



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

Bureau of Rail & Transit
December 16, 2019

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

REQUESTED ACTION

Authorize the Department of Transportation to enter into a Memorandum of Agreement (“MOA”) with the New England Central Railroad, Inc. (Vendor # 160565), 200 Meridian Centre, Suite 300, Rochester, New York, to assign bridge maintenance and inspection responsibilities on the State-owned portion of the Northern Railroad Line to New England Central Railroad, Inc., to be effective upon Governor and Council approval through April 30, 2020.

EXPLANATION

In 2012 the United States Department of Transportation enacted Federal Railroad Administration (“FRA”) Bridge Safety Standards (49 C.F.R. §§ 237.1–237.155 (“Part 237”)), a requirement that railroad track owners establish and maintain a Bridge Management Program. The State, as railroad track owner, must comply with the FRA’s Bridge Safety Standards. In response, the New Hampshire Department of Transportation, through the Bureau of Rail & Transit, commenced a Bridge Management Program for all railroad bridges on the 201 miles of active State-owned railroad lines, including the State-owned portion of the Northern Railroad Line in Lebanon, New Hampshire.

Pursuant to an existing Railroad Operating Agreement, New England Central Railroad, Inc. provides freight service on the State-owned portion of the Northern Railroad Line. This Agreement apportions maintenance responsibilities between the State and New England Central Railroad, Inc., including the maintenance and inspection of bridges and structures. 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. Part 237 permits the State, as the railroad track owner, to assign these maintenance responsibilities to New England Central Railroad, Inc.

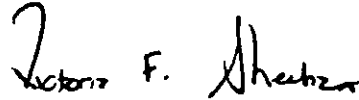
This MOA will streamline program processes and allow New England Central Railroad, Inc. to efficiently conduct bridge inspection, maintenance and reporting work. Per the Operating Agreement, New England Central Railroad, Inc. is required to provide regular reports to the Department on conditions, maintenance and repairs.

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

the Department of Administrative Services. Governor and Council approval is necessary as the MOA establishes an enforceable obligation in accordance with MOP 161. Subsequent to the Governor and Council approval, a copy of the MOA will be on file with the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,

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

Victoria F. Sheehan
Commissioner

Attachments

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, 2019.

OFFICE OF THE ATTORNEY GENERAL


Assistant Attorney General

Approved by Governor and Council on _____, 20____, Item # _____.

ATTEST: _____

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 12/3/19, 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

Ryan 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

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