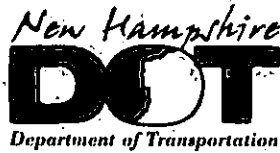


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Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

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

Bureau of Rail & Transit
December 30, 2020

REQUESTED ACTION

The Department of Transportation requests placing this item on the Consent Calendar.

Authorize the Department of Transportation to enter into an Operating Agreement with the New England Central Railroad, Inc. (NECR), Vendor 160565, Rochester, New York, for the use of the state-owned Northern Railroad Line in Lebanon, NH for freight railroad service, effective upon Governor and Council approval through January 31, 2031, with a provision for renewal for an additional 10-year period, subject to Governor and Council approval, through January 31, 2041.

Income from the agreement will be credited as follows:

04-096-096-964010-2991
Special Railroad Account
009-407323 Agency Income

EXPLANATION

The Department of Transportation owns the Northern Railroad Line, including an approximately two-mile section that remains available for freight railroad services and connects Lebanon to White River Junction, Vermont and the regional and national freight railroad network. This section has been included in Operating Agreements between the Department of Transportation and two freight railroad providers, and approved by the Governor and Council, since May 1, 2000.

More recently, on December 9, 2009 the Governor and Council approved an Operating Agreement between the Department of Transportation and the Claremont Concord Railroad Corp. to provide rail freight service on the active portion of the state-owned Northern Railroad Line connecting Lebanon to White River Junction, Vermont for the period of May 1, 2010 through April 30, 2020. On September 8, 2015 the Department of Transportation consented to an assignment of the 2010 Operating Agreement from the Claremont Concord Railroad Corporation to the New England Central Railroad, Inc. (NECR) as the NECR acquired the Claremont Concord Railroad.

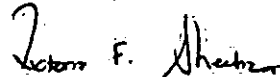
Pursuant to Section 1.15 of the current Operating Agreement, NECR notified the Department on April 30, 2019 that it wished to renew its operating agreement. The Department and NECR began active negotiations for the terms of a new 10-year Operating Agreement and twice requested additional time; a

6-month extension, Amendment #1, was approved by Governor and Council, as Item 21, on April 8, 2020 and a 3-month extension, Amendment #2, was approved by Governor and Council, as Item 5B, on October 21, 2020 and extended the completion date until January 31, 2021. The Department and NECR have negotiated a renewed Operating Agreement for a ten-year period through January 31, 2031. This renewed Agreement allows NECR and its shippers to continue to use the line for delivery and transloading of bulk cement, salt, fuel, and other products.

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

Your approval of this resolution is respectfully requested.

Sincerely,

A handwritten signature in dark ink, appearing to read "Victoria F. Sheehan", written over a horizontal line.

Victoria F. Sheehan
Commissioner

Attachments

OPERATING AGREEMENT
ON THE
STATE-OWNED PORTION OF THE NORTHERN RAILROAD LINE
BETWEEN

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

AND

NEW ENGLAND CENTRAL RAILROAD, INC.
ROCHESTER, NY 14618

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OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement") is made and entered into this ____ day of _____ 2021, between the State of New Hampshire, through the New Hampshire Department of Transportation, 7 Hazen Drive, P.O. Box 483, Concord, NH 03302-0483 ("the State") and New England Central Railroad, Inc., 400 Meridian Centre, Suite 330, Rochester, NY 14618 ("the Contractor"), collectively referred to as ("the Parties").

WHEREAS, the State owns a portion of the Northern Railroad Line, as more particularly described in Section 2.1; and

WHEREAS, the Contractor provides Service on the Northern Railroad Line pursuant to an Assignment dated September 9, 2015 of the Operating Agreement between the State and Claremont Concord Railroad Corporation dated May 1, 2010; and

WHEREAS, pursuant to Section 1.3 of the Operating Agreement dated May 1, 2010, the State and the Contractor desire to enter into a new Operating Agreement pursuant to the following terms and conditions:

ARTICLE I - GENERAL CONDITIONS

1.1. DEFINITIONS – As used herein, the following terms have the meanings indicated:

- a. **"Completion Date"** means January 31, 2031, unless this Agreement is otherwise extended or renewed in accordance with Section 1.3.1 of this Agreement.
- b. **"Contracting Officer"** means the Commissioner of the New Hampshire Department of Transportation (NHDOT), or her successor or her duly authorized representative, having an address of 7 Hazen Drive, P.O. Box 483, Concord, NH 03302-0483. The Contracting Officer shall be the representative of the State hereunder.
- c. **"Contractor"** means New England Central Railroad, Inc., 400 Meridian Centre, Suite 330, Rochester, NY 14618.
- d. **"Contractor's Representative"** means representative of the Contractor responsible for making contract decisions and will be the Contractor's contact for the Contracting Officer.
- e. **"Effective Date"** means the date this Agreement is approved by the Governor and Council of the State of New Hampshire.
- f. **"Facilities"** – collectively means the real estate, track, culverts, bridges, signals, switches, structures, buildings, and related railroad transportation property over which Service is to be provided.
- g. **"Final Report"** – means a report containing all information required by the various reporting provisions of the Agreement, from the date of the last such reports through and including the Completion Date.
- h. **"FRA"** means the Federal Railroad Administration of the United States Department of Transportation.

- i. **"In-Service Area"** means the active portion of the Line from MP 141.30 (Station 3583+49.5) in Lebanon, New Hampshire to MP 142.78 (Station 3662+40) in White River Junction, Vermont.
- j. **"Line"** means the State-owned Northern Railroad Line beginning in Lebanon at MP 141.00 and heading Northwesterly to MP 142.78 in White River Junction, Vermont, as more particularly described in Section 2.1.
- k. **"Major Maintenance Expenditure"** means any expenditure to address a condition on the Line that prevents Service on the Line while the condition exists. Major Maintenance Expenditures include, but are not limited to, bridge failures/rehabilitation, major washouts, and crossing rehabilitation or reconstruction.
- l. **"Out-of-Service Area"** means the inactive portion of the Line from MP 141.00 (Station 3568+49) to MP 141.30 (Station 3583+49.5) in Lebanon, New Hampshire.
- m. **"Gross Operating Revenue"** means those revenues derived by the Contractor from providing Service on the Line.
- n. **"Operations Manager"** means the Contractor's representative responsible for day-to-day operation and maintenance on the State-owned line who will be the contact for the Bureau of Rail and Transit personnel.
- o. **"Operating Year"** means January 1 to December 31.
- p. **"Service"** means revenue freight trains carrying goods or returning from delivering goods on behalf of shippers and receives on the Line.
- q. **"STB"** means the Surface Transportation Board.
- r. **"Subcontractor"** means an individual, partnership, firm, corporation, or any combination thereof, or joint venture, to whom the Contractor subcontracts any part of this Agreement.
- s. **"Termination Report"** means a report containing all information required by the various reporting provisions of the Agreement, from the date of the last such reports through and including the date of termination.
- t. **"User Fee"** means the fee to be paid by the Contractor to the State for use of the Line to provide Service, as more particularly defined in Article IV of this Agreement.

1.2. EFFECTIVE DATE/COMPLETION OF SERVICES.

- 1.2.1 Notwithstanding any provision of this Agreement to the contrary, this Agreement, and all obligations of the Parties hereunder, is subject to the approval of the Governor and Council of the State of New Hampshire. This Agreement shall become effective on the date the Governor and Council approve this Agreement.
- 1.2.2 Any Service performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation any obligation to pay the Contractor for any costs incurred or Service performed.

- 1.2.3 After termination of the Agreement the Parties shall be relieved of all obligations hereunder, except the Contractor shall at its own expense terminate its operations, relinquish the property, and file documents for discontinuance of service with the STB, and submit the final User Fee payment and a Final Report in accordance with the format and schedule of reports described in **Exhibit A** attached hereto and incorporated herein by this reference (hereinafter "Report and Payment Schedule"). Further, the Contractor's continuing duty to maintain financial records per Section 4.5.1, the Contractor's duty to defend, indemnify and hold harmless the State per Section 1.12.1, and the Contractor's hiring limitation in Section 1.6.2 shall survive termination of this Agreement.

1.3. RENEWAL OF AGREEMENT.

- 1.3.1 The Contractor shall notify the State by certified mail no later than one year prior to the Completion Date that the Contractor wishes to enter into renegotiations for a new agreement for an additional ten (10) year period beginning February 1, 2031. If the Contractor and the State cannot agree upon a new operating agreement by July 31, 2030 or the State is not satisfied with the Contractor's level of service during the term of this Agreement, the State may at that time solicit new Requests for Proposals to operate the Line and have no further obligations for renewal of this Agreement with the Contractor.

1.4. CONTRACTOR'S REPRESENTATION AND WARRANTIES.

- 1.4.1 The Contractor represents and warrants the following:
- a. The Contractor is a corporation duly organized, validly registered with the New Hampshire Secretary of State, and in good standing under the laws of New Hampshire, and is duly qualified to do business in each jurisdiction where its business or the ownership of its property requires such qualification;
 - b. The Contractor has the full power and authority to enter into this Agreement and to carry out the functions which it has undertaken in this Agreement;
 - c. All corporate and other proceedings required to be taken by or on the part of the Contractor to authorize it to enter into this Agreement and perform the Service have been duly taken; and
 - d. The execution of this Agreement and the operation of the Service will not violate any statute, rule, regulations, order, writ, injunction or decree of any court, administrative agency or governmental body.
 - e. The Contractor's Representative is:

Charles Hunter, Assistant Vice President Government Affairs
New England Central Railroad, Inc.

2 Federal Street
St. Albans, VT 05478
(802) 527-3434

- f. The Operation Manager is:

Jeffrey Castle, General Manager
New England Central Railroad, Inc.
2 Federal Street
St. Albans, VT 05478
(716) 827-2718

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

- 1.5.1 In connection with the performance of the Service, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities with appropriate jurisdiction which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
- 1.5.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, gender identity, disability, sexual orientation, national origin, or military status and will take affirmative action to prevent such discrimination.
- 1.5.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

1.6. PERSONNEL.

- 1.6.1 The Contractor shall at its own expense provide all personnel necessary to perform the Service. The Contractor warrants that all personnel engaged in the Service shall be qualified to perform the Service and shall be properly licensed and otherwise authorized to do so under all applicable laws.
- 1.6.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date, the Contractor shall not hire, and shall not permit any Subcontractor or other person, firm or corporation with

whom it is engaged in a combined effort to perform the Service to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement provided that the hiring of any such person as a result of a response to any general solicitation for employment through an untargeted advertisement made in the ordinary course of business shall not constitute a breach of this provision. This provision shall survive termination of this Agreement.

1.7. EVENT OF DEFAULT/REMEDIES.

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

- a. failure to perform the Service satisfactorily or on schedule as reasonably determined by the Contracting Officer;
- b. failure to submit any report required hereunder;
- c. failure of the Contractor to maintain the records required hereunder, or to permit access thereof;
- d. failure to pay the User Fee to the State as required hereunder; and/or
- e. failure to perform any other covenant, term or condition of this Agreement.

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

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

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

1.8. TERMINATION OF AGREEMENT.

1.8.1 In the event this Agreement is terminated for any reason prior to the Completion Date, the Contractor shall comply with Section 1.2.3 and deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a Termination Report.

- 1.8.2 If at any time after the Effective Date the Contractor operates the Service fewer than sixty (60) days during any Operating Year, the State may terminate this Agreement. Upon termination the Parties shall be subject to Section 1.8.1.
- 1.8.3 In the event of a termination or expiration of this Agreement, the Contractor agrees that it shall obtain the necessary approvals from the STB to discontinue operations and turn over operating authority to a new railroad operator at the Contractor's sole expense.

1.9. CONTRACTOR'S RELATION TO THE STATE.

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

1.10. TAXES AND UTILITIES.

- 1.10.1 All railroad or corporate taxes assessed by the State of New Hampshire, including those specified in New Hampshire RSA 82, or the Federal Government as a result of this Agreement are the responsibility of the Contractor.
- 1.10.2 The Contractor shall be responsible for arranging and paying for any and all utility services, including but not limited to water, gas, and electricity, required for the Facilities during the term of this Agreement.
- 1.10.3 The Contractor shall not deduct from the User Fee payments to the State any costs for taxes and utilities paid by the Contractor.

1.11. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

- 1.11.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the Contracting Officer. For purposes of this paragraph, a Change of Control shall constitute an assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.
- 1.11.2 None of the Service shall be subcontracted by the Contractor without the prior written consent of the Contracting Officer. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which the State is not a party.

1.12. INDEMNIFICATION.

1.12.1 Unless otherwise exempted by law, the Contractor shall defend, indemnify and hold harmless the State, its agencies, officers and employees, from and against any and all claims, demands, losses, liabilities, penalties, fines, judgments, awards, and costs for any personal injury or property damages, or other claims asserted against the State, its agencies, officers or employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor, its employees, lessees, or Subcontractors, including but not limited to negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this Section 1.12.1. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

1.13. INSURANCE.

1.13.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any Subcontractor to obtain and maintain in force, the following insurance:

- A. Railroad Liability Insurance and Contractual Liability Insurance shall be purchased with the State named as an Additional Insured in the following amounts:
 - i. five million dollars (\$5,000,000) for normal freight service
 - ii. seven million dollars (\$7,000,000) if hazardous materials are shipped, each occurrence
- B. Commercial Automobile Liability Insurance covering all motor vehicles including owned, hired, borrowed, and non-owned vehicles. Limits of Liability: \$1,000,000 Combined Single Limit for bodily Injury & Property Damage.
- C. In accordance with RSA 281-A, the Contractor shall maintain, and require any Subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of this Agreement. Where applicable, Federal Employer Liability Act Coverage shall be included.

D. Pollution Liability Insurance issued to and covering the liability of the Contractor arising out of the pollution or impairment of the environment, including costs of investigation and clean-up, caused by a sudden or accidental event. Coverage under this policy (or policies) shall have limits of liability not less than \$1,000,000 per occurrence.

1.13.2 The policies described in Section 1.13 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the New Hampshire Department of Insurance and issued by insurers authorized to conduct business in the State of New Hampshire.

1.13.3 The Contractor shall furnish to the Contracting Officer a certificate(s) of insurance for all insurance required under this Agreement. The Contractor shall also furnish to the Contracting Officer, or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

1.13.4 Notwithstanding anything to the contrary contained herein, the Contractor may carry a self-insured retention ("SIR") of up to \$5,000,000 until May 1, 2021. The Contractor agrees that the temporary authorization in this Section 1.13.4 is for the sole purpose of allowing the Parties additional time to resolve a dispute regarding an acceptable level of SIR. After May 1, 2021, the Contractor shall not carry a SIR in an amount greater than \$500,000, absent approval by the Contracting Officer. If the Contractor carries a SIR in an amount greater than \$500,000 or if the Parties cannot mutually agree on an alternative level of SIR on or before May 1, 2021, the Contracting Officer, in her sole discretion, may treat this as an Event of Default by the Contractor under Section 1.7 and may terminate this Agreement pursuant to Section 1.7.2.1.

1.14. WAIVER OF BREACH.

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

1.15. NOTICE.

1.15.1 Any notice by a party hereto to the other party shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and sent by registered or certified mail (return receipt requested) with the United States Postal Service addressed to the Parties at the following addresses:

To the State: Railroad Planner
New Hampshire Department of Transportation
Bureau of Rail & Transit
PO Box 483
Concord, NH 03302-0483

To the Contractor: Jeffrey Castle, General Manager
New England Central Railroad, Inc.
2 Federal Street
St. Albans, VT 05478
(716) 827-2718

1.16. AMENDMENT.

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

1.17. CONSTRUCTION OF AGREEMENT AND TERMS.

1.17.1 This Agreement shall be governed, interpreted, and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

1.18. THIRD PARTIES.

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

1.19. HEADINGS.

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

1.20. STATE'S REPRESENTATIVE.

1.20.1 The Contracting Officer shall be the State's representative.

1.21. SEVERABILITY.

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

1.22. ENTIRE AGREEMENT.

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

ARTICLE II - PHYSICAL DESCRIPTION

2.1 PHYSICAL DESCRIPTION. The Facilities consists of the State-owned portion of the Northern Railroad Line, as more particularly described as follows:

Being all the property of every kind and description, real, personal and mixed that was acquired by the State of New Hampshire from the Boston and Maine Corporation by a Release Deed recorded at the Grafton County Registry of Deeds on August 2, 1999, Book 2409, Pages 865 through 876, and said demised property being located in the City of Lebanon, NH, County of Grafton; including all real property, rail facilities on, within and appurtenant to the line formerly owned by the Boston and Maine Corporation located between Engineering Station 3568+49 Mile Post 141.00 as shown on Valuation Plan 32.1 Map 69 and Engineering Station 3662+40 (Mile Post 142.78) as shown on Valuation Plan 32.1 Map 70 and Valuation Plan 32.1 VT Map 71 in White River Junction, Vermont, including the West Lebanon Yard, also referred to as the Westboro Yard, on file in the records of the New Hampshire Department of Transportation, Bureau of Rail & Transit; subject to any and all conveyances, easements, covenants, restrictions, plans, or other matters of record in the Grafton County Registry of Deeds.

2.2 Upon written agreement signed by the Contractor and the Contracting Officer, the Contracting Officer and the Contractor may at any time reduce the scope of Facilities subject to this Agreement.

2.3 As permitted by RSA 228:67 and other applicable state law, the State may sell portions of the Facilities which, in the reasonable judgment of the Contracting Officer, after consultation with the Contractor, are not needed for present or future railroad operations. If the State sells any portion of the Facilities during the term of this Agreement, such portion shall automatically be excluded from the Facilities described in Section 2.1 and shall no longer be subject to this Agreement.

2.3.1 During the term of this Agreement, the Parties agree that the State is permitted to convey a portion of the Facilities, as approximately shown on **Exhibit E**, for non-railroad use to a third party. The Contractor agrees it is not interested in utilizing this portion of the Facilities for railroad operations. Prior to any conveyance under this Section 2.3.1, a formal survey will be conducted and a legal description will be prepared. Any conveyance of the

Facilities shown on **Exhibit E** will not include any portion of the Facilities shown on **Exhibit F**. Nothing herein shall require the State to convey any portion of the Facilities. The Contracting Officer agrees to provide a copy of any proposed development plans for the Facilities shown on **Exhibit E** not otherwise available to the Contractor to the extent the Contracting Officer possesses or has reasonable access to the same and provided the Contracting Officer is not prohibited from sharing such plans.

- 2.4 The Facilities remain the property of the State, which reserves to itself the right to grant easements, contracts, leases, and other rights therein which do not, in the reasonable judgment of the Contracting Officer, conflict with the operations described in Article III of this Agreement. The State reserves to itself all rents, fees and revenues derived from such grants.
- 2.5 The Contractor shall make no alterations to the Facilities, both real and personal, or construct any building or make other improvements on the Facilities beyond normal maintenance without the prior written consent of the Contracting Officer. Such consent shall not be unreasonably withheld, delayed or conditioned. All alterations, changes, and improvements built, constructed, or placed on the Facilities by the Contractor, shall unless otherwise provided by written agreement between the Contracting Officer and the Contractor be the property of the State and remain on the State's property at the expiration or sooner termination of this Agreement. Salvageable or scrap materials generated as a part of normal maintenance shall become the property of the Contractor.
- 2.6 At the Contracting Officer's option, the State may provide the Contractor with State-owned railroad equipment and materials under the jurisdiction of the Bureau of Rail and Transit, which it may declare available to the Contractor. Said equipment and materials shall be used solely for the provision of Service under this Agreement and shall be insured by the Contractor to the Contracting Officer's satisfaction.

2.7. LEASING TO SHIPPERS & RECEIVERS.

- 2.7.1 The Contractor, with prior written approval by the Contracting Officer, may lease portions of the Facilities to others, including shippers and receivers, for railroad-related purposes, including but not limited to the construction and operation of railroad sidings, loading platforms, transloading facilities, and other railroad-related facilities. The Contracting Officer shall not unreasonably withhold, delay nor condition such approval. In no event shall the Contracting Officer approve a lease pursuant to Section 2.7 if the completion date of such lease is later than the Completion Date of this Agreement. The requirements of this Section 2.7.1 shall not apply to leases of portions of the Facilities active prior to the Effective Date ("Prior Existing Leases"). A list of the Prior Existing Leases is itemized and detailed in Schedule I, attached hereto and incorporated herein.
- 2.7.2 Leases pursuant to Section 2.7 shall be subject to appropriate local taxes, and revenues from such leases shall be included in the Contractor's Gross Operating Revenue.

2.7.3 To obtain the Contracting Officer's approval, the Contractor shall provide to the Contracting Officer written notice of its desire to lease a portion of the Facilities and shall submit a copy of the proposed terms of the lease between the Contractor and the Contractor's lessee. Except for Prior Existing Leases, leases under this Section 2.7 shall be subject to this Agreement and this Agreement shall be incorporated by reference into any such lease.

2.7.4 In the event the Contractor seeks to lease a portion of the Facilities pursuant to this Section 2.7, the Contractor agrees to require the lessee to agree to the following terms:

a. **INSPECTION.** The State has the right to enter the leased premises in the case of emergency, or to inspect it or make necessary repairs, alterations, improvements, or to exhibit the leased premises to others, or whenever necessary to determine the condition of the leased premises.

b. **INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor's lessee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all claims, demands, losses, liabilities, penalties, fines, judgments, awards, and costs for any personal injury or property damages, or other claims asserted against the State, its officers or employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the lessee, its employees, or subcontractors, including but not limited to negligence, reckless or intentional conduct. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of the lease between the Contractor and the Contractor's lessee.

c. **MODIFICATIONS.** The Contractor's lessee shall submit to the Contracting Officer a plan showing any proposed changes to the leased premises and shall obtain approval and permission from the Contracting Office prior to performing any work or modifications to the leased premises or its operations. In the event the plan is approved by the Contracting Officer, the Contractor's lessee shall apply for and obtain all necessary State, federal, and local permits or approvals prior to performing any work or modifications to the leased premises.

d. **INSURANCE.** The Contractor's lessee shall, at its sole expense, maintain the following minimum insurance requirements:

i. **Commercial General Liability:** \$1,000,000 each occurrence and \$2,000,000 general aggregate. The General Liability policy shall include Railroad Endorsement CG 2417 or its equivalent. The State of New Hampshire, its agencies, and its agents and employees shall be named as additional insureds.

ii. Commercial Automobile Liability Insurance covering all motor vehicles including owned, hired, borrowed, and non-owned vehicles. Limits of Liability: \$1,000,000 Combined Single Limit for bodily Injury & Property Damage.

Railroad Protective Public and Property Damage Liability: \$1,000,000 each occurrence and \$2,000,000 in the aggregate.

Workers' Compensation Insurance in the amount as required by N.H. RSA 281-A.

The policies described in this Section 2.7.4 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the New Hampshire Department of Insurance and issued by insurers licensed in the State of New Hampshire.

Notwithstanding the foregoing, the Contracting Officer, in her sole discretion and taking into account the scope and character of the lessee's operations, may increase the required liability insurance requirements.

- 2.7.5 The Contracting Officer reserves the right to require the Contractor and the Contractor's lessee to include additional terms beyond those set forth in Section 2.7.4 in any proposed lease if the Contracting Officer, in the Contracting Officer's reasonable discretion, determines that such terms are necessary after evaluating the nature of the lessee's proposed use of the Facilities.

ARTICLE III - OPERATIONS

3.1 SERVICE AREAS.

- 3.1.1 The Contractor shall, between the Effective Date and the Completion Date, manage and operate Service on the In-Service Area of the Line. The Contractor shall be solely responsible for all phases and requirements of its operation, including, but not limited to, dispatching of trains, assignment of power and cars, scheduling, workforce, equipment, advertising, and marketing. The Contractor may charge a reasonable fee for operations on the In-Service Area by other railroads. The Contractor may manage and operate Service in the Out-of-Service Area of the Line should new business warrant Service.
- 3.1.2 The Contractor agrees to provide cars, locomotives and all other things as necessary to afford the degree and quality of Service reasonably requested by its shippers and receivers and customary in Contractor's industry.
- 3.1.3 The Contractor will endeavor to negotiate mutually acceptable rates and terms of service with shippers and receivers and commence Service. Upon commencement

of Service the Contractor shall provide a minimum of sixty (60) days of Service during each Operating Year.

- 3.1.4 Notwithstanding any other provisions of this Agreement, the Contractor agrees to allow temporary Service by others in the event that the Contracting Officer reasonably determines that the Contractor is unable to provide Service for reasons other than inability to reach agreement with shippers and/or the Contracting Officer regarding rates and terms of service on the Line. Notice of Service by others must be given to the Contractor in writing and such temporary Service shall cease when Contractor has shown to the reasonable satisfaction of the Contracting Officer that Contractor has regained the ability to provide Service.
- 3.1.5 The Contractor will conform to the State's "Guidelines Governing the Operation of On-Track Equipment on State-owned Railroad Lines," and will incorporate these Guidelines into its current Timetable.
- 3.1.6 The Contractor shall immediately report all incidents as required by RSA 367:56 and the "Rail Safety Section Notification Requirements" attached hereto as **Exhibit B** and incorporated herein.

3.2. MAINTENANCE.

- 3.2.1 The Contractor shall at all times during the term of this Agreement keep and maintain all Facilities in a reasonably safe condition for the use intended.
- 3.2.2 **EQUIPMENT** – The Contractor shall be responsible for proper upkeep and maintenance of all equipment it uses, either supplied by the State or the Contractor, and shall ensure that equipment is in compliance with all current FRA regulations. State-owned equipment shall be returned to the State in as good condition as when received except for ordinary wear and tear.
- 3.2.3 **TRACK** – The Contractor shall be responsible for the proper upkeep and maintenance of Facilities. Said upkeep and maintenance shall include but not be limited to:
 - a. Surface and alignment
 - b. Brush and vegetation control (all brush to be chipped)
 - c. Drainage and ditches
 - d. All operating signals to be kept in good operating condition
 - e. Crossing and switches to be kept in good operating condition. The Contractor shall provide a flagman during the passage of trains for the protection of any crossing protected by signals where the signal is not operating for any reason.
 - f. Snow removal and winter maintenance when needed for Service.
- 3.2.3.1 The Contractor shall be responsible to perform all work and routine maintenance necessary to maintain the In-Service Area of the Line at FRA Class 1

Track Safety Standards or better. The Out-of-Service Area shall **meet** FRA Class 1 Track Safety Standards **prior to use** for Service. In any event, Contractor will expend no less than five (5%) percent of Annual Gross Operating Revenue on actual track maintenance, exclusive of inspections ("Annual Maintenance Requirement"), during each Operating Year of this Agreement. The Contractor shall include a report of maintenance expenses in accordance with the Report and Payment Schedule (**Exhibit A**). The Contractor's performance shall satisfy all obligations required of the owner of a railroad, set forth in Part 213 of the FRA Track Safety Standards (49 C.F.R §§ 213-213.369). In the event that the Contractor does not meet the Annual Maintenance Requirement for an Operating Year, the Contractor shall pay the remaining unspent portion of the Annual Maintenance Requirement to the State within sixty (60) days after the end of the Operating Year. The payment shall be made payable to "Treasurer, State of New Hampshire" and shall be sent in accordance with Section 4.1.1. Any amount paid to the State under this section shall exclusively be deposited into the Special Railroad Fund established by RSA 228:68 and shall only be expended in accordance with RSA 228:69.

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

3.2.4.1 The Contractor is assigned and shall be responsible for all compliance responsibilities detailed in Part 237 of the FRA Bridge Safety Standards (49 C.F.R. §§ 237.1-237.155), per the terms of the Memorandum of Agreement signed by the Parties and approved by Governor and Council of the State of New Hampshire on January 8, 2020, attached hereto as **Exhibit C** and incorporated herein by reference. The Contractor shall comply with its approved Bridge Management Program incorporated herein by reference and made a part hereof.

- 3.2.5 In the event a Major Maintenance Expenditure is required the Contractor shall assist in all necessary repairs, but be limited in its direct financial contribution to five thousand dollars (\$5,000.00) per Operating Year in the aggregate. However, the Contractor waives any claims to damages for any delays in repairing or reopening the Line after such an occurrence and the State reserves to itself the decision whether, when and how such repairs and reopening will be done, in the reasonable discretion of the Contracting Officer. The Contracting Officer shall give priority to Major Maintenance Expenditures in the In-Service Area or other areas on the Line in which the Contractor actively provides the Service.
- 3.2.6 If the Contractor fails to perform maintenance as required in Section 3.2, the State shall give written notice of such failure in accordance with Section 1.14. Failure to perform maintenance in accordance with Section 3.2 constitutes a material breach of this Agreement.

If within thirty (30) days of receipt of such notice, Contractor has not completed or taken steps to Contracting Officer's satisfaction to perform the required maintenance work, the State reserves the right to perform such maintenance work at Contractor's sole cost and expense.

3.3. INSPECTION.

3.3.1 IN-SERVICE AREA. The Contractor shall patrol the In-Service Area and formally inspect the track in accordance with FRA Track Safety Standards subpart F (49 C.F.R § 213.233) and record the inspection per 49 C.F.R. §213.241. The Contractor shall submit an inspection report within thirty (30) days after each inspection. Should any deviations from the requirements be found, the Contractor shall take immediate appropriate remedial action and notify the Contracting Officer in writing of said remedial action.

3.3.2 OUT-OF-SERVICE AREA. The Contractor shall patrol the Out-of-Service Area at least six (6) times per year with at least four (4) weeks between patrols. The Contractor shall submit a patrol report within thirty (30) days of each patrol. Should problems be found, including but not limited to those that may threaten the integrity of the infrastructure, the Contractor shall notify the Contracting Officer in writing of the problems and propose whether remedial action should be taken. The Contracting Officer, in her reasonable discretion, reserves to herself the decision whether, when and how such remedial action will be done. In the event Service is restored over any portion of the Out-of-Service Area, the Contractor shall patrol and inspect the area in accordance with Section 3.3.1 of this Agreement.

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

3.3.4 The Contracting Officer may take any action, including the field inspection of any project site and the inspection of the Facilities, equipment, and all books and records of the Contractor relating to Service on the Line and of any contractor or Subcontractor relating to any project or task accomplished under this Agreement. The Contractor shall authorize access dates and times for these inspections.

3.3.4.1 The purpose of such inspection shall be, but is not limited to:

- a. Ensure that work complies with the contract specifications.
- b. Verify quantitative measures of materials installed, such as tie counts.

- c. Verify labor and materials charges for contracts providing for payment on an actual cost basis ("Force Account Work").
- d. Verify the quantities of uninstalled State-owned materials and the security of same against damage, theft, or use other than for approved projects.
- e. Provide any other information requested by the Contracting Officer.

3.4. CONSTRUCTION PROJECTS.

3.4.1 The Contracting Officer reserves the right to advertise and let construction rehabilitation projects within the Facilities, provided that such projects do not unreasonably interfere with the Contractor's ability to provide Service. The construction contractor to whom this work may be awarded shall have the right to perform the work so described in the construction contract. Any contract under this Section 3.4.1 shall require certain conditions, including, without limitation, minimum insurance requirements, indemnity obligations, and cooperation with the Contractor. The Contracting Officer shall have the right to adjust trips not published in the regular railroad schedule to accommodate the construction schedule.

3.4.2 The Contracting Officer may from time to time allow utility projects to be constructed within the Facilities. Permittees for these projects will be required to enter into a license agreement with the State (the "License Agreement"), which shall require certain conditions, including, without limitation, minimum insurance requirements, indemnity obligations and cooperation with the Contractor in assuring that the work be performed in such a manner that the tracks, operations and appurtenances of the Facilities will be safeguarded. The Contractor may require a flagman and/or railroad inspector at a construction site if the Contractor deems it necessary, the cost of said services to be paid by the Permittee to the Contractor.

The Permittees shall acknowledge that the installation and use of the Facility by the Permittee may expose the State and the Contractor to additional liability to which they would not otherwise be exposed. Accordingly, the Permittee shall agree that neither the State nor the Contractor shall be liable for injury or death of the Permittee or any agent of the Permittee, or for loss or destruction of or damage to any property of the Permittee or any agent of the Permittee while upon, or about, or in the use of the Facility pursuant to the terms of the License Agreement, except for injuries, death, loss, damage, or destruction that are a result of the gross negligence or willful misconduct of the State or the Contractor. The Permittee and its employees, contractors and agents agree to defend, indemnify, and hold harmless the State, its officers, agents and employees, from and against any and all losses suffered by the State, its successors and assigns, officers, agents, employees and the Contractor, its parents, subsidiaries and affiliates, and the officers, directors, shareholders, agents and employees of each (collectively the "Indemnified Parties") from any and all claims, liabilities or penalties asserted against the Indemnified Parties, by or on behalf of any person on account of, directly based or resulting from, the acts or omissions of the Permittee or from the use, maintenance,

installation, removal or existence of this Facility, pursuant to the License Agreement, except for losses, claims, liabilities, or penalties that are a result of the gross negligence or willful misconduct of the State or the Contractor. Without limiting the foregoing, it is agreed that this covenant of indemnification shall apply to all cases of loss, damage, injury, death, cost or expense for which any Indemnified Party may or shall be liable, and which are not the result of the gross negligence or willful misconduct of the State or the Contractor. For the purpose of the License Agreement, all officers, directors, and members of the Permittee and all of their designees, invitees, and agents using the Facility shall be deemed agents of the Permittee.

3.4.3 In the event the Contracting Officer permits a construction rehabilitation project described in 3.4.1 or a utility project described in 3.4.2 which requires a construction contractor or Permittee to perform work within 25 feet of the Line, the construction contractor or Permittee shall, at its sole expense, maintain the following minimum insurance requirements:

i. Commercial General Liability: \$2,000,000 each occurrence and \$6,000,000 general aggregate. The General Liability policy shall include Contractual Liability - Railroad endorsement CG 2417 or its equivalent. The Indemnified Parties shall be named as additional insureds and a waiver of subrogation shall apply in favor of the Indemnified Parties.

ii. Commercial Automobile Liability Insurance covering all motor vehicles including owned, hired, borrowed, and non-owned vehicles. Limits of Liability: \$1,000,000 Combined Single Limit for bodily Injury & Property Damage. The Indemnified Parties shall be named as additional insureds and a waiver of subrogation shall apply in favor of the Indemnified Parties.

iii. Workers' Compensation Insurance in the amount as required by N.H. RSA 281-A. To the extent permitted by law, a waiver of subrogation shall apply in favor of the Indemnified Parties.

iv. Railroad Protective Public and Property Damage Liability: \$2,000,000 each occurrence and \$6,000,000 in the aggregate. The Contractor shall be the named insured. The State of New Hampshire, its agencies, and its agents and employees shall be named as additional insureds.

3.4.4 The Contractor may be called upon to construct sidings to new shippers and receivers on the Line. Any and all costs and expenses related to the construction of sidings and appurtenances thereto shall be the responsibility of the shipper or receiver. The responsible shipper or receiver shall be billed for all costs and expenses after the Contracting Officer reviews the proposed plans, including, but not limited to location, alignment, materials, safety appliances, and the approvals are issued by the Contracting Officer issues her approvals.

3.4.5 Any expenditures by the State pursuant to this Section 3.4 shall not diminish the obligation of the Contractor pursuant to Section 3.2.3.1 or any other provision of this Agreement.

3.5. FREIGHT TARIFFS.

3.5.1 The Contractor shall endeavor to negotiate mutually acceptable rates and terms of service with shippers. Once the Contractor has negotiated such mutually acceptable rates, the Contractor shall submit the agreed upon rates to the Contracting Officer for review. In the event that the State reasonably believes that the agreed upon rates are too low, the Contracting Officer may elect to not approve such rates and mediate with the Contractor and shipper(s) regarding higher rates. Notwithstanding the foregoing, in the event that a shipper and the Contractor cannot agree on appropriate rates, the Contractor's then current published tariff rates shall apply.

3.6. FORCE MAJEURE.

3.6.1 In no event shall any party be deemed in default of this Agreement for any loss, damage, injury, delay, failure or inability to meet all or any portion of its obligation caused by or arising from any event beyond its reasonable control, including, without limitation, any action of any federal, state or local agency or instrumentality; by government authorities including compliance with environmental quality, energy conservation and occupational safety requirements adopted or effected after the Effective Date of this Agreement; by acts of God; by strikes or other labor trouble; by explosions, fires, or vandalism until such events are remedied.

ARTICLE IV - USER FEE PAYMENTS, ACCOUNTING AND AUDITS

4.1. PAYMENTS AND REPORTING.

4.1.1 The Contractor shall make User Fee payments and submit reports required under this Agreement directly to:

New Hampshire Department of Transportation
Bureau of Rail & Transit
Railroad Planner
7 Hazen Drive
P.O. Box 483
Concord, NH 03302-0483

4.2. SCHEDULE OF PAYMENTS AND REPORTS.

4.2.1 Payments shall be paid monthly, based upon the level of operation, as explained below. Payments shall be made no later than thirty (30) days after the end of each calendar month that Gross Operating Revenue is earned.

4.2.2 The Contractor shall be responsible for collecting revenues and for delivering freight traffic reports, marketing reports, revenue reports and maintenance cost reports in accordance with the Report and Payment Schedule (**Exhibit A**). The Contractor shall submit all reports required under this Agreement in a form and substance satisfactory to the Contracting Officer.

4.3. USER FEE PAYMENT.

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

4.3.2 The Contractor may, where directed in writing by the Contracting Officer, deduct from User Fee payments the cost of specific expenditures including but not limited to Major Maintenance Expenditures.

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

4.4. ACCOUNTING AND AUDITS.

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

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

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

ARTICLE V - MARKETING EFFORT

5.1 The Contractor will make a commercially reasonable effort to market the Line in order to make Service profitable and to maintain good business and working relationships with local businesses, State and local government officials, employees, and other railroads, and will report on the marketing effort in accordance with the Report and Payment Schedule (**Exhibit A**).

- 5.2 All advertising devices including signs, banners, fixed and portable displays or anything else placed in the railroad right-of-way to attract attention to the railroad shall conform with local, State and Federal ordinances that apply to the abutting highway right-of-way or private property. All permanent advertising to be placed in the railroad right-of-way shall have prior written approval of the State. For the avoidance of doubt, railroad safety and operating signage shall not be considered permanent advertising.

ARTICLE VI - OTHER OPERATORS

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

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, we have hereunto set our hands on the 4th day of January 2021.

NEW ENGLAND CENTRAL RAILROAD, INC.

BY: [Signature]

TITLE: President

THE STATE OF New York COUNTY OF Monroe

On this 4th day of January 2021, before me, Ellen Saporito the undersigned officer, personally appeared Leonard Wigner known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.

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

ELLEN R. SAPORITO
Notary Public in the State of New York
Qualified in Monroe County No. 4942358
My Commission Expires September 19, 2022

[Signature]
NOTARY PUBLIC

THE STATE OF NEW HAMPSHIRE

BY: [Signature]

TITLE: Commissioner

THE STATE OF NEW HAMPSHIRE, COUNTY OF MERRIMACK

On this 6th day of January 2021, before me, Natasha Field the undersigned officer, personally appeared Victoria F. Sherman known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.

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

[Signature]
NOTARY PUBLIC

NATASHA A. FIELD, Notary Public
State of New Hampshire
My Commission Expires May 1, 2024

This is to certify that the Operating Agreement shown above has been reviewed by this office and is approved as to form and execution on January 6, 2021.

OFFICE OF ATTORNEY GENERAL

BY: Christina Wilk
Assistant Attorney General

APPROVED by Governor and Executive Council on _____, 2021, ITEM # _____.

ATTEST: _____
Secretary of State

EXHIBIT A
Report and Payment Schedule

| DUE DATE | | ITEM | REPORTING PERIOD |
|-----------|----|--------------------------|--------------------|
| January | 1 | Payment & Revenue Report | November |
| | 30 | Marketing Report | November - January |
| | 30 | Traffic Report | December |
| February | 1 | Payment & Revenue Report | December |
| | 28 | Maintenance Cost Report | November - January |
| | 28 | Traffic Report | January |
| March | 1 | Payment & Revenue Report | January |
| | 30 | Traffic Report | February |
| April | 1 | Payment & Revenue Report | February |
| | 30 | Marketing Report | February - April |
| | 30 | Traffic Report | March |
| May | 1 | Payment & Revenue Report | March |
| | 30 | Maintenance Cost Report | February - April |
| | 30 | Traffic Report | April |
| June | 1 | Payment & Revenue Report | April |
| | 30 | Traffic Report | May |
| July | 1 | Payment & Revenue Report | May |
| | 30 | Marketing Report | May - July |
| | 30 | Traffic Report | June |
| August | 1 | Payment & Revenue Report | June |
| | 30 | Maintenance Cost Report | May - July |
| | 30 | Traffic Report | July |
| September | 1 | Payment & Revenue Report | July |
| | 30 | Traffic Report | August |
| October | 1 | Payment & Revenue Report | August |
| | 30 | Marketing Report | August - October |
| | 30 | Traffic Report | September |
| November | 1 | Payment & Revenue Report | September |
| | 30 | Maintenance Cost Report | August - October |
| | 30 | Traffic Report | October |
| December | 1 | Payment & Revenue Report | October |
| | 30 | Traffic Report | November |

EXHIBIT B

Rail Safety Section Notification Requirements

Exhibit B

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION
BUREAU OF RAIL & TRANSIT
RAIL SAFETY SECTION
NOTIFICATION REQUIREMENTS

INCIDENTS INVOLVING RAILROADS (RSA 367:56)

NOTIFICATION BY THE RAILROAD IS REQUIRED FOR:

1. All incidents involving a fatality.
2. All grade crossing accidents.
3. All grade crossing signal system activation failures as defined in 49 CFR Part 234.5.
4. All incidents involving the leakage or spillage of material as a result of railroad operations or incidents.
5. All derailments involving cars containing commodities required to be placarded by 49 CFR Part 172.
6. Derailments involving:
 - More than one (1) car, (include a power unit as a car), or
 - The car is not in the normal upright operating position, or
 - The car has traveled more than 200 feet derailed, or
 - The car has traveled through a grade crossing derailed.
7. Any incident involving the movement of on-track equipment, Motorcars, or Rail-Bikes that results in personal injury to a non-railroad employee.

THE NOTIFICATION NUMBERS ARE:

Monday - Friday
0730 - 1600 hours

Railroad Inspector: (603) 271-2448 (office phone)
Bureau of Rail & Transit (603) 271-2468
Bureau Administrator: (603) 271-3497.

Nights, weekends and holidays

NH Transportation Systems Management & Operations Systems (TSMO) 603-271-6862
• TSMO will contact the Railroad Inspector, Bureau Administrator, and State Police as necessary and in accordance with written work instructions that include after-hours procedures.

Note: The Railroad Inspector must be contacted and/or a voice mail message left for him. If staff is unable to speak directly with Railroad Inspector, after leaving a message for the Inspector, proceed with contacting the Bureau Administrator. Current staff (as of 12/20/2019): Railroad Inspector—John Robinson & Bureau Administrator—Shelley Winters

THE INFORMATION NEEDED WILL BE:

1. Name of the railroad
2. Name of the caller and call back number
3. Location of the incident, town, street, station, etc.
4. Any fatalities or personal injuries
5. Any hazardous materials involved

INCIDENTS THAT INVOLVE HAZARDOUS MATERIALS, PLEASE NOTIFY THE LOCAL FIRE DEPARTMENT. YOU ARE ALSO REQUIRED TO NOTIFY THE HAZARDOUS MATERIALS UNIT AT 1-800-346-4009 AND THE N.H. STATE POLICE DISPATCH AT 603-271-3636.

Initial _____

EXHIBIT C

Memorandum of Agreement MEMORANDUM OF AGREEMENT "MOA"

This Memorandum of Agreement ("MOA") is entered into by and between the State of New Hampshire, by and through the Department of Transportation, Bureau of Rail and Transit, 7 Hazen Drive, PO Box 483, Concord, NH 03302-0483, hereinafter referred to as "State", and the New England Central Railroad, Inc., 400 Meridian Centre, Suite 330, Rochester, NY, 14618, hereinafter referred to as "Railroad."

WHEREAS the Railroad has a Railroad Operating Agreement ("Operating Agreement") with the State for use of the state-owned portion of the Northern Railroad Line between Mile Post B141.00/WRJ2.00 (Engineering Station 3515+49 as shown on Valuation Section 32.1 Map 68) at the southerly limits and Mile Post B142.74/WRJ0.26 (Engineering Station 3662+40 as shown on Valuation Section 32.1 VT Map 71) on the northerly limits;

WHEREAS there are five (5) railroad bridges within the operating limits covered by the Operating Agreement;

WHEREAS the State, as railroad track owner, is responsible for compliance with the Federal Railroad Administration's Track Safety Standards (49 C.F.R. §§ 213.1-213.369 ("Part 213")) and Bridge Safety Standards (49 C.F.R. §§ 237.1-237.155 ("Part 237"));

WHEREAS the State, per the terms of the Operating Agreement and consistent with 49 C.F.R. §213.5(c), has assigned to the Railroad responsibility for compliance with the Federal Railroad Administration's Track Safety Standards;

WHEREAS the Railroad has requested clarification of railroad bridge maintenance and inspection responsibilities and expressed a preference to be responsible for compliance with Part 237 of the Federal Railroad Administration's Bridge Safety Standards;

NOW THEREFORE, the State and the Railroad agree to the following terms:

1. Pursuant to 49 C.F.R. § 237.3, the Railroad shall be assigned and be responsible for all compliance responsibilities detailed in Part 237 of the Federal Railroad Administration's Bridge Safety Standards for the following bridges:
 - a. Connecticut River Bridge (old Br 142.74) at MP WRJ-0.26 (Current Status: Active)
 - b. Twin States Sand & Gravel Inc. Salt unloading pit (old MP 140.87) at MP WRJ-1.15 (Current Status: Active)
 - c. Glen Road Bridge (old Br 141.35) at MP WRJ-1.63 (Current Status: OUT OF SERVICE)
 - d. Mascoma River I (old Br 141.29) at MP WRJ-1.71 (Current Status: OUT OF SERVICE)
 - e. Mascoma River II (old Br 141.17) at MP WRJ-1.83 (Current Status: OUT OF SERVICE)

2. The State provides the following information relative to the subject railroad bridges:
 - a. Bridge 142.74 Deck plate girder clear span of 500' 2", max height of 51', built 1929. Over the Connecticut River in West Lebanon, NH in Grafton County (43.646930, -72.303887).
 - b. Salt unloading pit (old MP 140.87) no information available. Approximate clear span @15' (43.636017, -72.313491).
 - c. Bridge 141.35 Stone arch, clear span of 18', max height of 20', build date unknown. Over single lane Glen Road in West Lebanon, NH in Grafton County (43.634340, -72.305275).
 - d. Bridge 141.29 Deck plate girder clear span of 81' 7", max height of 37' 6", build date 1929. Over the Mascoma River in West Lebanon, NH in Grafton County (43.634628, -72.303887).
 - e. Bridge 141.17 Deck plate girder clear span of 95', max height of 26', build date 1910. Over the Mascoma River in West Lebanon, NH in Grafton County (43.634653, -72.301787).
3. Term. This MOA is in effect upon signature and will remain in effect through April 30, 2020, the "Completion Date" of the current Operating Agreement. If the parties entered into a new or revised Operating Agreement on or before the Completion Date of the current Operating Agreement, this MOA shall automatically continue and remain in effect during the term of the new or revised Operating Agreement.
4. Amendment. This MOA may be amended at any time by either party by written agreement signed by both parties.
5. Assignment and Sublease. The MOA shall not be assigned or sublet to any other party without the written consent of the State.
6. Termination.
 - a. The Railroad or the State may terminate this MOA by providing the State one-hundred and twenty (120) days written notification.
 - b. The State may terminate this MOA for failure of the Railroad to perform its obligations under this MOA to the State's reasonable satisfaction. The State shall provide the Railroad written notification should the Railroad fail to perform its obligations to the State's reasonable satisfaction and shall grant the Railroad sixty (60) days to correct any issues.

Both Parties Agree to the above:

New England Central Railroad, Inc.

By: Leonard Wagner Date: 12/3/17
Print Name and Title Leonard Wagner, President

STATE OF New York
COUNTY OF Monroe

On, 12/3/19, before the undersigned officer personally appeared Leonard Wagner 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.

Mary Dallas Mannix
Notary Public - State of New York
No. 01MA6284691
Qualified in Monroe County
My Commission Expires June 24, 2021

12/3/19
Date


Mary Dallas Mannix
Notary Public

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

Patrick Herlihy 12/6/19
Patrick Herlihy, Director
Division of Aeronautics, Rail & Transit

The foregoing Agreement, having been reviewed by this office, is approved as to form and execution on
December 9, 20 19.

OFFICE OF THE ATTORNEY GENERAL


Assistant Attorney General

Approved by Governor and Council on JAN 08 2020, 20 __, Item # __.

ATTEST: 
DEPUTY SECRETARY OF STATE
Secretary of State

NEW ENGLAND CENTRAL RAILROAD, INC.

400 Meridian Centre, Suite 330

Rochester, New York 14618

CERTIFICATE OF VOTE

I, Ryan Hart, do hereby certify that I am duly elected Assistant Treasurer of the New England Central Railroad, Inc., a corporation organized under the laws of the State of New Hampshire.

I hereby certify the following is a true and correct copy of a vote taken at a meeting of the Board of Directors of the Corporation, held on 12/2/19, 2019 in accordance with the By-laws, at which a quorum was present, and that the same is still in force and effect:

1. Resolved, that Leonard Wagner, President, be and are hereby authorized to execute proposals and contracts, at limits established from time to time by the Board of Directors, on behalf of New England Central Railroad, Inc. and that the Corporation will be bound according to the provisions of such proposals and/or contracts. The signature of Leonard Wagner shall serve to bind the Corporation on such proposals and contracts.
2. It is further certified that, as the date hereof, Leonard Wagner is President of New England Central Railroad, Inc. and he is authorized, on behalf of the Corporation, to enter into and execute a Memorandum of Agreement assigning to the Corporation the compliance responsibilities set forth in 49 C.F.R. Part 237 of the Federal Railroad Administration's Bridge Safety Standards for certain bridges on the Northern Railroad Line, and any and all documents attendant thereto, with the State of New Hampshire, Department of Transportation.

I hereby certify that said vote has not been amended or repealed and was in full force and effect as of December 3, 2019.

IN WITNESS WHEREOF, I have subscribed my name as Ryan Hart, Assistant Treasurer and have caused the Seal of the Corporation to be hereunto affixed this 19 day of December 2019.

12/19/19
Date

Ry Hart
Ryan Hart, Assistant Treasurer
New England Central Railroad, Inc.

STATE OF New York
COUNTY OF Monroe

On, 12/19/19, before the undersigned officer personally appeared Assistant Treasurer the person identified in the foregoing certificate, known to me (or satisfactorily proven) to be the Secretary of the corporation identified in the foregoing certificate, and acknowledged that he executed the foregoing certificate.

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

December 19, 2019
Date

Mary Dallas Mannix
Notary Public - State of New York
No. 01MA8284691
Qualified in Monroe County
My Commission Expires June 24, 2021

Mary Dallas Mannix
Notary Public

MAP OF THE LINE

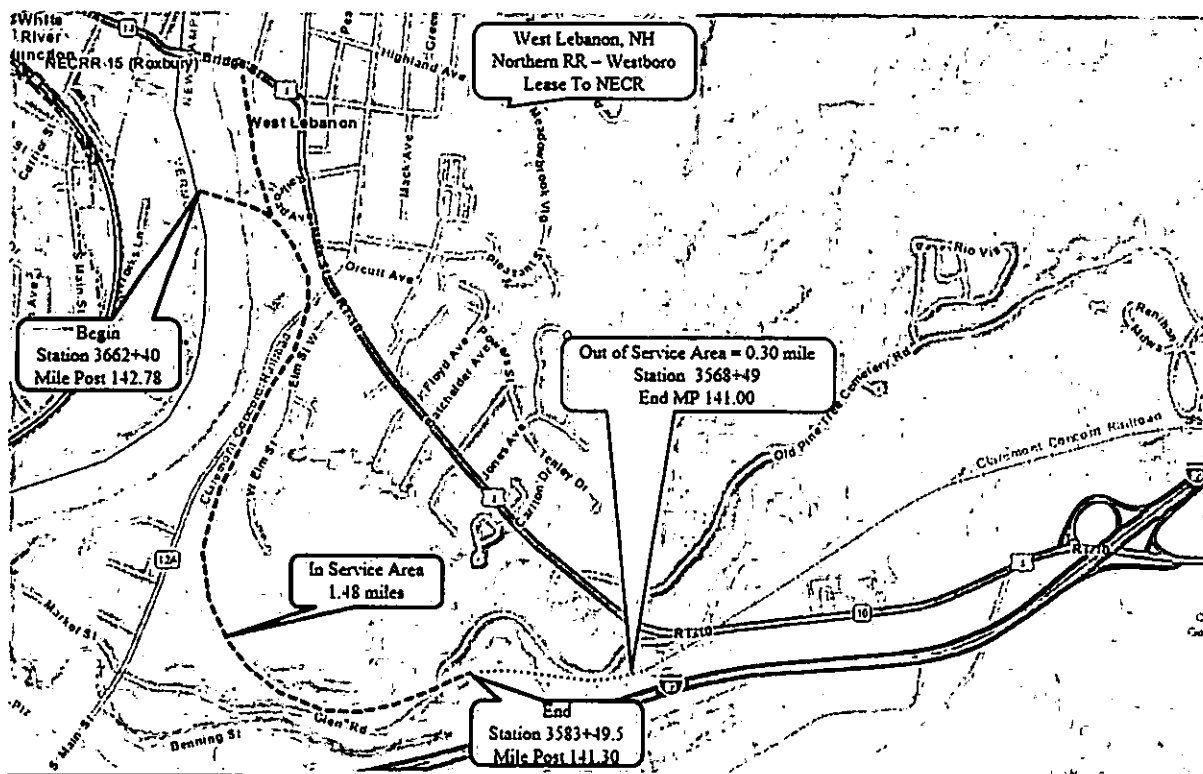


EXHIBIT E
PROPOSED SUBJECT SALE

This analysis is based on the hypothetical condition that these buildings have been demolished and removed from the site and that the site is free from environmental contamination. The parcel is also improved with a sewer treatment facility owned and operated by the City of Lebanon and located in the southwest corner of the site near the river frontage.

Sketch of Proposed Subject Sale/Lease Area

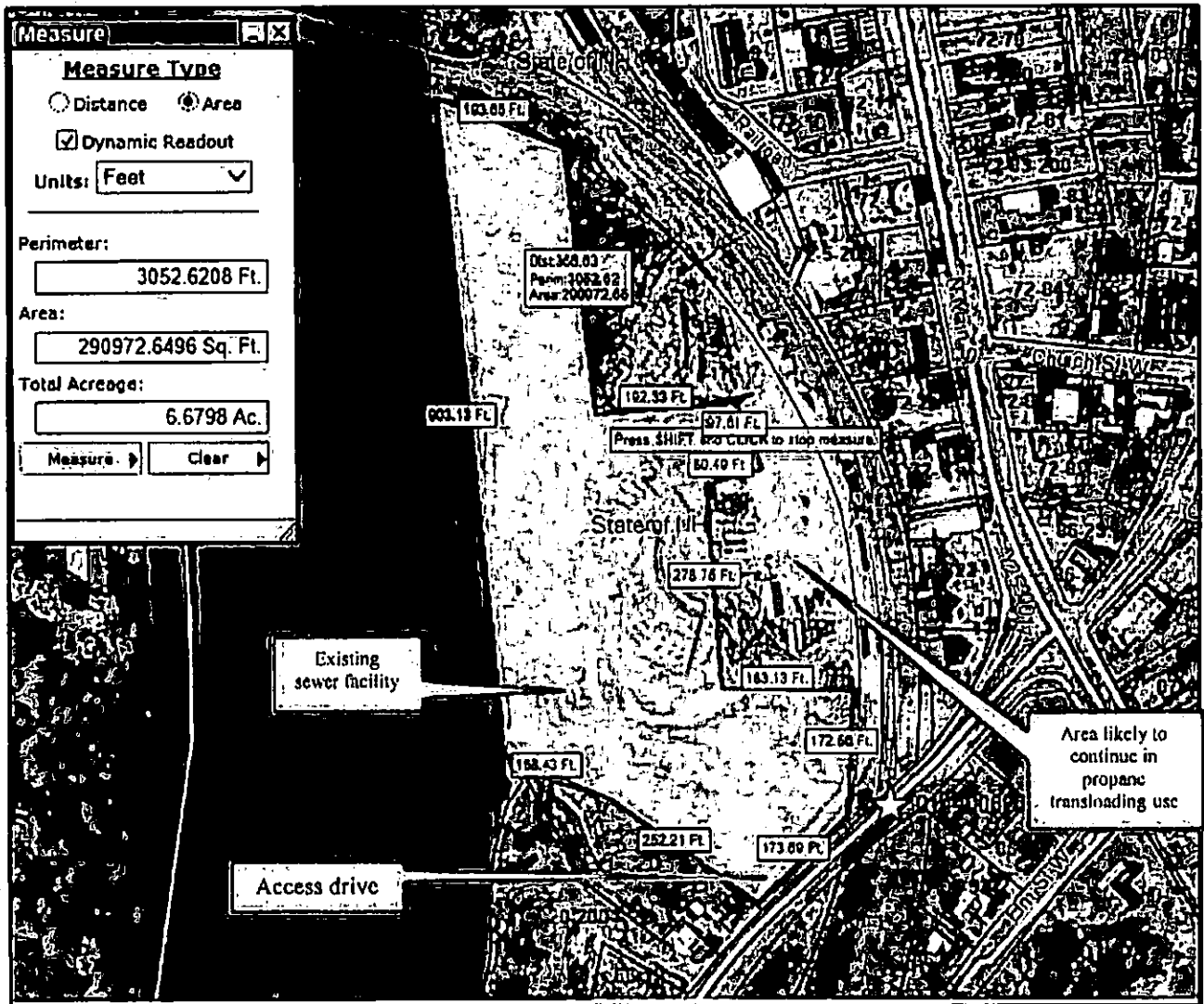


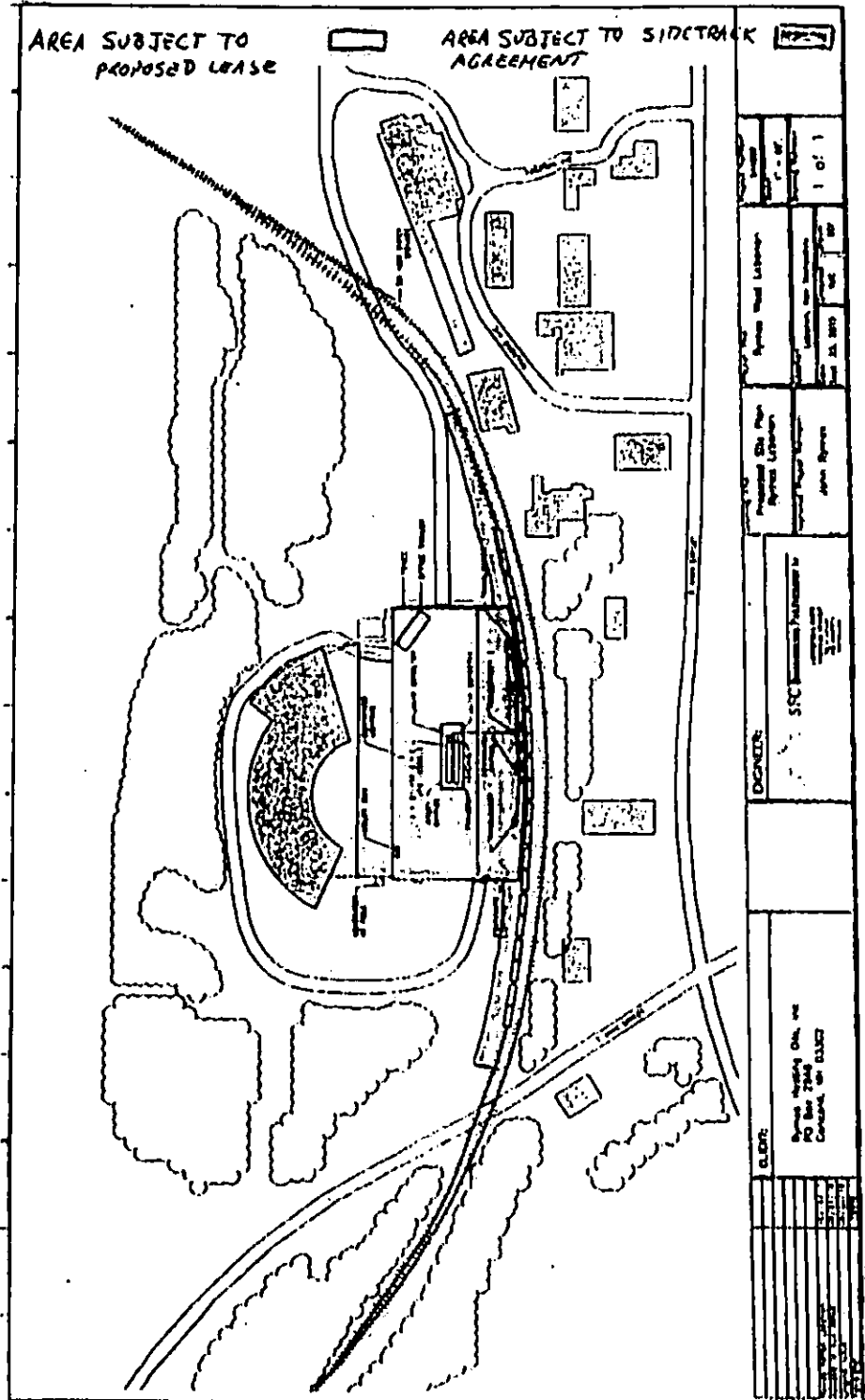
EXHIBIT F

West Lebanon, NH

NECR - CCR Lebanon Industrial Track - Mile Post 0.25 +/-

Land - 65,100 sf / 1.49 acres +/-

Track - 1,020 feet / up to 17 sixty-foot rail cars



SCHEDULE I

Existing Prior Leases

- NECR 121201 - December 1, 2012 Sidetrack Agreement between Claremont Concord Railroad Corporation and Rymes Heating Oils, Inc. - assigned to NECR in 2015 – Rymes interest assigned to Superior Plus Energy Services, Inc. effective 9/1/2020
- NECR 18046224 – June 1, 2019 Land & Track Lease between NECR and Holcim (US) Inc.

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 ENGLAND CENTRAL RAILROAD, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on May 04, 1995. 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: 228498

Certificate Number: 0005006641



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 18th day of September A.D. 2020.

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

William M. Gardner
Secretary of State

NEW ENGLAND CENTRAL RAILROAD, INC.

**WRITTEN CONSENT OF DIRECTORS
IN LIEU OF A MEETING**

JANUARY 4, 2020

THE UNDERSIGNED, being all the members of the Board of Directors (the "Board") of New England Central Railroad, Inc., a Delaware corporation (the "Corporation"), do hereby adopt the following resolutions by written consent without a meeting, with full force and effect as if adopted by the unanimous affirmative vote of the Board at a duly called and constituted meeting:

Approval of Operating Agreement with State of New Hampshire Department of Transportation

RESOLVED, that the Board believes that it is advisable, desirable and in the best interests of the Corporation that the Corporation execute the Operating Agreement with the State of New Hampshire Department of Transportation (the "Transaction Documents") creating certain rights and obligations related to a portion of railroad line owned by the State of New Hampshire and perform the transactions contemplated thereby;

RESOLVED, that the Corporation is hereby authorized to enter into the Transaction Documents and the President, any Vice President, the Treasurer or Assistant Treasurer and the Secretary or Assistant Secretary of the Corporation (the "Authorized Officers") are hereby authorized and directed, in the name and on behalf of the Corporation, to execute and deliver to the State the Transaction Documents substantially in the form presented to the Board, and any agreement and/or instrument related thereto, referred to therein, identified as ancillary thereto or contemplated to be executed and delivered in connection therewith, with such changes therein as such Authorized Officers executing any such Transaction Document shall approve, such approval to be conclusively evidenced by such Authorized Officer's execution thereof;

General Authorization

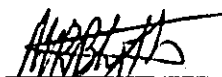
RESOLVED, that the Authorized Officers are hereby authorized to take or cause to be taken in the name and on behalf of the Corporation any and all such actions in addition to those specifically referred to in the foregoing resolutions, including, without limitation, paying fees and expenses, making use of the Corporation's credit resources and executing, delivering or filing all such other documents, instruments, agreements, schedules, reports or statements as they or any of them shall deem to be necessary or advisable in order to carry out the purpose and intent of each of the foregoing resolutions and to consummate the transactions contemplated thereby; and

RESOLVED, that any acts of the Authorized Officers and any of the person or persons designated and authorized to act by an Authorized Officer, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts in the name and on behalf of the Corporation.

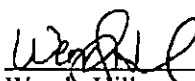
This written consent may be executed in two or more counterparts, each of which, when so executed, shall be deemed an original, and such counterparts together shall constitute but one and the same instrument.

[Signatures are on the following page]

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first written above, and direct that it be filed with the minutes of the Corporation.



Mark Blyth
Director



Wendy Hill
Director



Alfred Q. Ricotta
Director



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/06/2021

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

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

| | | | |
|---|--|---|--|
| PRODUCER Marsh USA Inc. 131 Interpark Blvd. San Antonio, TX 78216 Attn: Philadelphia.certs@marsh.com | | CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL: ADDRESS: | |
| CN101924481-RailE-20-21 North | | INSURER(S) AFFORDING COVERAGE | |
| INSURED New England Central Railroad c/o Genesee & Wyoming Inc. 20 West Avenue Darien, CT 06820 | | INSURER A : National Union Fire Ins Co. of Pittsburgh PA 19445 | |
| | | INSURER B : Lexington Insurance Company | |
| | | INSURER C : | |
| | | INSURER D : | |
| | | INSURER E : | |
| | | INSURER F : | |

COVERAGES CERTIFICATE NUMBER: CLE-006557188-08 REVISION NUMBER: 10

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

| INSR LTR | TYPE OF INSURANCE | ADDL SUBR INSD WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|------------------------------|-----------------|-------------------------|-------------------------|--|
| | COMMERCIAL GENERAL LIABILITY | | | | | EACH OCCURRENCE \$ |
| | CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ |
| | | | | | | MED EXP (Any one person) \$ |
| | | | | | | PERSONAL & ADV INJURY \$ |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | GENERAL AGGREGATE \$ |
| | <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | | PRODUCTS - COMP/OP AGG \$ |
| | OTHER: | | | | | \$ |
| A | AUTOMOBILE LIABILITY | | CA1722414 (AOS) | 11/01/2020 | 11/01/2021 | COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 |
| A | X ANY AUTO | | CA1722415 (MA) | 11/01/2020 | 11/01/2021 | BODILY INJURY (Per person) \$ |
| A | <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY | | CA1722417 (VA) | 11/01/2020 | 11/01/2021 | BODILY INJURY (Per accident) \$ |
| | X HIRED AUTOS ONLY | | | | | PROPERTY DAMAGE (Per accident) \$ |
| | | | | | | \$ |
| | UMBRELLA LIAB | | | | | EACH OCCURRENCE \$ |
| | EXCESS LIAB | | | | | AGGREGATE \$ |
| | DED <input type="checkbox"/> RETENTION \$ | | | | | \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | Y/N <input type="checkbox"/> | | | | E.L. EACH ACCIDENT \$ |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | | | E.L. DISEASE - EA EMPLOYEE \$ |
| B | Railroad Liability | | 026022521 | 12/01/2020 | 12/01/2021 | E.L. DISEASE - POLICY LIMIT \$ |
| | Claims Made | | | | | Per Occurrence 7,000,000 |
| | | | | | | Annual Aggregate 7,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
State of New Hampshire is Included as Additional Insured where required by written contract. Railroad Liability policy includes Contractual Liability where required by written contract.

| | |
|---|---|
| CERTIFICATE HOLDER The State of New Hampshire, Department of Transportation 7 Hazen Drive PO Box 483 Concord, NH 03302-0483 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i> |
|---|---|

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ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

| | | |
|--------------------------|-----------|---|
| AGENCY Marsh USA Inc. | | NAMED INSURED New England Central Railroad c/o Genesee & Wyoming Inc. 20 West Avenue Darien, CT 06820 |
| POLICY NUMBER | | |
| CARRIER | NAIC CODE | EFFECTIVE DATE: |

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Primary Railroad Liability:

SIR: \$500,000

Bill of Lading Coverages: \$5,000,000 Each Occurrence

Coverages include: BI, PD, FELA, xs AL, xs FRS, xs BOL, xsEL

9. Cancellation a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation. b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least: (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium or for non-compliance with the policy terms or conditions; or (2) 90 days before the effective date of cancellation if we cancel for any other reason.



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

G+C # 5B
Date 10/21/20



William Cass, P.E.
Assistant Commissioner

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

Bureau of Rail & Transit
September 25, 2020

REQUESTED ACTION

The Department of Transportation requests placing this item on the Consent Calendar.

Authorize the Department of Transportation to enter into a contract amendment with the New England Central Railroad, Inc. (NECR), Vendor 160565, Rochester, New York, to amend the completion date from October 31, 2020 to January 31, 2021 for the use of the state-owned Northern Railroad Line in Lebanon, NH for freight railroad service. This amendment is effective November 1, 2020, with Governor and Executive Council approval, through January 31, 2021. The original operating agreement was approved by Governor and Council on December 9, 2009 (Item 161) and amended by Governor and Council on April 8, 2020 (Item 21).

Income from the agreement will be credited as follows:

04-096-096-964010-2991
Special Railroad Account
009-407323 Agency Income

EXPLANATION

On December 9, 2009 the Governor and Council approved an Operating Agreement between the Department of Transportation and the Claremont Concord Railroad Corp. to provide rail freight service on the active portion of the state-owned Northern Railroad Line connecting Lebanon to White River Junction, Vermont for the period of May 1, 2010 through April 30, 2020. On September 8, 2015 the Department of Transportation consented to an assignment of the 2010 Operating Agreement from the Claremont Concord Railroad Corporation to the New England Central Railroad, Inc. (NECR) as the NECR acquired the Claremont Concord Railroad.

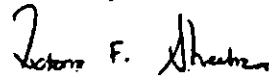
Pursuant to Section 1.15 of the current Operating Agreement, NECR notified the Department on April 30, 2019 that it wished to renew its operating agreement. The Department and NECR began active negotiations for the terms of a new 10-year Operating Agreement and requested additional time; a 6-month extension, Amendment #1, was approved by Governor and Council, as Item 121, on April 8, 2020. While negotiations have continued, an additional three (3) months is required to finalize the terms of a new 10-year Operating Agreement. As the railroad line is active, this Amendment allows NECR

and its shippers to continue to use the line for delivery and transloading of bulk cement, salt, fuel, and other products while negotiations conclude.

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

Your approval of this resolution is respectfully requested.

Sincerely,

A handwritten signature in dark ink, appearing to read "Victoria F. Sheehan". The signature is fluid and cursive, with the first name being the most prominent.

Victoria F. Sheehan
Commissioner

Attachments

AMENDMENT #2 TO OPERATING AGREEMENT

This AMENDMENT TO THE OPERATING AGREEMENT ("Amendment") is entered into this 24th day of September, 2020, by and between the State of New Hampshire, acting by and through the New Hampshire Department of Transportation, Bureau of Rail and Transit, PO Box 483, Concord, NH 03302-0483, (hereinafter referred to as "State") and New England Central Railroad, Inc., 400 Meridian Centre, Suite 330, Rochester, NY, 14618, (hereinafter referred to as "the Contractor"), collectively referred to as ("the Parties").

WHEREAS, the State and the Contractor, pursuant to an Assignment dated September 9, 2015, are parties to the Operating Agreement between the State and Claremont Concord Railroad Corporation dated May 1, 2010, approved by the New Hampshire Governor and Executive Council of New Hampshire on December 9, 2009 and as amended by the Parties on April 4, 2020 ("Operating Agreement");

WHEREAS, pursuant to the Operating Agreement, the Contractor provides service on the Northern Railroad Line, as more particularly described in Section 2.1 of the Operating Agreement;

WHEREAS, pursuant to Section 1.1.1(k), the Completion Date of the Operating Agreement is October 31, 2020;

WHEREAS, pursuant to Section 1.3.1, the Parties are negotiating for a new operating agreement, but will not be able to finalize a new agreement and seek approval of the Governor and Council of New Hampshire before the current Operating Agreement expires on October 31, 2020; and

WHEREAS, the Parties desire for the Contractor to continue its use and operation of the Northern Railroad Line pursuant to the terms of the current Operating Agreement during negotiations.

NOW THEREFORE, the Parties agree to amend the Operating Agreement as follows:

1. Section 1.1.1(k) of the Operating Agreement shall be amended to extend the Completion Date of October 31, 2020 for an additional three (3) months. The amended Completion Date shall be January 31, 2021. The Operating Agreement shall terminate on January 31, 2021, unless terminated sooner in accordance with Section 1.7 or Section 1.8 of the Operating Agreement.
2. If the Parties enter into a new operating agreement on or before January 31, 2021, the current Operating Agreement shall automatically terminate upon the effective date of the new agreement.
3. If the Parties cannot agree upon a new agreement by January 31, 2021, the State shall have no further obligations for renewal of the Operating Agreement with the Contractor.

4. The Parties agree that all other provisions of the Operating Agreement not amended herein shall remain in full force and effect.
5. This Amendment and all obligations of the parties hereunder shall become effective upon approval by the New Hampshire Governor and Executive Council.

IN WITNESS WHEREOF, the Parties hereto have set their hands the date first-written above.

New England Central Railroad, Inc:

By: 

Date: 09/25/2020

Leonard Wagner, President
Print Name and Title

STATE OF NEW HAMPSHIRE
Department of Transportation

By: 

Date: 09/30/2020

Victoria F. Sheehan
Commissioner
New Hampshire Department of Transportation

The foregoing Amendment, having been reviewed by this office, is approved as to form and execution on Sept. 29, 2020.

OFFICE OF THE ATTORNEY GENERAL

By: 

Assistant Attorney General

Approved by Governor and Council on OCT 21 2020, 20____, Item # ____.

ATTEST:

Secretary of State


DEPUTY SECRETARY OF STATE

State of New Hampshire

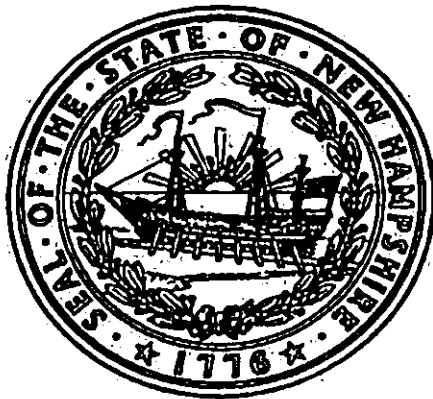
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that NEW ENGLAND CENTRAL RAILROAD, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on May 04, 1995. 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: 228498

Certificate Number: 0005006641



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 18th day of September A.D. 2020.

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

William M. Gardner
Secretary of State

NEW ENGLAND CENTRAL RAILROAD, INC.

**WRITTEN CONSENT OF DIRECTORS
IN LIEU OF A MEETING**

SEPTEMBER 24, 2020

THE UNDERSIGNED, being all the members of the Board of Directors (the "Board") of New England Central Railroad, Inc., a Delaware corporation (the "Corporation"), do hereby adopt the following resolutions by written consent without a meeting, with full force and effect as if adopted by the unanimous affirmative vote of the Board at a duly called and constituted meeting:

Approval of Amendment to Extend Operating Agreement

RESOLVED, that the Board believes that it is advisable, desirable and in the best interests of the Corporation that the Corporation execute the amendment (the "Transaction Documents") extending the term of the Operating Agreement between the State of New Hampshire (the "State") and Claremont Concord Railroad Corporation dated May 1, 2010, approved by the New Hampshire Governor and Executive Council of New Hampshire on December 9, 2009 and assigned to the Corporation on or about September 9, 2015 (the "Operating Agreement") with consent of the State and perform the transactions contemplated thereby;

RESOLVED, that the Corporation is hereby authorized to enter into the Transaction Documents and the President, any Vice President, the Treasurer or Assistant Treasurer and the Secretary or Assistant Secretary of the Corporation (the "Authorized Officers") are hereby authorized and directed, in the name and on behalf of the Corporation, to execute and deliver to the State the Transaction Documents substantially in the form presented to the Board, and any agreement and/or instrument related thereto, referred to therein, identified as ancillary thereto or contemplated to be executed and delivered in connection therewith, with such changes therein as such Authorized Officers executing any such Transaction Document shall approve, such approval to be conclusively evidenced by such Authorized Officer's execution thereof;

General Authorization

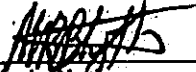
RESOLVED, that the Authorized Officers are hereby authorized to take or cause to be taken in the name and on behalf of the Corporation any and all such actions in addition to those specifically referred to in the foregoing resolutions, including, without limitation, paying fees and expenses, making use of the Corporation's credit resources and executing, delivering or filing all such other documents, instruments, agreements, schedules, reports or statements as they or any of them shall deem to be necessary or advisable in order to carry out the purpose and intent of each of the foregoing resolutions and to consummate the transactions contemplated thereby; and

RESOLVED, that any acts of the Authorized Officers and any of the person or persons designated and authorized to act by an Authorized Officer, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts in the name and on behalf of the Corporation.


This written consent may be executed in two or more counterparts, each of which, when so executed, shall be deemed an original, and such counterparts together shall constitute but one and the same instrument.

[Signatures are on the following page]

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first written above, and direct that it be filed with the minutes of the Corporation.



Mark Blyn
Director



Wendy Hill
Director



Alfred Q. Ricotta
Director



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/24/2020

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

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

PRODUCER
Marsh USA Inc.
1717 Arch Street
Philadelphia, PA 19103
Attn: Philadelphia.certs@marsh.com

| | |
|---|------------|
| CONTACT NAME: | |
| PHONE: | FAX: |
| (A/C No. Ext): | (A/C No.): |
| E-MAIL: | |
| ADDRESS: | |
| INSURER(S) AFFORDING COVERAGE: | |
| NAIC # | |
| INSURER A: National Union Fire Ins Co. of Pittsburgh PA | |
| INSURER B: Lexington Insurance Company | |
| INSURER C: | |
| INSURER D: | |
| INSURER E: | |
| INSURER F: | |

CN101924481-Railr-19-20

North

INSURED
New England Central Railroad
c/o Genesee & Wyoming Inc.
20 West Avenue
Darlen, CT 06820

COVERAGES

CERTIFICATE NUMBER:

CLE-006557186-04

REVISION NUMBER: 9

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

| INSR LTR | TYPE OF INSURANCE | ADDITIONAL INSURED | SUBROGATION | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|--------------------|-------------|-----------------|-------------------------|-------------------------|--|
| | COMMERCIAL GENERAL LIABILITY | | | | | | |
| | <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR | | | | | | |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | |
| | <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | | | |
| | OTHER: | | | | | | |
| A | AUTOMOBILE LIABILITY | | | CA1722337 (AUS) | 11/01/2019 | 11/01/2020 | EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ |
| A | <input checked="" type="checkbox"/> ANY AUTO | | | CA1722338 (MA) | 11/01/2019 | 11/01/2020 | \$ 5,000,000 |
| | <input type="checkbox"/> OWNED AUTOS ONLY | | | | | | BOODLY INJURY (Per person) \$ |
| | <input checked="" type="checkbox"/> HIRED AUTOS ONLY | | | | | | BOODLY INJURY (Per accident) \$ |
| | <input type="checkbox"/> SCHEDULED AUTOS | | | | | | PROPERTY DAMAGE (Per accident) \$ |
| | <input type="checkbox"/> NON-OWNED AUTOS ONLY | | | | | | \$ |
| | UMBRELLA LIAB | | | | | | EACH OCCURRENCE \$ |
| | EXCESS LIAB | | | | | | AGGREGATE \$ |
| | <input type="checkbox"/> OCCUR | | | | | | \$ |
| | <input type="checkbox"/> CLAIMS-MADE | | | | | | \$ |
| | DED | | | | | | RETENTION \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | | PER STATUTE |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | Y/N | | | | | OTH-ER |
| | If yes, describe under DESCRIPTION OF OPERATIONS below. | N | N/A | | | | E.L. EACH ACCIDENT \$ |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE \$ |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ |
| B | Railroad Liability | | | 026022521 | 11/01/2019 | 11/01/2020 | Per Occurrence \$ 5,000,000 |
| | Claims Made | | | | | | Annual Aggregate \$ 5,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

State of New Hampshire is included as Additional Insured where required by written contract. Railroad Liability policy includes Contractual Liability where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

The State of New Hampshire,
Department of Transportation
7 Hazen Drive
PO Box 483
Concord, NH 03302-0483

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

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Manashi Mukherjee

Manashi Mukherjee

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AGENCY CUSTOMER ID: CN101924481

LOC #: Philadelphia



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

| | | | |
|--------------------------|-----------|---|--|
| AGENCY Marsh USA Inc. | | NAMED INSURED New England Central Railroad c/o Genesee & Wyoming Inc. 20 West Avenue Derden, CT 06820 | |
| POLICY NUMBER | | EFFECTIVE DATE: | |
| CARRIER | NAIC CODE | | |

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Primary Railroad Liability:

SIR: \$5,000,000

Bill of Lading Coverages: \$5,000,000 Each Occurrence

Coverages include: BI, PD, FELA, xs AL, xs FRS, xs BOL, xs EL

9. Cancellation a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation. b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least: (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium or for non-compliance with the policy terms or conditions; or (2) 90 days before the effective date of cancellation if we cancel for any other reason.



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

G+C #21
Date 4/8/20



William Cass, P.E.
Assistant Commissioner

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

Bureau of Rail & Transit
March 24, 2020

REQUESTED ACTION

Authorize the Department of Transportation to enter into a contract amendment with the New England Central Railroad, Inc. (NECR), Vendor 160565, Rochester, New York, to amend the completion date from April 30, 2020 to October 31, 2020 for the use of the state-owned Northern Railroad Line in Lebanon, NH for freight railroad service. This amendment is effective May 1, 2020, with Governor and Executive Council approval, through October 31, 2020. The current operating agreement was approved by Governor and Council on December 9, 2009, Item 161.

Income from the agreement will be credited as follows:

04-096-096-964010-2991
Special Railroad Account
009-407323 Agency Income

EXPLANATION

On December 9, 2009 the Governor and Council approved an Operating Agreement between the Department of Transportation and the Claremont Concord Railroad Corp. to provide rail freight service on the active portion of the state-owned Northern Railroad Line connecting Lebanon to White River Junction, Vermont for the period of May 1, 2010 through April 30, 2020. On September 8, 2015 the Department of Transportation consented to an assignment of the 2010 Operating Agreement from the Claremont Concord Railroad Corporation to the New England Central Railroad, Inc. (NECR) as the NECR acquired the Claremont Concord Railroad.

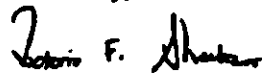
Pursuant to Section 1.15 of the current Operating Agreement, NECR notified the Department on April 30, 2019 that it wished to renew its operating agreement. The Department and NECR have been actively negotiating the terms of a new 10-year Operating Agreement however as the terms have not been finalized, this subject Amendment will extend the current Operating Agreement for six (6) months to allow time for negotiations to conclude. As the railroad line is active, this Amendment allows NECR and its shippers to continue to use the line for delivery and transloading of bulk cement, salt, fuel, and other products while negotiations conclude.

This Amendment has been reviewed and approved by the Office of the Attorney General for form and execution. Copies of the fully executed Amendment have been provided to the Secretary of State's Office

and the Department of Administrative Services. Subsequent to the Governor and Council approval, a copy of the Amendment will be on file with the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,


Victoria F. Sheehan
Commissioner

Attachments

AMENDMENT TO OPERATING AGREEMENT

This AMENDMENT TO THE OPERATING AGREEMENT ("Amendment") is entered into this 20 day of March, 2020, by and between the State of New Hampshire, acting by and through the New Hampshire Department of Transportation, Bureau of Rail and Transit, PO Box 483, Concord, NH 03302-0483, (hereinafter referred to as "State") and New England Central Railroad, Inc., 400 Meridian Centre, Suite 330, Rochester, NY, 14618, (hereinafter referred to as "the Contractor"), collectively referred to as ("the Parties").

WHEREAS, the State and the Contractor, pursuant to an Assignment dated September 9, 2015, are parties to the Operating Agreement between the State and Claremont Concord Railroad Corporation dated May 1, 2010, approved by the New Hampshire Governor and Executive Council of New Hampshire on December 9, 2009 ("Operating Agreement");

WHEREAS, pursuant to the Operating Agreement, the Contractor provides service on the Northern Railroad Line, as more particularly described in Section 2.1 of the Operating Agreement;

WHEREAS, pursuant to Section 1.1.1(k), the Completion Date of the Operating Agreement is April 30, 2020;

WHEREAS, pursuant to Section 1.3.1, the Parties are negotiating for a new operating agreement, but will not be able to finalize a new agreement and seek approval of the Governor and Council of New Hampshire before the current Operating Agreement expires on April 30, 2020; and

WHEREAS, the Parties desire for the Contractor to continue its use and operation of the Northern Railroad Line pursuant to the terms of the current Operating Agreement during negotiations.

NOW THEREFORE, the Parties agree to amend the Operating Agreement as follows:

1. Section 1.1.1(k) of the Operating Agreement shall be amended to extend the Completion Date of April 30, 2020 for an additional six (6) months. The amended Completion Date shall be October 31, 2020. The Operating Agreement shall terminate on October 31, 2020, unless terminated sooner in accordance with Section 1.7 or Section 1.8 of the Operating Agreement.
2. If the Parties enter into a new operating agreement on or before October 31, 2020, the current Operating Agreement shall automatically terminate upon the effective date of the new agreement.
3. If the Parties cannot agree upon a new agreement by October 31, 2020, the State shall have no further obligations for renewal of the Operating Agreement with the Contractor.

NEW ENGLAND CENTRAL RAILROAD, INC.

**WRITTEN CONSENT OF DIRECTORS
IN LIEU OF A MEETING**

MARCH 19, 2020

THE UNDERSIGNED, being all the members of the Board of Directors (the "Board") of New England Central Railroad, Inc., a Delaware corporation (the "Corporation"), do hereby adopt the following resolutions by written consent without a meeting, with full force and effect as if adopted by the unanimous affirmative vote of the Board at a duly called and constituted meeting:

Approval of Amendment to Extend Operating Agreement

RESOLVED, that the Board believes that it is advisable, desirable and in the best interests of the Corporation that the Corporation execute the amendment (the "Transaction Documents") extending the term of the Operating Agreement between the State of New Hampshire (the "State") and Claremont Concord Railroad Corporation dated May 1, 2010, approved by the New Hampshire Governor and Executive Council of New Hampshire on December 9, 2009 and assigned to the Corporation on or about September 9, 2015 with consent of the State and perform the transactions contemplated thereby;

RESOLVED, that the Corporation is hereby authorized to enter into the Transaction Documents and the President, any Vice President, the Treasurer or Assistant Treasurer and the Secretary or Assistant Secretary of the Corporation (the "Authorized Officers") are hereby authorized and directed, in the name and on behalf of the Corporation, to execute and deliver to the State the Transaction Documents substantially in the form presented to the Board, and any agreement and/or instrument related thereto, referred to therein, identified as ancillary thereto or contemplated to be executed and delivered in connection therewith, with such changes therein as such Authorized Officers executing any such Transaction Document shall approve, such approval to be conclusively evidenced by such Authorized Officer's execution thereof;

General Authorization

RESOLVED, that the Authorized Officers are hereby authorized to take or cause to be taken in the name and on behalf of the Corporation any and all such actions in addition to those specifically referred to in the foregoing resolutions, including, without limitation, paying fees and expenses, making use of the Corporation's credit resources and executing, delivering or filing all such other documents, instruments, agreements, schedules, reports or statements as they or any of them shall deem to be necessary or advisable in order to carry out the purpose and intent of each of the foregoing resolutions and to consummate the transactions contemplated thereby; and

RESOLVED, that any acts of the Authorized Officers and any of the person or persons designated and authorized to act by an Authorized Officer, which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts in the name and on behalf of the Corporation.

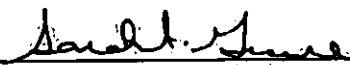
This written consent may be executed in two or more counterparts, each of which, when so executed, shall be deemed an original, and such counterparts together shall constitute but one and the same instrument.

[Signatures are on the following page]

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first written above, and direct that it be filed with the minutes of the Corporation.



Mark Blith
Director



Sarah A. Greene
Director



Alfred Q. Ricotta
Director



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/24/2020

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

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

PRODUCER
Marsh USA Inc.
1717 Arch Street
Philadelphia, PA 19103
Attn: Philadelphia.certs@marsh.com

CONTACT

NAME:

PHONE:

FAX:

E-MAIL:

ADDRESS:

NAME:

PHONE:

FAX:

E-MAIL:

ADDRESS:

CN101924481-Rail-19-20 North

INSURED
New England Central Railroad
c/o Genesee & Wyoming Inc.
20 West Avenue
Derham, CT 06820

INSURER(S) AFFORDING COVERAGE

INSURER A: National Union Fire Ins Co. of Pittsburgh PA

INSURER B: Lexington Insurance Company

INSURER C:

INSURER D:

INSURER E:

INSURER F:

NAIC #

19445

COVERAGES

CERTIFICATE NUMBER:

CLE-008557188-04

REVISION NUMBER: 0

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

| OPER LTR | TYPE OF INSURANCE | ADJUSTER (INSR) (W/O) | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|-----------------------|-----------------|-------------------------|-------------------------|---|
| | COMMERCIAL GENERAL LIABILITY | | | | | |
| | <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR | | | | | |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | |
| | <input type="checkbox"/> POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC | | | | | |
| | OTHER: | | | | | |
| 5 | AUTOMOBILE LIABILITY | | CA1722337 (AOS) | 11/01/2019 | 11/01/2020 | COMBINED SINGLE LIMIT (Per accident) \$ 5,000,000 |
| | <input checked="" type="checkbox"/> ANY AUTO | | CA1722338 (MA) | 11/01/2019 | 11/01/2020 | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS | | | | | BODILY INJURY (Per accident) \$ |
| | <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | | | | PROPERTY DAMAGE (Per accident) \$ |
| | UMBRELLA LIAB | | | | | EACH OCCURRENCE \$ |
| | EXCESS LIAB | | | | | AGGREGATE \$ |
| | DED RETENTION \$ | | | | | \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/> |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in NY) | Y/N | N/A | | | E.L. EACH ACCIDENT \$ |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | E.L. DISEASE - EA EMPLOYEE \$ |
| B | Railroad Liability | | 028022521 | 11/01/2019 | 11/01/2020 | Per Occurrence \$ 5,000,000 |
| | Claims Made | | | | | Annual Aggregate \$ 5,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

State of New Hampshire is included as Additional Insured where required by written contract. Railroad Liability policy includes Contractual Liability where required by written contract.

CERTIFICATE HOLDER

The State of New Hampshire,
Department of Transportation
7 Hazen Drive
PO Box 483
Concord, NH 03302-0483

CANCELLATION

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

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Manashi Mukherjee

Manashi Mukherjee

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AGENCY CUSTOMER ID: CN101924481

LOC #: Philadelphia



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

| | | | |
|--------------------------|-----------|---|--|
| AGENCY Marsh USA Inc. | | NAMED INSURED New England Coastal Railroad c/o Genesee & Wyoming Inc. 20 West Avenue Darien, CT 06820 | |
| POLICY NUMBER | | EFFECTIVE DATE: | |
| CARRIER | NAIC CODE | | |

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Primary Railroad Liability:

SIR: \$5,000,000

Bill of Lading Coverages: \$5,000,000 Each Occurrence

Coverages include: BI, PD, FELA, xs AL, xs FRS, xs BOL, xs EL

9. Cancellation a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation. b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least: (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium or for non-compliance with the policy terms or conditions; or (2) 90 days before the effective date of cancellation if we cancel for any other reason.

CONSENT TO ASSIGNMENT OF AGREEMENT

This Consent to Assignment of the "Operating Agreement on the State-Owned Portions of the Northern Railroad Line", herein referred to as "Operating Agreement", is made as of the 8th day of September, 2015. Reference is made to the Operating Agreement from the State of New Hampshire, Department of Transportation ("Department") to the Claremont Concord Railroad Corporation, 197 Dock Street, Schuykill Haven, PA, 17972. The term of the Operating Agreement commenced on May 1, 2010 and expires April 30, 2020. Per the terms of the Operating Agreement, an additional term of 10 years may be negotiated with the Department.

The Department hereby consents to an assignment of the Operating Agreement from the Claremont Concord Railroad Corporation to New England Central Railroad, Inc., 400 Meridian Centre, Suite 330, Rochester, NY, 14618 ("NECR"). By acceptance of the assignment of the Operating Agreement the NECR agrees to be bound by the terms and conditions of the Agreement. Acceptance of these terms was also affirmed in the "Assignment and Assumption Agreement" signed by the Claremont Concord Railroad Corporation and New England Central Railroad, Inc. and subsequently submitted to the Department.

The Department acknowledges that to the best of its knowledge and belief that the Claremont-Concord Railroad is not in default of any of its obligations under the Operating Agreement and that the Operating Agreement, as affected by this Consent and the assignment, has not been altered or amended and remains in full force and effect and may only be amended in accordance with the terms set forth within it.

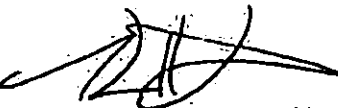
Executed as an instrument under seal as of the date first above written.

THE STATE OF NEW HAMPSHIRE
Department of Transportation

By:


William Cass, PE
Assistant Commissioner

Accepted by:


Thomas D. Savage
Vice President and Treasurer
New England Central Railroad, Inc.

STATE OF Connecticut
COUNTY OF Fairfield

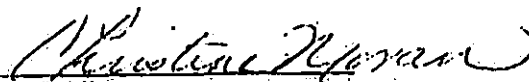
On, 9/9/15, before the undersigned officer personally appeared Thomas D. Savage known to me (or satisfactorily proven), and acknowledged that he executed the foregoing document.

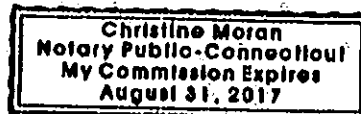
In witness whereof I hereunto set my hand and official seal.

Date

9/9/2015

Notary Public





OPERATING AGREEMENT
ON THE
STATE-OWNED PORTION OF THE NORTHERN RAILROAD LINE
BETWEEN

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

AND

CLAREMONT CONCORD RAILROAD CORPORATION
SCHUYLKILL HAVEN, PENNSYLVANIA 17972

MAY 1, 2010

Contractor Initials CF
Date 10/5/09

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| | CERTIFICATE OF VOTE | |
| | CERTIFICATE OF INSURANCE | |

Contractor Initials CE
Date 10/5/09

ARTICLE I - GENERAL CONDITIONS

1.1 DEFINITIONS

1.1.1 As used herein, the following terms have the meanings indicated:

- a. "Contractor" - Claremont Concord Railroad Corp., 197 Dook Street, Schuylkill Haven, PA 17972.
- b. "State" - means the State of New Hampshire.
- c. "FRA" means the Federal Railroad Administration.
- d. "STB" means the Surface Transportation Board.
- e. "Service" - means rail freight transportation.
- f. "Contracting Officer" - Commissioner, New Hampshire Department of Transportation (NHDOT), or his duly authorized representative having an address of 7 Hazen Drive, P.O. Box 483, Concord, NH 03302-0483. The Contracting Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement and the resolution of any disputes by the Contracting Officer shall be final.
- g. "Agreement" - means this Operating Agreement dated May 1, 2010.
- h. "Facilities" collectively means the real estate, track, bridges, signals, switches, structures, buildings, and related railroad transportation property over which Service is to be provided, excluding cement transload facilities constructed by the Contractor.
- i. "Effective Date" means the date this Agreement is approved by the Governor and Council of the State of New Hampshire or the Contractor obtains operating authority from the STB, whichever occurs last.
- j. "Commencement Date" - May 1, 2010
- k. "Completion Date" - April 30, 2020.
- l. "Operating Year" - January 1 to December 31.
- m. "Users Fee" - Fee to be paid by the Contractor to State for the use of the Facilities.
- n. "Subcontractor" - An individual, partnership, firm, corporation, or any combination thereof, or joint venture, to whom the Contractor sublets any part of this Agreement.

1.2 EFFECTIVE DATE/COMPLETION OF SERVICES

- 1.2.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date")
- 1.2.2 Any Service performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation any obligation to pay the Contractor for any costs incurred or Service performed.

1.3 RENEWAL OF AGREEMENT

- 1.3.1 The Contractor shall notify the State by certified mail no later than one year prior to the Completion Date that the Contractor wishes to enter into renegotiations for a new Agreement for an additional ten (10) year period beginning May 1, 2020. If the Contractor and the State cannot agree upon new Operating Agreement by November 1, 2019, the State may at that time solicit proposals from other persons to operate the

Contractor Initials CE
Date 10/5/09

Facilities and have no further obligations for renewal of this Agreement with the Contractor.

CONTRACTOR'S REPRESENTATION AND WARRANTIES

1.4 The Contractor represents and warrants the following:

- a. The Contractor is a corporation duly organized, validly registered with the Secretary of State, and in good standing under the laws of the State, and is duly qualified to do business in each jurisdiction where its business or the ownership of its property requires such qualification;
- b. The Contractor has the full power and authority to enter into this Agreement and to carry out the functions that it has undertaken in this Agreement;
- c. All corporate and other proceedings required to be taken by or on the part of the Contractor to authorize it to enter into this Agreement and perform the Service have been duly taken; and
- d. The execution of this Agreement and the operation of the Service will not violate any statute, rule, regulations, order, writ, injunction or decree of any court, administrative agency or governmental body.

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

- 1.5.1 In connection with the performance of the Service, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
- 1.5.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
- 1.5.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

1.6. PERSONNEL.

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

Contractor Initials CE
Date 10/5/09

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

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

1.7 EVENT OF DEFAULT/REMEDIES.

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

1.7.1.1 failure to perform the Service satisfactorily or on schedule;

1.7.1.2 failure to submit any report required hereunder;

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

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

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

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

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

1.8. TERMINATION.

1.8.1 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) days after the date of termination, a report ("Termination Report") containing all information required by the various reporting provisions of the Agreement, from the date of the last such reports through and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

Contractor Initials CF
Date 10/5/09

1.9. CONTRACTOR'S RELATION TO THE STATE.

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

1.10 ASSIGNMENT/DELEGATION/SUBCONTRACTS.

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

1.11 INDEMNIFICATION.

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

1.12. INSURANCE.

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

1.12.1.1 Railroad Liability and Contractual Liability Insurance shall be purchased with the State named as co-insured in the amount of three million dollars (\$3,000,000), or five million dollars (\$5,000,000) if hazardous materials are shipped, each occurrence, with a deductible of twenty-five thousand dollars (\$25,000) maximum.

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

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

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

1.13. WAIVER OF BREACH

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

1.14. NOTICE.

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

1.15. AMENDMENT.

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

1.16 CONSTRUCTION OF AGREEMENT AND TERMS.

- 1.16.1 This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

1.17 THIRD PARTIES.

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

1.18 HEADINGS.

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

1.19 SEVERABILITY.

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

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1.20 ENTIRE AGREEMENT.

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

ARTICLE II - PHYSICAL DESCRIPTION

- 2.1 **PHYSICAL DESCRIPTION** - The Facilities are described as follows: Being all the property of every kind and description, real, personal and mixed that was acquired by the State of New Hampshire from the Boston and Maine Corporation by a Release Deed recorded at the Grafton County Registry of Deeds on August 2, 1999, Book 2409, Pages 865 through 876, and said demised property being located in the City of Lebanon, NH, County of Grafton; including all real property, rail facilities on, within and appurtenant to the line formerly owned by the Boston and Maine Corporation located between Engineering Station 3515+69 as shown on Valuation Map 32.1 Map 68 and Engineering Station 3662+40 as shown on Valuation Map 32.1 VT Map 71 in Lebanon, including the Westboro Yard, on file in the records of the New Hampshire Department of Transportation, Bureau of Rail & Transit.
- 2.2 The Facilities shall remain the property of the State, which reserves to itself the right to grant easements, contracts, leases, and other rights therein which do not, in the sole judgment of the State, conflict with the operations described in Article III. The State reserves to itself all rents, fees and revenues derived from such grants. As permitted by applicable State law, the State may sell portions of the railroad yard not needed for present or future railroad operations to the City of Lebanon or other parties. Notwithstanding these provisions, the Contractor with prior approval by the State may lease portions of the Facilities to shippers for construction of railroad sidings, loading platforms and other railroad-related facilities. Such leases shall be subject to appropriate local taxes, and revenues from such leases shall be included in the railroad's gross freight operating revenues.
- 2.3 The Contractor shall make no alterations to the Facilities, both real and personal, or construct any building or make other improvements on the Facilities beyond normal maintenance without the prior written consent of the State. Such consent shall not be unreasonably withheld. All alterations, changes, and improvements built, constructed, or placed on the Facilities by the Contractor, shall unless otherwise provided by written agreement between the State and the Contractor be the property of the State and remain on the State's property at the expiration or sooner termination of this agreement. Salvageable or scrap materials generated as a part of normal maintenance shall become the property of the Contractor.
- 2.4 At its option the State may provide the Contractor with State-owned railroad equipment and materials under the jurisdiction of the Bureau of Rail and Transit, which it may declare available to the Contractor. Said equipment and materials shall be used solely for the provision of Service under this Agreement and shall be insured by the Contractor to the State's satisfaction.

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ARTICLE III - OPERATIONS

3.1 SERVICE AREAS

- 3.1.1 The Contractor shall, between the Effective Date and the Completion Date, manage and operate Service on the Facilities described in 2.1 above. The Contractor shall be solely responsible for all phases and requirements of its operation, including, but not limited to, dispatching of trains, assignment of power and cars, scheduling, workforce, equipment, advertising, and marketing. The Contractor may charge a reasonable fee for operations on the Facilities by other railroads.
- 3.1.2 The Contractor agrees to provide cars, locomotives and all other things as necessary to afford the degree and quality of Service reasonably requested by its shippers.
- 3.1.3 Notwithstanding any other provisions of this Agreement, the State may arrange to provide service on a temporary basis if the Contractor is unable to provide service, and the Contractor agrees to allow provision of such temporary Service by others in the event of its inability to provide Service. Notice of Service by others must be given to the State in writing by the Contractor.
- 3.1.4 The Contractor warrants that all personnel engaged in the Services shall be qualified to perform such Services, and shall be properly licensed and authorized to perform such Services under all applicable laws. The Contractor shall not hire as an employee, and it shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services, to hire, any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.
- 3.1.5 The Contractor will conform to the State's "Guidelines Governing the Operation of On-Track Equipment on State-owned Railroad Lines," and will incorporate these Guidelines into its current Time Table.
- 3.1.6 If the Contractor intends to provide passenger or tourist excursion service on any portion of the Facilities, it shall notify the State in writing no less than sixty (60) days prior to initiation of such service, and submit a certificate of insurance for Specialized Passenger Risk Liability and Contractual Liability with the State named as additionally insured in the amount of Five Million (\$5,000,000) dollars at least five (5) days prior to commencement of passenger or tourist excursion operations.

3.2 MAINTENANCE

- 3.2.1 Equipment - The Contractor shall be responsible for proper upkeep and maintenance of all equipment it uses, either supplied by the State or the Contractor, and shall ensure that equipment is in compliance with all current FRA regulations. State equipment shall be returned to the State in as good condition as when received except for ordinary wear and tear.
- 3.2.2 Track - The Contractor shall be responsible for the proper upkeep and maintenance of Facilities. Said upkeep and maintenance shall include but not be limited to:
- a. Surface and alignment

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

3.2.2.1 The Contractor shall be responsible to perform all work and routine maintenance necessary to maintain the lines included in the Facilities at FRA Class I Track Safety Standards or better, and in any event will expend no less than twenty (20) percent of annual gross freight operating revenue on actual track maintenance during each year of this Agreement, and will include a report of maintenance expenses on a form and according to a schedule to be specified by the State (See Exhibit A). Credit for these expenditures may be carried forward to future years at the State's discretion. The Contractor shall satisfy all obligations required by the FRA of a railroad owner, set forth in Part 213 of the FRA Track Safety Standards (49 CFR 213).

3.2.3 STRUCTURES (BRIDGES & CULVERTS) - The Contractor shall be responsible for maintaining structures and shall make needed repairs necessary to keep structures safe for the convenience of the railroad and the State. Said maintenance shall include but not be limited to the cleaning and removal of debris, lubrication of bearing surfaces, scour and erosion protection.

3.2.4 In the event a major unanticipated maintenance or capital expenditure is required (bridge failure or major washout, etc.) the Contractor shall assist in all necessary repairs, but be limited in its direct financial contribution to five thousand (\$5000.00) dollars per Operating Year, or any amount remaining pursuant to the required expenditures pursuant to Section 3.2.2.1, whichever is greater, in the aggregate. However, the Contractor waives any claims to damages for any delays in repairing or reopening the line after such an occurrence and the State reserves to itself the decision whether, when and how such repairs and reopening will be done.

3.3 INSPECTION

3.3.1 The Contractor shall patrol the Facilities and inspect the track in accordance with FRA Track Safety Standards subpart F (49 CFR 213.233) and submit an inspection report in a timely manner but no less than one (1) week after each inspection. Should any defects be found, the Contractor shall take the appropriate remedial action in a timely manner in accordance with such regulations and notify the Contracting Officer in writing of said remedial action.

3.3.2 The Contracting Officer has the right to monitor the Contractor to ensure that the Contractor complies with the conditions of this Agreement. The Contracting Officer shall be granted full access to the operations and shall have the authority to direct the Contractor to remedy deficiencies as per FRA Track Safety Standards under this Agreement.

3.3.3 The Contracting Officer may take any action, including the field inspection of any project site and the inspection of the rail facilities, equipment, and all books and records

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of Contractor and of any contractor or subcontractor relating to any project or task accomplished under this Agreement.

3.3.3.1 The purpose of such inspection shall be:

- a. To ensure that work complies with the contract specifications.
- b. To verify quantitative measures of materials installed, such as tie counts.
- c. To verify labor and materials charges for contracts providing for payment on an actual cost basis ("force account work").
- d. To verify the quantities of uninstalled State-owned materials and the security of same against damage, theft, or use other than for approved projects.
- e. To provide any other information requested by the Contracting Officer relating to the Facilities.

3.4 CONSTRUCTION PROJECTS:

3.4.1 The Contracting Officer reserves the right to advertise and let construction rehabilitation projects within the confines of the Facilities. The construction contractor to whom this work may be awarded shall have the right to perform the work so described in the contract. Any expenditures by the State pursuant to this Section 3.4 shall not diminish the obligation of the Contractor pursuant to Section 3.2.2.1 or any other provision of this Agreement.

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

3.4.3 At the request of the State, the Contractor shall construct sidings to new shippers on the Facilities at shippers' or the Contractor's expense. These sidings and appurtenances thereto may be competitively bid, if constructed by other than the Contractor, and billed to the shipper.

3.5 FREIGHT TARIFFS - On or before the Effective Date, the Contractor shall adopt all existing applicable tariffs, rates, and divisions. Said tariffs, rates, and divisions shall apply to the Service provided pursuant to this Agreement, until such tariffs, rates or divisions are changed in accordance with law. All proposed rates and tariffs under control of the Contractor may be reviewed by the Contracting Officer upon request.

3.6 FORCE MAJEURE - The parties hereto will be excused from performance of any of their respective obligations hereunder occasioned by any event beyond their respective control, including, without limitation, any action of any federal, state or local agency or instrumentality; by government authorities including compliance with environmental quality, energy conservation and occupational safety requirements adopted or effected after the date of this Agreement; by acts of God; by strikes or other labor trouble; by explosions, fires, or vandalism until such events are remedied; provided, however, that the party claiming force majeure shall take all reasonable actions to eliminate or end the force majeure condition.

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ARTICLE IV - USER FEE PAYMENTS, ACCOUNTING AND AUDITS

- 4.1 The Contractor shall make User Fee payments required under this article directly to the State of New Hampshire, Department of Transportation, Bureau of Rail and Transit.
- 4.2 Payments shall be paid monthly (or less frequently with the approval of the Contracting Officer), based upon the level of operation, as explained below. Payments shall be made no later than thirty (30) days after the last day of each calendar month that gross freight operating revenues are earned, and will include a report of freight traffic on a form and according to a schedule to be specified by the State. (See EXHIBIT A)
- 4.3 USER FEE PAYMENT
- 4.3.1 The Contractor shall pay five (5%) percent of annual gross freight operating revenues as a user's fee to the State.
- 4.3.2 The Contractor may, where directed in writing by and at the sole discretion of the Contracting Officer, deduct from payments the cost of specific expenditures including but not limited to major maintenance projects in track work or structure repair.
- 4.4 LATE PAYMENT
- 4.4.1 Should any payment be received more than five (5) days after the due date, the Contracting Officer shall be entitled to a five (5%) percent late charge added to that month's users fee.
- 4.5 ACCOUNTING AND AUDITS
- 4.5.1 The Contracting Officer shall have access, during regular working hours, for the purpose of audit and examination, to any books, documents, papers, and records of the Contractor that may be related or pertinent to this Agreement during the period of this Agreement and for a period of five (5) years after the termination of this Agreement. The Contractor shall impose this requirement of each of its subcontractors.
- 4.5.2 If, as a result of any audit, the Contracting Officer determines that the amount paid to the State is less than the amount owed, the Contractor shall pay the difference to State within thirty (30) days of the determination.
- 4.5.3 If, as a result of any audit, the Contracting Officer determines that the amount paid to the State is more than the amount owed, State will make repayment or credit the Contractor accordingly, so far as appropriations allow, the overpayment to the State.
- 4.5.4 The Contractor shall be responsible for collecting revenues and for delivering traffic reports, marketing reports, revenue reports and maintenance cost reports on forms and according to a schedule to be specified by the State. (See EXHIBIT A)

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ARTICLE V - MARKETING EFFORT

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

ARTICLE VI - OTHER OPERATORS

- 6.1 In all of its operations and use of the Facilities, the Contractor will cooperate with other railroads in the use of the Facilities, including any railroad authorized by the State to use any portion of the Facilities in conjunction with the reactivation of the Northern Railroad following a selection process for a railroad operator on the line. The State may at its discretion provide mediation of disputes involving the state-owned railroad corridor consistent with Article 1.16.

ARTICLE VII - TERMINATION OF AGREEMENT

- 7.1 If at any time after the Commencement Date the Contractor operates the Service fewer than sixty (60) days during any Operational Year, the State may terminate this Agreement and relieve the State and Contractor of all obligations hereunder, except the Contractor's continuing duty to maintain financial records and to continue to defend and hold harmless the State for any claims arising during the period of this Agreement.
- 7.2 In the event of a termination or expiration of this Agreement, the Contractor agrees that it shall obtain the necessary approvals from the STB to discontinue operations and turn over operating authority to a new railroad operator.

Contractor Initials CE
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IN WITNESS WHEREOF, we have hereunto set our hands on the 5th day of October, 2009.

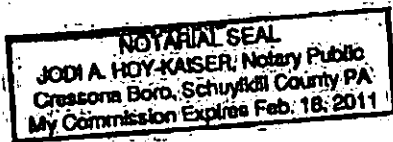
CLAREMONT CONCORD RAILROAD CORP.

BY: [Signature]

THE STATE OF NEW HAMPSHIRE, COUNTY OF Schofield

On this 5 day of October, 2009, before me, [Signature] the undersigned officer, personally appeared [Signature] known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.

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



[Signature]
NOTARY PUBLIC

THE STATE OF NEW HAMPSHIRE

BY: [Signature]

Jack W. Ferns, Director
Aeronautics, Rail, and Transit
NHDOT

THE STATE OF NEW HAMPSHIRE, COUNTY OF MERRIMACK

On this 4 day of November, 2009, before me, [Signature] the undersigned officer, personally appeared Jack Ferns known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he has executed the same for the purposes therein contained.

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

DANIEL L. HARTFORD
Notary Public
My Commission Expires May 20, 2014

[Signature]
NOTARY PUBLIC

This is to certify that the Operating Agreement shown above has been reviewed by this office, and is approved as to form and execution on November 9, 2009.

OFFICE OF ATTORNEY GENERAL

BY: [Signature]

Assistant Attorney General
DEC 09 2009

APPROVED by Governor and Executive Council on _____

ATTEST: [Signature]

DEPUTY SECRETARY OF STATE

Contractor Initials CF
Date 10/5/09

| EXHIBIT A | | | |
|---|---|---|---|
| CLAREMONT CONCORD RAILROAD, INC. | | | |
| REPORT AND PAYMENT DUE DATES | | | |
| JANUARY | FEBRUARY | MARCH | APRIL |
| 1st - NOVEMBER PAYMENT & REVENUE REPORT | 1st - DECEMBER PAYMENT & REVENUE REPORT | 1st - JANUARY PAYMENT & REVENUE REPORT | 1st - FEBRUARY PAYMENT & REVENUE REPORT |
| 30th - NOVEMBER - JANUARY MARKETING REPORT | 28th - NOVEMBER - JANUARY MAINTENANCE COST REPORT | 30th - FEBRUARY TRAFFIC REPORT | 30th - FEBRUARY - APRIL MARKETING REPORT |
| 30th - DECEMBER TRAFFIC REPORT | 28th - JANUARY TRAFFIC REPORT | | 30th - MARCH TRAFFIC REPORT |
| | | | |
| MAY | JUNE | JULY | AUGUST |
| 1st - MARCH PAYMENT & REVENUE REPORT | 1st - APRIL PAYMENT & REVENUE REPORT | 1st - MAY PAYMENT & REVENUE REPORT | 1st - JUNE PAYMENT & REVENUE REPORT |
| 30th - FEBRUARY - APRIL MAINTENANCE COST REPORT | 30th - MAY TRAFFIC REPORT | 30th - MAY - JULY MARKETING REPORT | 30th - MAY - JULY MAINTENANCE COST REPORT |
| 30th - APRIL TRAFFIC REPORT | | 30th - JUNE TRAFFIC REPORT | 30th - OCTOBER TRAFFIC REPORT |
| | | | |
| SEPTEMBER | OCTOBER | NOVEMBER | DECEMBER |
| 1st - JULY PAYMENT & REVENUE REPORT | 1st - AUGUST PAYMENT & REVENUE REPORT | 1st - SEPTEMBER PAYMENT & REVENUE REPORT | 1st - OCTOBER PAYMENT & REVENUE REPORT |
| 30th - AUGUST TRAFFIC REPORT | 30th - AUGUST - OCTOBER MARKETING REPORT | 30th - AUGUST - OCTOBER - MAINTENANCE COST REPORT | 30th - JULY TRAFFIC REPORT |
| | 30th - SEPTEMBER TRAFFIC REPORT | 30th - OCTOBER TRAFFIC REPORT | |
| | | | |