



THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION



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Victoria F. Sheehan  
Commissioner

William Cass, P.E.  
Assistant Commissioner

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

Bureau of Rail and Transit  
August 30, 2017

**REQUESTED ACTION**

Authorize the Department of Transportation to enter into a contract with the New Hampshire Northcoast Railroad Company, Ossipee, NH (VC#156085) for an amount not to exceed \$900,000 for track improvements on the New Hampshire Northcoast Railroad in Strafford and Carroll Counties, effective upon Governor and Council approval through January 31, 2019. 100% Capital General Funds.

Funding is available as follows:

FY 2018

04-96-96-960030-1676	
Capital Projects	
034-500161 Strafford & Carroll	\$900,000
Rail Improvements	

**EXPLANATION**

Pursuant to the Laws of 2017, Chapter 228:1-XXII:D, the State appropriated \$900,000 of capital budget funds to support the New Hampshire Northcoast Railroad Company rehabilitation project and match equivalent railroad funds. A total of 20.4 miles of track between MP 80.6 and 101 on the New Hampshire Northcoast Railroad in the Towns of Ossipee, Milton, Wakefield, Rollinsford and the Cities of Rochester, Somersworth, Counties of Strafford and Carroll, State of New Hampshire will be rehabilitated under this agreement.

This agreement will provide funding for the New Hampshire Northcoast Railroad to make improvements to its 42-mile privately-owned short line railroad that runs between Rollinsford and Ossipee, NH. Improvements to and rehabilitation of this line will continue to allow rail freight movement of aggregate and other commodities and help provide safer operations and a safe increase in the weight and volume of rail cars on the corridor. Major components of the project include the repair and refurbishment of three (3) at-grade crossings in Rochester, Union and Wakefield and track refurbishment, including replacement of over 11,200 ties, 4,430 feet of 112 lb. rail, ballast work, and line resurfacing, to accommodate industry-standard 286,000-lb. rail cars and increase train speeds.

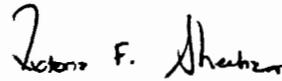
The repairs and improvements will allow the railroad to maintain present FRA track class standards and allow the railroad to better serve existing customers and attract new business.

The total for this project is \$1,800,000. In addition to the State contribution of \$900,000, the New Hampshire Northcoast Railroad will provide matching funds for this project in the amount of \$900,000.

The Department of Transportation will administer these funds as authorized by RSA 228:66.

The Agreement has been approved by the Attorney General as to form and execution, and the Department verified that the necessary funds are available. Copies of the fully executed Agreement are on file at the Secretary of State's Office and the Department of Administrative Service's Office, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

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

**SPECIAL AGREEMENT  
NEW HAMPSHIRE NORTHCOAST RAIL IMPROVEMENT PROJECT**

**THE STATE OF NEW HAMPSHIRE  
NEW HAMPSHIRE NORTHCOAST CORPORATION**

**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
BUREAU OF RAIL & TRANSIT  
PO BOX 483, 7 HAZEN DRIVE  
CONCORD, NH 03302-0483**

**August 11, 2017**

*Effective upon the date of approval by Governor & Council*, this Special Agreement (“Agreement”), New Hampshire Northcoast Rail Improvement Project is made and entered into between New Hampshire Northcoast Corporation (the “Grantee”) and the State of New Hampshire (the “State”) acting through and by its Department of Transportation, Bureau of Rail & Transit.

Whereas, the Department of Transportation, Bureau of Rail & Transit, situated at 7 Hazen Drive, Concord NH 03301 (hereinafter referred to as the “NHDOT”), is the agency responsible for matters relating to rail service; and

Whereas, the New Hampshire Northcoast Corporation, a corporation or other legal entity (hereinafter the “Grantee”), owns and operates a railroad in and through the Towns of Ossipee, Milton, Wakefield, Rochester, Somersworth and Rollinsford, New Hampshire; and

Whereas, the Grantee has agreed to provide the required matching funds by means of cash, labor and materials toward the rehabilitation project; and

Whereas, pursuant to the Laws of 2017, Chapter 228:1-XXII:D, the State appropriated \$900,000 of capital budget funds to support the rehabilitation of 20.4 miles of track between MP 80.6 and 108 on the New Hampshire Northcoast Railroad in the Towns of Ossipee, Milton, Wakefield, Rollinsford and the Cities of Rochester, Somersworth, Counties of Strafford and Carroll, State of New Hampshire.

Subject to the provisions of Section 18, the parties to this Agreement acknowledge that the NHDOT and the State of New Hampshire shall not acquire or gain any interest of ownership or otherwise in any of the Grantee’s property, whether personal, real or otherwise.

Now, therefore, in consideration of the premises and the covenants and agreements hereinafter set forth, the NHDOT and the Grantee do hereby contract and agree:

1. AUTHORIZATION OF FUNDS

The NHDOT shall reimburse 50% of net project costs not to exceed \$900,000 for the rehabilitation of the New Hampshire Northcoast Railroad line in Rollinsford, Somersworth, Rochester, Milton, Wakefield and Ossipee, New Hampshire from MP 80.6 to MP 108.0 and MP 0 to MP 1.8 on the Ossipee Running Track, including the replacement of cross ties, ballast and rail. Funding for the Project shall include \$900,000 of Grantee funds and \$900,000 of State Capital Budget funds, with the overall Project totaling \$1,800,000.

The funds shall be made available upon Governor and Council approval for eligible expenses as identified in the Scope of Work (Exhibit A).

2. PROJECT DESCRIPTION

The project consists of the installation of new cross-ties, ballast, crossing repairs and resurfacing from MP 80.6 to MP 108 on the main line and new rail sections from MP 0 to MP 1.8 on the Ossipee Running Track of the New Hampshire Northcoast Railroad Company (NHNC) in the Towns of Ossipee, Milton, Wakefield, Rollinsford and the Cities of Rochester, Somersworth, Strafford and Carroll Counties, New Hampshire as described in the Scope of Work (EXHIBIT A). The work will be performed by or for the Grantee, and accepted by the NHDOT for reimbursement through Chapter 228:1-XXII:D, Laws of 2017, State of New Hampshire with funds provided by the Grantee and State Capital Budget funds.

3. DEFINITIONS

A. Grantee – New Hampshire Northcoast Railroad.

B. Grantee’s Representative - The Grantee shall designate a person to coordinate and manage all Grantee responsibilities regard the development of the Project.

- C. State – State of New Hampshire,
- D. NHDOT – New Hampshire Department of Transportation (through the Bureau of Rail & Transit).
- E. Contracting Officer – Commissioner of NHDOT or the person designated by the NHDOT to coordinate and manage all NHDOT responsibilities regarding the Project.
- F. Agreement – SPECIAL AGREEMENT, NEW HAMPSHIRE NORTHCOAST RAIL IMPROVEMENT PROJECT.
- G. Scope – The Grantee shall furnish all personnel, facilities, equipment, and other materials and services (except as otherwise specified herein) necessary to perform the approved Project, as set forth in Exhibit A, Scope of Work, New Hampshire Northcoast Rail Corridor Improvement Project, Strafford and Carroll Counties, New Hampshire.
- H. Project Completion Date – **January 31, 2019.**
- I. Net Project Cost – Eligible project cost less revenue (Project Income, i.e. rail salvage value)
- J. Project Cost – The total estimated cost of the Project as defined in the Scope of Work, which is described in the Proposed Track Rehabilitation Budget (Exhibit B), is \$1,800,000 and includes \$900,000 of State Capital Budget funds and \$900,000 of NH Northcoast Corporation contributions. State reimbursement to the New Hampshire Northcoast Corporation under this Agreement shall not exceed \$900,000, which is State Capital Budget funds and represents 50% of net project costs.

4. CONTRIBUTION BY THE RAILROAD

The Grantee shall be responsible for the matching share (minimum 50% of net project costs) of all eligible Project Costs as described in the Proposed Track Rehabilitation Budget (Exhibit B), attached. Also, the grantee shall be fully responsible for all Project Costs deemed ineligible for State participation and all Project Costs that exceed the maximum amount reimbursable to the Grantee by the NHDOT, as stated above.

- A. The Grantee shall submit, for NHDOT approval, an acceptable line item budget containing an itemization of estimated Project costs; and a work plan and schedule describing how and when the Grantee intends to prosecute the Project work.
- B. The Grantee shall not perform or authorize any services or work under this agreement without first receiving approval in writing from the NHDOT.
- C. The Grantee shall develop and prepare all necessary design plans, specifications, estimates and contract documents for the Project. The Grantee shall submit all such plans, specifications, estimates and contract documents to the NHDOT for review upon request.
- D. The Grantee shall obtain all permits and licenses necessary to construct the Project. Also, the Grantee shall be solely responsible to develop and prepare all environmental studies and reports necessary for the Project.
- E. The Grantee shall certify to NHDOT that it has right, title and interest to the property upon which the Project will be constructed or has obtained written authorization in the form of easements or licenses from the owners of the property upon which all or a portion of the Project will be constructed. Such right, title and interest or easement or license shall remain with the Grantee for the term described below in Section 18, unless assignment or release of the lien specified in Section 18 is approved in writing from NHDOT.

5. REPORTING

The Grantee shall submit a detailed narrative report with each invoice detailing work and improvements including project limits by Mile Post (MP).

6. REIMBURSEMENT PROCEDURES

The Grantee shall submit an invoice to the NHDOT, no less than quarterly, for all claims for reimbursement of eligible Project costs incurred pursuant to the terms of this Agreement. Costs are incurred whenever work is performed, goods and services are received or a cash disbursement is made. All claims submitted for reimbursement within 60 days shall be submitted on the Grantee's billhead, reference NH Capital Budget funds and shall contain the following:

- A. An itemized account of expenditures consistent with the approved line item budget required in Section 4.A. of this agreement.
- B. Backup documentation and proof of payment to suppliers, tradesmen, materialmen and contractors shall be submitted with each invoice.
- C. A cumulative total of all costs incurred by budget line item; and
- D. A certification (signature on invoice or accompanying letter) from the General Manager, or designee, of the Grantee that all amounts so claimed for reimbursement are correct, due and not claimed previously and that all work for which such reimbursement is being claimed was performed in accordance with the terms of this Agreement.

7. GENERAL PROVISIONS

- A. Independent Capacity - The Grantee, its employees, agents, representative, consultants or contractors, shall, in performance of the work under this Agreement, act in an independent capacity from and not as officers, employees or agents of the NHDOT.
- B. Access The Grantee shall permit reasonable access to the Project by authorized representatives of the NHDOT.
- C. Inspection An inspector from the NHDOT will regularly and randomly inspect the work during the rehabilitation project and after its completion for the purpose of insuring compliance with the terms of this Agreement.

8. INDEMNIFICATION

The Grantee, its successors and assigns, shall indemnify and hold harmless the NHDOT and its employees, contractors, consultants and agents against any and all claims, demands or actions arising from or related to the Project that are caused by any wrongful act or omission of the Grantee or its employees, officers, contractors, subcontractors, consultants, licensees and invitees including any claims, demands or actions related to injury, death, or property loss, including reasonable attorney's fees. This provision shall survive the project completion or early termination of this Agreement.

9. PROJECT RECORDS

The Grantee shall maintain any and all records associated with the Project and shall make said records available to authorized representatives of the NHDOT for audit purposes. The Grantee shall maintain said records for a period of at least five (5) years after completion of the Project.

- A. Project Accounts – Grantee agrees to establish and maintain for the Project either a separate set of accounts or accounts within the framework of an established accounting system.

- B. Documentation of Project Cost and Program Income – All costs charged to the Project, including any approved services contributed by the Grantee or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Grantee agrees to maintain accurate records of all Program Income derived from Project implementation.
- C. Checks, Orders, and Vouchers – The Grantee agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

10. THIRD PARTIES

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

11. CONDITIONAL NATURE OF AGREEMENT

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination. The State shall not be required to transfer funds from any other account to the Account established for this project in the event funds are unavailable.

12. INTERPRETATION AND PERFORMANCE

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

13. ENTIRE AGREEMENT

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.

14. TERMS

All of the provisions set forth in this Agreement, excepting Sections 9 and 18, shall be satisfactorily completed by January 31, 2019. The January 31, 2019 deadline may be changed with written concurrence between NHDOT and the Grantee.

15. NOTICE

All notice required pursuant to this Agreement shall be forwarded by regular mail to the following:

To the NHDOT:

NH Department of Transportation  
 Bureau of Rail & Transit  
 PO Box 483, 7 Hazen Drive  
 Concord, NH 03302-0483

Attention: Louis A. Barker  
 Railroad Planner

To the Grantee:

New Hampshire Northcoast Corp.  
 PO Box 429  
 Ossipee, NH 03864- 0429

Attention: Kevin Verrill  
 Operations Manager

16. SEVERABILITY

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.

17. PROJECT COMPLETION, AUDIT, AND CLOSEOUT

- A. Project Completion – Within 90 days of the Construction Completion date or termination by the NHDOT, the Grantee will submit a final certification or summary of Project expenses.
- B. Audits – Grantee agrees to assist the State in audits if so required, in accordance and per applicable State Statute.
- C. Project Closeout – Project closeout occurs when all required Project work and all administrative procedures required have been completed, and when the State notifies the Grantee and final payment has been forwarded to the Grantee. Project closeout shall not invalidate any continuing obligations imposed on the Grantee by this Agreement or the State's final notification or acknowledgement.

18. CONTINUATION OF SERVICE, MAINTENANCE AND LIEN

The Grantee agrees to use and maintain the improvements constructed as part of this Project for the purpose of moving freight for a period of ten (10) years after completion of the Project, pursuant to RSA 228:66, II, at an annual tonnage level 80% of tonnage levels for the 3 years preceding the agreement. The NHDOT reserves the right to recover from the Grantee the fair market value of all materials incorporated into the Project in the event the Grantee fails to use improvements for the purpose of moving freight for said period. The NHDOT right, as described above in this Section 18, shall be limited to the actual current fair market value of the reimbursement paid by the NHDOT to the Grantee under this Agreement. The Grantee agrees to notify NHDOT immediately if the rail line is withdrawn from service.

The Grantee shall develop and implement, or cause to be developed and implemented, a maintenance plan acceptable to NHDOT which assures an appropriate level of maintenance of the improvements constructed under this Agreement pursuant to the Class 2 FRA Track Safety Standards.

Pursuant to RSA 228:66, V, the NHDOT and the Railroad agree that a lien on the improved property shall be created in favor of the State of New Hampshire in an amount which equals all, or the pro rata share, of the improvements made. The lien shall expire 10 years from the date the improvements are completed; provided that the lien shall be recorded in the State's registry of deeds of the county or counties in which the improved property is situated and shall not supersede any lien created by a mortgage affecting such property. If the line upon which the improvements have been made is operated and maintained for normal use for a period of 10 years subsequent to the completion of the improvements, the lien shall expire, and the State shall record a suitable release of the lien.

19. TERMINATION AND DEFAULT

The NHDOT reserves the right to terminate the payment provisions of this Agreement in the event of any substantial default by the Grantee. Substantial default shall include but not be limited to:

- A. Misrepresentation or falsification of any claims submitted by the Grantee for reimbursement pursuant to Section 6, above.
- B. Breach of any material provisions of this Agreement: and,
- C. Failure to complete the Project within the Terms as set forth in this Agreement and as detailed in Scope of Work.

In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) calendar days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to 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 and hereto included as an exhibit to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate.

Grantee: New Hampshire Northcoast Corporation

Date: 8/14/17 By: Dean M. Boylan  
(Name)  
President  
(Title)

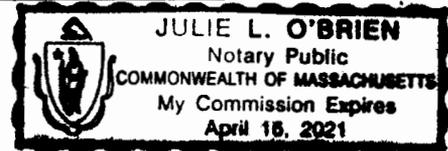
STATE OF Massachusetts  
COUNTY OF Suffolk

On, 8/14/17, before the undersigned officer personally appeared Dean M. Boylan known to me (or satisfactorily proven) to be the President of the corporation identified in the foregoing document, and acknowledged that he executed the foregoing document.

In witness whereof I hereunto set my hand and official seal.

Aug. 14, 2017  
Date

Julie L. O'Brien  
Notary Public

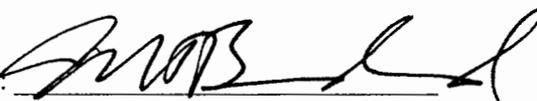


State of New Hampshire, Department of Transportation

Date: 9/8/17 By: [Signature]  
(Name)  
COMMISSIONER  
(Title)

The foregoing Agreement, having been reviewed by this office, is approved as to form and execution this 11  
day of September, 2017.

**THE OFFICE OF THE ATTORNEY GENERAL**

By:   
Assistant Attorney General

The forgoing Agreement, has been approved by the NH Governor & Executive Council on

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Secretary of State

## EXHIBITS TO AGREEMENT

- A. Scope of Work
- B. Project Budget
- C. Certificate of Good Standing
- D. Certificate of Corporate Vote/Authority

Initial EMB

## EXHIBIT A

### Scope of Work:

1. Main line ties to be replaced will be individually identified (spray painted) between MP 101 and MP 80.6 (there will be a total of 147 switch timbers replaced on 7 main line switches - see below)
2. The 114 rail sections (approximately 39' ea.) to be replaced will be individually identified (spray painted) are between MP 108 to the end of the 'Ossipee Runner"; MP 100.6 and MP 100.4; and MP 97.7 and MP 97.5
3. Ballast Stone will be spread, tamped and regulated where needed over the entire line

### Switch locations:

- MP 108 Main line Switch at Ossipee Runner, Ossipee – 43 timbers (various sizes)
- South switch at GE Run-Around, Somersworth– 24 timbers (various sizes)
- North switch at GE Run-Around, Somersworth – 4 timbers (various sizes)
- South switch at Hayes Run-Around, Rochester – 21 timbers (various sizes)
- North switch at Hayes Run-Around – 7 timbers (various sizes)
- North switch at Burleyville Run-Around, Wakefield – 18 timbers (various sizes)
- Main line Switch at Tri- City Park, Rochester – 30 timbers (various sizes)

Initial DMB

**EXHIBIT B**

**PROPOSED TRACK REHABILITATION BUDGET  
2017 - 2019**

TOTAL PROJECT COST                    \$1,800,000.00

**SOURCE OF FUNDS**

NH DOT                                    \$900,000.00  
NHN MATCH                               \$900,000.00

<b>ESTIMATED EXPENDITURES</b>	<b>COST per Unit</b>	<b>COST Extended</b>
Remove & Install 11,203 Ties (labor, materials* & disposal included) - subtotal	\$102.30	146,066.90
Remove & Install 147 Switch Ties (labor, materials*& disposal included) - subtotal	\$231.05	\$33,964.35
<b>Total Tie Removal &amp; Installation</b>		<b>\$1,180,031.25</b>
Resurface (Tamp & Regulate) 221,760 l.f. Track - includes 6,000+/- tons ballast stone	\$1.10	\$243,936.00
Remove & Replace 4,430 l.f. 112 lb. Jointed Rail (labor & materials** included)	\$35.20	\$155,936.00
Replace Norway Plains Crossing - Rochester (rail, ties and rail guard)	\$80,000.00	\$80,000.00
Replace Maple Street Crossing*** - Union (rail, ties and rail guard)	\$60,000.00	\$60,000.00
Replace Weeks Crossing*** - Wakefield - NH Route 153 (rail, ties and rail guard)	\$80,000.00	\$80,000.00
<b>TOTAL ESTIMATED EXPENDITURES</b>		<b>\$1,799,903.25</b>

Initial 

**EXHIBIT C**

**Insert Certificate of Good Standing**

Initial *SMA*

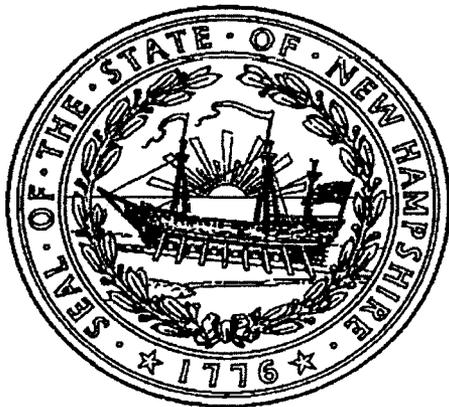
# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that NEW HAMPSHIRE NORTHCOAST CORP. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on March 12, 1986. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 92653



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 15th day of August A.D. 2017.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

**EXHIBIT D**

**Insert Certificate Corporation Vote/Authority**

Initial OMA

NEW HAMPSHIRE NORTHCOAST CORPORATION

CERTIFICATE OF VOTE

I, Jeanne-Marie Boylan, do hereby certify that I am duly elected Secretary of the New Hampshire Northcoast Corporation, a corporation organized under the laws of the State of New Hampshire.

I hereby certify the following is a true and correct copy of votes taken at a meeting of the Board of Directors of the Corporation, held on August 14, 2017 in accordance with the By-laws, at which a quorum was present, and that the same is still in force and effect:

1. VOTED, that Dean M. Boylan, Jr., President, be and is hereby authorized to execute proposals and contracts, at limits established from time to time by the Board of Directors, on behalf of New Hampshire Northcoast Corporation, and that the Corporation will be bound according to the provisions of such proposals and/or contracts. The signature of Dean M. Boylan, Jr. shall serve to bind the Corporation on all such proposals and contracts.
2. VOTED, that Dean M. Boylan, Jr. is President of New Hampshire Northcoast Corporation, and he is authorized, on behalf of the Corporation, to enter into and execute a Special Agreement-New Hampshire Northcoast Rail Improvement Project dated August 11, 2017 between the State of New Hampshire and the Corporation regarding the expenditure and administration of State and Corporation matching funds of up to \$900,000.00 by each party, and any and all documents attendant thereto, with the State of New Hampshire, Department of Transportation.

IN WITNESS WHEREOF, I have subscribed my name as Jeanne-Marie Boylan, Secretary and have caused the Seal of the Corporation to be hereunto affixed this 14<sup>th</sup> day of August, 2017.

August 14, 2017  
Date

Jeanne-Marie Boylan  
Jeanne-Marie Boylan, Secretary  
New Hampshire Northcoast Corporation

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF SUFFOLK

Before the undersigned officer personally appeared Jeanne-Marie Boylan, known to me, or satisfactorily proven, to be the Secretary of the corporation identified in the foregoing certificate, and acknowledged that she executed the foregoing certificate.

In witness whereof I hereunto set my hand and official seal.

August 14, 2017  
Date

Julie L. O'Brien  
Notary Public

