed.
 6. The Railroad agrees to permit the State, its agents, and contractors to enter upon said right of way and land of the Railroad for the purpose of performing the work described in Paragraph 2 above and as shown on approved plans.

7. The Railroad agrees to coordinate the work hereinbefore described with the State's Project and also agrees to complete the work prior to or concurrently with the Project's completion date, provided the Railroad is not delayed by acts of God, strikes, or late delivery of critical materials.
8. The Railroad agrees to perform the work hereinbefore proposed, in accordance with the plans mentioned above, including such additions or modifications hereafter approved, in writing, by the Railroad and the Commissioner. The amount of work to be performed by the Railroad, including any changes, shall be approved by the Commissioner and the duly authorized representatives of the Federal Government before the work is performed, and the Railroad shall be reimbursed therefore, as hereinafter provided, except that the cost of any such force account or contract work which is not approved as above indicated shall be borne by the Railroad.
9. As defined in the 23, CFR 646.210 (b) (1) there is no Railroad benefit; therefore, no contribution from the Railroad is required.
10. All cost records of the Railroad pertaining to the project will be subject at any time to inspection by representatives of the State and Federal governments for a period of not less than three years from the date final payment is received by the Railroad.
11. The Railroad agrees to provide flagging and inspection services to permit the construction of the project in accordance with and as shown in more detail upon the above described plans.
 - A. The work to be done by the Railroad to accomplish the above described flagging and inspection services shall consist of the following: furnish labor, materials and equipment for Preliminary Engineering; Office Engineering; Field Engineering and Supervision; Accounting.
 - B. An itemized estimate of the cost of the work, including materials to be furnished by the Railroad is attached hereto and made a part of this Agreement. Reimbursement, however, will be on an actual cost basis, the work being shown in greater detail on the State and Railroad's plans.
 - C. All work shall be performed in a good, workman like manner under competent, experienced supervision, per current railway engineering and construction practice.
12. Federal and State participation in the cost of the work done under this Agreement shall be computed on the basis of the provisions and regulations of the 23 CFR 646 and 23 CFR Part 140, Subpart I. The above-mentioned code, including all current amendments and/or revisions, is hereby made a part of this Agreement.

- 13. Upon the receipt of satisfactory detailed progress vouchers, or one final voucher, with applicable credit shown for salvage, or scrap and betterments, the State agrees to reimburse the Railroad for the cost of preliminary engineering, and for all labor, including flagging, and materials furnished to perform the work as described in the previous paragraphs and as shown on the approved plans, also for maintaining railroad traffic during the construction of this project and for such engineering expenses as are necessary for the general protection of the Railroad's property and operations during construction. Payment shall be made by the State to the Railroad within sixty (60) days after completion and acceptance of the work by the State. However, the State shall be under no obligation to make payment for the costs of any work for which Utility Reports are not submitted in accordance with Paragraph 5 above or any other work performed prior to the date the Railroad is authorized, in writing, by the State to proceed with such approved work or whenever the Railroad violates the conditions set forth in this Agreement.

- 14. Both parties agree that this project is a joint project between the State and the Railroad, therefore, both parties will cooperate fully to the extent possible to pursue said project to completion.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

THE STATE OF NEW HAMPSHIRE
Department of Transportation

RAILROAD COMPANY NAME

By: _____
Peter E. Stannas, P.E.
Director of Project Development

By: _____
(Signature)

(Typed or Printed Name)

_____ JAM

(Title)

(Date)

RAILROAD (RAILWAY-HIGHWAY CROSSING)

Revised 2/03/2017, Supersedes 10/6/16

CITY/TOWN(S)
FED. NO
STATE NO
(STREET/ROUTE NO)
(RAILROAD COMPANY
NAME RAILWAY-
HIGHWAY CROSSING)

RAILROAD AGREEMENT

This Agreement is made in duplicate this _____ day of _____, 2018, by and between the STATE OF NEW HAMPSHIRE, by its Department of Transportation, party of the first part, hereinafter called the "State", and _____ (Vendor # _____), a Corporation duly organized and existing under the laws of the State of _____, and authorized to do business in the State of New Hampshire, party of the second part, hereinafter called the "Railroad".

WITNESSETH:

WHEREAS, the State has the approval of the Federal Highway Administration (FHWA), for a Federal-Aid _____ Project (Organization Code _____), PROJECT NAME, FED NO, STATE NO, STREET/ROUTE NO, for the construction of an at-grade Railway-Highway crossing in the Town of _____, County of _____, New Hampshire.

WHEREAS, the COMMISSIONER of the New Hampshire Department of Transportation (NHDT), hereinafter called the "Commissioner", has prepared plans and specifications for such Project marked PROJECT NAME, FED NO, STATE NO, which plans and specifications meet with the approval of the Railroad and are on file in the permanent records of said Department of Transportation, Concord, New Hampshire, and,

WHEREAS, the New Hampshire Department of Transportation, Bureau of Rail and Transit concurs with the aforementioned project and, (INCLUDE THIS PARAGRAPH ONLY ON STATE OWNED RAILROADS).

WHEREAS, the State desires the assistance of the Railroad in the installation/relocation/replacement of the aforementioned facilities,

NOW THEREFORE, in consideration thereof, the parties hereto mutually agree as follows:

1. The Railroad shall furnish the labor, materials, and equipment to perform the following:
 - A. Reconstruct said crossings using:

1. 115 pound Welded Rail (butt weld preferred) or as approved by the State.
 2. Elastomeric Railseal Interface with A.D.A. GAUGE, railseal to extend minimum of 2' beyond edge of pavement, curb line, or sidewalk. A minimum of 15' section lengths shall be used through the crossing.
 3. Filter fabric, 14" x 7-3/4", AREA 8, 8 hole double shouldered canted tie plates, tie plate pads and rail anchors shall be included.
 4. Joints and welds shall be staggered.
 5. End of rail shall be cropped prior to thermite welding so there will be no holes in areas of welds.
 6. 9' - 0" ties shall be used through the crossings with 8' - 6" ties in the approaches.
 7. Will perform necessary ditch reconstruction along its track to provide drainage.
 8. Remove unnecessary brush and materials along its right-of-way to open sight triangles to the crossings.
- B. The Railroad will coordinate with the State's or Contractor Forces so it can provide proper and timely detours. At time of construction, the Railroad will endeavor to cooperate with other utilities should the need arise to place their utility under the tracks.
- C. The Railroad will strive to adjust its train schedule so as to allow as much time as possible for construction of said crossings.
- D. Appropriate salvage credit will be given for all recovered materials such as rails, ties, spikes, plates, etc., removed and replaced from the existing layout. If salvage material is classified as scrap, it will be made available for inspection prior to disposal and be disposed of locally.
- E. Stone ballast will be a minimum depth of 12" throughout the limits of rail removed, and then taper to existing depths.
- F. Install railroad signals as shown on the plans. Bases for said signals will be set a minimum of 8' behind edge of pavement, with 12" (Light Emitting Diodes) LED lights with a bell, reflective sheeting for crossbucks, and conforming to all current standards, MUTCD Part VIII and to plans, specifications and estimates, including all detection circuitry and other appurtenances required for a complete installation.

Method of Payment for Described Work:

Actual Cost estimated at \$ _____ (Work Class Code _____)

Billing for Cost of Installation submitted to:

Melodie A. Esterberg, P.E., Chief of Design Services
 Bureau of Highway Design
 New Hampshire Department of Transportation
 7 Hazen Drive, PO Box 483
 Concord, NH 03302-0483

Detailed billing shall be submitted showing:

- State Project Name & Number.
 - Organization and Work Class codes.
 - Brief description of work covered.
 - Dates work was started & completed.
 - Breakdown of quantities and costs for labor, equipment, materials and overhead expenses.
 - Signed Utility Reports
 - Whether billing is partial or final.
 - RAILROAD COMPANY NAME bill or invoice number.
 - Date of billing.
2. The State shall accordingly furnish the labor, materials, and equipment for the following work:
 - A. Pave the crossing and approaches and reconstruct the roadway portion outside the rails, as shown on the plans and estimates, and construct and pave shoulders as required.
 - B. Additional roadway work such as necessary drainage, roadway widening, and/or site work as agreed with the Contract Administrator.
 - C. Maintenance of highway traffic. This work will consist of providing competent flagmen with vests, furnishing, erecting and maintaining traffic signs and delineators at the required locations. Maintaining a detour, should one be established, including signing, lighting, etc.
 - D. Provide a detour, for the crossing during the time of construction.
 3. The finished grade of track will be set by the State with the approval of the Railroad (to be determined at time of construction).

4. The Railroad agrees that the State may let a contract or contracts for the construction of the work described in Paragraph 2 above, herein after referred to the State's Contractor. Contractors shall be required to provide Railroad Protective Insurance as specified in Standard Specification for Road and Bridge Construction Section 107.11.
5. The work described in Paragraph 1 above, which will be done by Railroad forces is shown in greater detail, along with the lines of work, on the approved plans, specifications and in the attached estimates, said plans, specifications and estimates being made a part of this Agreement. The Railroad may engage a qualified consultant to perform their required services and may have any required maintenance-of-way performed under an existing continuing contract and/or by competitive bid contract. Continuing contracts shall be defined as a written contract with the Railroad and the contractor, which periodically does work for the Railroad. The Railroad will have awarded the continuing contracts using a competitive bid process, the attached documentation of which being made a part of this Agreement, and in compliance with 23 CFR 646.216 (f). Contracts must be authorized by the State before work can be awarded.
6. The Railroad agrees to notify the State of the starting and completion dates of the work hereinbefore described, and to provide the State's Contract Administrator on the Project with Utility Reports showing the work performed, the classes and hours of labor, equipment and materials used, and the disposition of the materials replaced, along with the time and place recovered materials will be available for inspection prior to disposal by sale or scrap. The Railroad further agrees to complete the Utility Reports for work being done daily and deliver them weekly to the State's Contract Administrator or mail them to the New Hampshire Department of Transportation, Highway Design 7 Hazen Drive, PO Box 483 Concord, NH 03302-0483 at the end of the week following that in which the work was performed. The Railroad and the State's Contract Administrator/Utility Coordinator shall resolve any possible discrepancies. The Utility Reports are not the basis for payment, but are required for verification that the work was performed.
7. The Railroad agrees to permit the State, its agents, and contractors to enter upon said right of way and land of the Railroad for the purpose of performing the work described in Paragraph 2 above and as shown on approved plans.
8. The Railroad agrees in order to assure a proper installation, to inspect the Contractor's work of installing, relocating and/or adjusting the Railroad's facilities as required by the Project. Any issue shall be brought to the attention of the State's Contract Administrator immediately and he/she shall resolve it.
9. The Railroad agrees to coordinate the work hereinbefore described with the State's Project and also agrees to complete the work prior to or concurrently with the

Project's completion date, provided the Railroad is not delayed by acts of God, strikes, or late delivery of critical materials.

10. The Railroad agrees to perform the work hereinbefore proposed, in accordance with the plans mentioned above, including such additions or modifications hereafter approved, in writing, by the Railroad and the Commissioner. The amount of work to be performed by the Railroad, including any changes, shall be approved by the Commissioner and the duly authorized representatives of the Federal Government before the work is performed, and the Railroad shall be reimbursed therefore, as hereinafter provided, except that the cost of any such force account or contract work which is not approved as above indicated shall be borne by the Railroad.
11. In accordance with the **BUY AMERICA** requirements of the Federal regulations (23 U.S.C. 313 and 23 CFR 635.410), all manufacturing processes for steel and iron products or predominantly of steel or iron (at least 90% steel or iron content) furnished for permanent incorporation into the work on this project shall occur in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another country. Other than these exceptions, all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. must occur in the United States.
 - A. Products of steel include, but are not limited to, such products as structural steel, piles, reinforcing steel, structural plate, steel culverts, guardrail steel supports for signs, signals and luminaires, and cable wire/strand. Products of iron include, but are not limited to, such products as cast iron frames and grates and ductile iron pipe. Coatings include, but are not limited to, the applications of epoxy, galvanizing and paint. The coating material is not subject to this clause, only the application process.
 - B. A Certificate of Compliance (available at www.NHDOT.com) shall be furnished for steel and iron products as part of the backup information with the billing. Records to be maintained by the Railroad for this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product affirming that every process, including the application of a coating, performed on the steel or iron product has been carried out in the United States of America, except as allowed by this Section. The lack of these certifications will be justification for rejection of the steel and/or iron product or non-payment of the work.
 - C. The requirements of said law and regulations do not prevent the use of miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above products, manufactured products that are not predominantly steel or iron or a minimal use of foreign steel and iron materials if the cost of such materials used does

not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.

- D. Upon completion of the project, the Railroad shall certify in writing as to compliance with this Section and also provide the total project delivered cost of all foreign steel and/or iron permanently incorporated into the work covered by this Agreement. The form for this certification entitled "Buy America Certificate of Compliance" can be found at www.NHDOT.com.
12. As defined in the 23, CFR 646.210 (b) (1) there is no Railroad benefit; therefore, no contribution from the Railroad is required.
13. All cost records of the Railroad pertaining to the project will be subject at any time to inspection by representatives of the State and Federal governments for a period of not less than three years from the date final payment is received by the Railroad.
14. The Railroad agrees to make the necessary changes in its facilities to the extent required to permit the construction of the project; also agrees to construct such facilities in addition to those provided in the contract as may be needed for maintaining traffic during such changes in its facilities and the construction of said project in accordance with and as shown in more detail upon the above described plans.
- A. The work to be done by the Railroad to accomplish the above described changes shall consist of the following: furnish labor, materials and equipment for (1) Preliminary Engineering (*); (2) Office Engineering (*); (3) Field Engineering and Supervision (*); (4) Install New Crossing (*); (10) Accounting; (11) Preliminary Engineering (**); (12) Office Engineering (**); (13) Field Engineering and Supervision (**); and (14) Installation of Flashing Signals (**).
- (*) Construction Department
(**) Communication and Signal Department
- B. An itemized estimate of the cost of the work, including materials to be furnished by the Railroad is attached hereto and made a part of this Agreement. Reimbursement, however, will be on an actual cost basis, the work being shown in greater detail on the State and Railroad's plans.
- C. All work shall be performed in a good, workman like manner under competent, experienced supervision, per current railway engineering and construction practice.
- D. No work that requires the railroad to move and adjust its facilities at its own expense as defined in 23 CFR 646.216 (d) (2) (iv) is included in this agreement.

15. Federal and State participation in the cost of the work done under this Agreement shall be computed on the basis of the provisions and regulations of the 23 CFR 646 and 23 CFR Part 140, Subpart I. The above-mentioned code, including all current amendments and/or revisions, is hereby made a part of this Agreement.
16. The Railroad agrees to accept the operation, use and maintenance of the crossing and crossing protection (signals with a bell), described in Paragraph 1 above, and to maintain the crossing protection in an operable approved manner.
17. Upon the receipt of satisfactory detailed progress vouchers, or one final voucher, with applicable credit shown for salvage, or scrap and betterments, the State agrees to reimburse the Railroad for the cost of preliminary engineering, and for all labor, including flagging, and materials furnished to perform the work as described in the previous paragraphs and as shown on the approved plans, also for maintaining railroad traffic during the construction of this project and for such engineering expenses as are necessary for the general protection of the Railroad's property and operations during construction. Payment shall be made by the State to the Railroad within sixty (60) days after completion and acceptance of the work by the State. However, the State shall be under no obligation to make payment for the costs of any work for which Utility Reports are not submitted in accordance with Paragraph 6 above or any work, other than preliminary engineering, performed prior to the date the Railroad is authorized, in writing, by the State to proceed with such approved work or whenever the Railroad violates the conditions set forth in this Agreement.
18. Both parties agree that this project is a joint project between the State and the Railroad, therefore, both parties will cooperate fully to the extent possible to pursue said project to completion.
19. It is hereby mutually agreed by the State and the Railroad that when conditions are such that the signals installed under Section 1 of this Agreement are no longer needed at this location, the State will be paid by the Railroad or its successors an amount equal to the then current salvage value of the signals, supports and crossing less the cost of the removal of said facilities or the State will petition the New Hampshire Department of Transportation, Bureau of Rail and Transit, for the reinstallation of these signals by the Railroad at another crossing of a public highway on the Railroad's lines within the State, using such funds other than Railroad funds, as may be available at that time.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

THE STATE OF NEW HAMPSHIRE
Department of Transportation

RAILROAD COMPANY NAME

By: _____
Peter E. Stamnas, P.E.
Director of Project Development

By: _____
(Signature)

(Typed or Printed Name)

_____ JAM

(Title)

(Date)