



*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  
February 5, 2019

**REQUESTED ACTION**

Authorize the Department of Transportation to enter into a contract amendment with Advance Transit, Inc. (Vendor 166573), Wilder, Vermont, to increase the contract amount by \$112,500.00 from \$3,280,698.00 to \$3,393,198.00 for public transportation services in the Hanover-Lebanon area, effective upon Governor and Council approval through June 30, 2019. The original contract was approved by Governor and Council on June 7, 2017, Item #36. 100% Federal Funds.

Funding is available as follows:

04-96-96-964010-2916

Public Transportation

072-500575-0000 Grants to Non-Profits-Federal

FY 2019

\$112,500.00

**EXPLANATION**

The Department has approved a request for additional Federal Transit Administration (FTA) funding for Advance Transit, Inc. to assist in the provision of public transit service in the Hanover-Lebanon area. Advance Transit, Inc. is a private, non-profit organization that provides rural public transportation in the Upper Valley region of New Hampshire and Vermont. Each state's share of Advance Transit's funding is based on a Memorandum of Understanding (MOU) signed by the transit system and the two states and has been in effect since September 30, 1993.

The Department approved FTA Section 5311 Rural Area Formula Program funds for six rural transit systems, including Advance Transit, to assist with the provision of NH public transit services for a period of July 1, 2018 to June 30, 2019. The Department had a prior year balance of FTA Section 5311 carryover funds in the amount of approximately \$400,000 and contacted each of the rural transit systems to determine whether their system required additional funding for FY 2019. Two systems, Advance Transit and Southwestern Community Services, requested consideration for increased funds to sustain current service levels throughout FY 2019. The Department was able to identify and allocate additional FTA Section 5311 funds to accommodate both requests, which will help ensure transit services are not disrupted due to lack of funding. The subject FY 2019 contract amendment provides an additional \$112,500.00 of FTA Section 5311 funds to Advance Transit for operating expenses. Advance Transit will provide the required 50% non-Federal matching Funds.

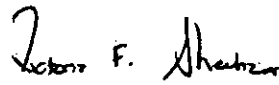
In the event that Federal Funds become unavailable, general funds will not be requested to support this program.

All other provisions of the agreement shall remain in effect.

The amendment has been approved by the Attorney General as to form and execution and the Department has verified that the necessary funds are available. Copies of the fully executed amendment are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to the Governor and Council approval will be on file at 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 fluid and cursive, with the first name "Victoria" and last name "Sheehan" clearly distinguishable.

Victoria F. Sheehan  
Commissioner

Attachments

## AMENDMENT TO AGREEMENT

### ADVANCE TRANSIT, INC.

WHEREAS, the Governor and Council approved an agreement between the New Hampshire Department of Transportation and Advance Transit, Inc. on June 7, 2017, (Item #36) effective July 1, 2017 through June 30, 2019 and this agreement remains in effect;

WHEREAS, the Price Limitation in Section 1.8 of the P-37 form is \$3,280,698;

WHEREAS, Exhibit B, Budget provides Federal Transit Administration (FTA) Section 5311 Non-Urban Area Formula grant program funds;

WHEREAS, the Department of Transportation has available FTA Section 5311 program funds for State Fiscal Year 2019;

**RESOLVED, that the agreement be amended as follows:**

Section 1.8, "Price Limitation" of the P-37 form to be amended to read \$3,393,198; (increase of \$112,500)

Exhibit B, Budget, Section I. shall be revised to include an additional \$112,500 of Federal Transit Administration (FTA) Section 5311 Non-Urban Area Formula program funds for State Fiscal Year 2019 for a revised contract total of \$3,393,198.

All other provisions of the agreement shall remain in effect.

Amended Exhibit B, Section I Budget appears below.

YdH9H 0 05169  
101910

10/10/19 10:10:10

### EXHIBIT B

#### BUDGET (REVISED)

- I. The Contract price, as defined in Section 1.8 of the General Provisions, is the FTA Section 5311 portion of the eligible project costs. Federal funds are granted as follows:

Section 5311	SFY 2018	SFY 2019	SFY 2019 Amendment	Total
Administration	\$420,409	\$420,409	\$0	\$840,818
Capital (PM)	\$412,176	\$412,176	\$0	\$824,352
Capital (ADA)	\$185,342	\$185,342	\$0	\$370,684
Operating	\$612,422	\$612,422	\$112,500	\$1,337,344
RTAP	\$10,000	\$10,000	\$0	\$20,000
Total Federal Funds	\$1,640,349	\$1,640,349	\$112,500	\$3,393,198

Revised Contract Funds = \$3,393,198

Funds are contingent upon Federal and State appropriation.

Advance Transit, Inc.

By: Matt Osborn

Date: 1/22/19

Title: President

Signature: Matt Osborn

County of Windsor

On this the 22 day of January, 2019, before me Christy K. Redreases, the undersigned officer, personally appeared Matt Osborn, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that (s)he has executed the same for the purposes therein contained.

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

[Signature]  
Notary Public/Justice of the Peace

NH Department of Transportation

By: Patrick C. Herlihy  
Director

Date: 2/12/19

Title: Aeronautics, Rail and Transit

Signature: [Signature]

Approved by Attorney General

By: Emily C. Goering

Date: March 5, 2019

Title: Assistant Attorney General

Signature: Emily C. Goering

Approved by Governor and Council

By: \_\_\_\_\_

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

**EXHIBITS TO AMENDMENT**

CERTIFICATE OF GOOD STANDING

CERTIFICATE OF CORPORATE VOTE

CERTIFICATE OF INSURANCE

# State of New Hampshire

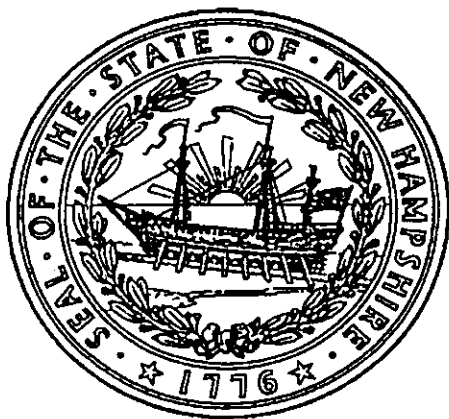
## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that ADVANCE TRANSIT, INC. is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on January 12, 1984. 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: 52688

Certificate Number: 0004388573



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 23rd day of January A.D. 2019.

A handwritten signature in cursive script, reading "William M. Gardner".

William M. Gardner  
Secretary of State

ADVANCE TRANSIT, INC.


ABSTRACT OF CORPORATE MINUTES

The following is a true abstract from minutes of the meeting of the Board of Directors of Advance Transit, Inc. on March 19, 1987 which meeting was duly called at which a quorum was present:

On a motion duly made and seconded, it was voted to authorize the President, to accept grants and awards and enter into contracts from time to time with the State of Vermont's Agency of Transportation, or New Hampshire Department of Transportation, and to sign and otherwise fully execute such acceptances and contracts and any related documents requested by vote of this governing board until such time as his successor is elected or appointed."

I certify the foregoing vote is still in effect and has not been revoked, rescinded or modified.

I further certify that Matt Osborn is the duly elected President of this corporation and still qualified and serving in such capacity.

  
Van J. Chesnut  
Assistant Secretary

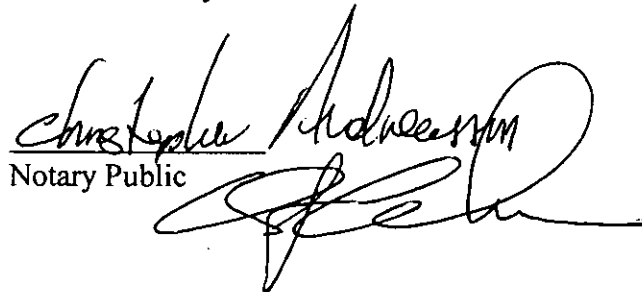
4/22/19  
(Date)

"No corporate seal."

STATE OF VERMONT  
COUNTY OF WINDSOR

On 22 Feb 2021 before the undersigned officer personally appeared the person identified in the foregoing certificate, known to me (or satisfactorily proven) to be the Assistant Secretary of the corporation identified in the foregoing certificate, and acknowledge that he executed the foregoing certificate.

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

  
Notary Public

Exp 31 Jan 2021



ADVATRA-01

RCARLLE

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/29/2018

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 Hickok & Boardman, Inc. 346 Shelburne Rd Burlington, VT 05401	CONTACT NAME: Melissa Kavanagh	
	PHONE (A/C, No, Ext): (802) 383-1621	FAX (A/C, No): (802) 658-0541
	E-MAIL ADDRESS: mkavanagh@hbinsurance.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: National Interstate Ins Co	NAIC # 32620
	INSURER B: Union Ins Co	25844
	INSURER C: Tokio Marine Specialty Insurance Company	23850
	INSURER D:	
	INSURER E:	
	INSURER F:	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR YVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X		GLR 0242225-04	07/01/2018	07/01/2019	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000 \$
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			CAR 0242225-04	07/01/2018	07/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WCA5153288-14	07/01/2018	07/01/2019	PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Pollution Liability			STEP011823-00	07/01/2018	07/01/2019	\$1,000,000 per Claim 2,000,000
C	Excess Employer Liab			PUB636631	07/01/2018	07/01/2019	\$0 Retention 4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The New Hampshire Department of Transportation is included as an additional insured under the General Liability policy per attached form CG 2010 04/13.

## CERTIFICATE HOLDER

## CANCELLATION

New Hampshire Department of Transportation  
Bureau of Rail and Transit  
PO Box 483  
Concord, NH 03302

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



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
ON FILE WITH THE COMPANY	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

- A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
1. Your acts or omissions; or
  2. The acts or omissions of those acting on your behalf;
- in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.
- However:
1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
  2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:**
- This insurance does not apply to "bodily injury" or "property damage" occurring after:
1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



Victoria F. Sheehan  
Commissioner

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

G+C #36  
date 6-7-17



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  
April 28, 2017

**REQUESTED ACTION**

Authorize the Department of Transportation to enter into an agreement with Advance Transit, Inc. (Vendor 166573), Wilder, Vermont, for an amount not to exceed \$3,280,698 for public transportation services in the Hanover-Lebanon area, for the period July 1, 2017 through June 30, 2019, effective upon approval by Governor and Council. 100% Federal Funds.

Funding for this agreement is available in the State fiscal year 2018 and 2019 budget, contingent upon the availability and continued appropriation of funds, with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified.

	<u>SFY 2018</u>	<u>SFY 2019</u>
04-96-96-964010-2916		
Public Transportation		
072-500575 Grants to Non-Profits-Federal	\$1,640,349	\$1,640,349

**EXPLANATION**

The Department has approved a request for Federal Transit Administration (FTA) funding from Advance Transit, Inc. to assist in the provision of public transit service. Advance Transit, Inc. is a private, non-profit organization that provides rural public transportation, including transportation for seniors and individuals with disabilities, in the Upper Valley region of New Hampshire and Vermont. Approximately three-fourths of Advance Transit's ridership and service is in New Hampshire and one-fourth in Vermont. Each state's share of Advance Transit's funding is based on a Memorandum of Understanding (MOU) signed by the transit system and the two states that has been in effect since September 30, 1993.

The bus schedule for Advance Transit, Inc. is attached to this Agreement.

The Department's proposed SFY 2018 and 2019 operating budget includes funds from the FTA Section 5311 Formula Grants for Rural Areas Program (Section 5311) that provides funds for capital, planning, and operating assistance for public transportation in rural areas with populations of less than 50,000. Advance Transit, Inc. has provided public transportation utilizing these funds since 1984. The Department has allocated federal funding for the SFY 2018-2019 biennium based on prior funding levels, applications received, and available FTA funds. For the SFY 2018-2019 biennium, the FTA Section 5311 allocation for Advance Transit, Inc. is \$3,280,698.

Advance Transit, Inc. will provide the required matching funds for FTA Section 5311 to include 20% for administration and/or capital and 50% for operations.

The Department released a public notice on January 10, 2017 announcing the availability of FTA Section 5311 funds. Applications for requested funding were due on February 21, 2017. The Department received applications for seven (7) rural public transit systems and one application was subsequently withdrawn. Funding was awarded to six (6) public transportation systems as follows:

Transit System	Applicant
Advance Transit (AT)	Advance Transit
Concord Area Transit (CAT)	Community Action Program Belknap-Merrimack Counties
Southwestern Community Services Transportation (SCST)	Southwestern Community Services
North Country Transit (NCT)	Tri-County Community Action Program
Carroll County Transit (CCT)	Tri-County Community Action Program
City Express	VNA @ Home Healthcare, Hospice & Community Services

An evaluation committee that consisted of Fred Butler (NHDOT Rail & Transit, Public Transportation Administrator), Michael Pouliot (NHDOT Rail & Transit, Transportation Specialist), and Karen Jennison (NHDOT Rail & Transit, Transit Grants Coordinator) reviewed, evaluated, and scored Section 5311 applications based on criteria as indicated in the application materials and the Department's State Management Plan for FTA programs. The evaluation matrix and scores are provided below for reference:

Evaluation Criteria	Weight
1. The proposed service effectively addresses a demonstrated community need, and/or the proposed service is a continuation or expansion of existing services.	15%
2. The applicant has the fiscal and technical capacity and adequate budget to operate its service.	15%
3. The applicant has successful experience in providing transportation services.	15%
4. The application shows coordination with other transportation providers in the service area: public, nonprofit, and for-profit.	10%
5. The applicant demonstrates involvement in and support for the project, financial and otherwise, on the part of citizens and local government.	10%
6. The applicant demonstrates effort to involve the private sector in the delivery of transportation services.	10%
7. The applicant successfully demonstrates service efficiency and effectiveness, measured in ridership, service miles and hours, costs, and fare recovery. New applicants must demonstrate the ability to measure performance and achieve goals.	15%
8. The applicant complies with relevant federal and state regulations, and has a history of compliance with regulations and reporting requirements.	10%
	100%

Transit System	Average Score
Advance Transit	90.20%
Community Action Program Belknap-Merrimack Counties Concord Area Transit	85.50%
VNA at HCS City Express	83.30%
Tri-County CAP North Country Transit	80.70%
Southwestern Community Services Southwestern Community Services Transportation	80.30%
Tri-County CAP Carroll County Transit	75.00%

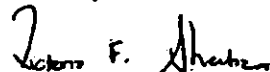
**Note:** Every application met the Department's criteria for inclusion in its SFY 2018-2019 public transit funding plan and will be awarded separate amounts for the aforementioned transit systems.

In the event that federal funds become unavailable, general funds will not be requested to support this program.

The Agreement has been approved by the Attorney General as to form and execution and the Department will verify the necessary funds are available pending enactment of the Fiscal Year 2018 and 2019 budget. Copies of the fully executed agreement are on file at the Secretary of State's Office and the Department of Administrative Services' Office, and subsequent to Governor and Council approval will be on file at the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,



Victoria F. Sheehan  
Commissioner

Attachments

Subject:

Advance Transit SFY 2018-2019 Public Transportation Services

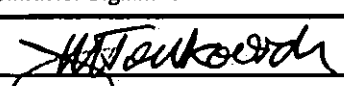
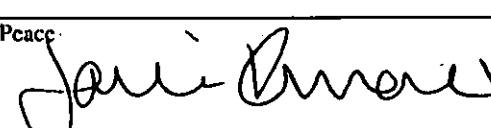
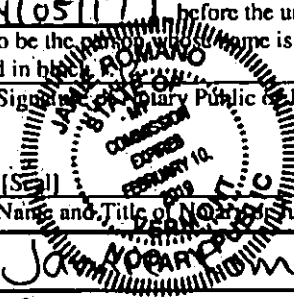
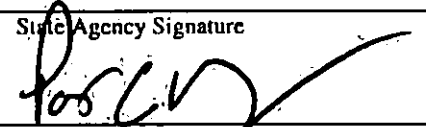
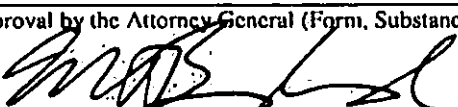
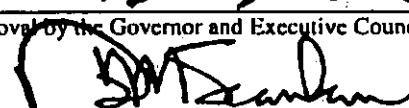
FORM NUMBER P-37 ( version 1/09)

## AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

## GENERAL PROVISIONS

## 1. IDENTIFICATION.

1.1 State Agency Name NH Department of Transportation		1.2 State Agency Address PO Box 483, 7 Hazen Drive, Concord NH 03302-0483	
1.3 Contractor Name Advance Transit, Inc.		1.4 Contractor Address PO Box 1027, Billings Farm Road, Wilder VT 05088	
1.5 Contractor Phone Number 1-802-295-1824	1.6 Account Number 04-96-96-964010-2916-072-5	1.7 Completion Date June 30, 2019	1.8 Price Limitation \$3,280,698.00
1.9 Contracting Officer for State Agency Michelle Winters, Bureau of Rail & Transit		1.10 State Agency Telephone Number 603-271-2468	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory J.M. Tonkovich, President, AD of Div.	
1.13 Acknowledgement: State of <u>VT</u> , County of <u>Windsor</u> On <u>04/05/17</u> before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person indicated in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.13.1			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal] 			
1.13.2 Name and Title of Notary Public or Justice of the Peace Jani Romano - Personal Banker			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Patricia C. Herlihy, Director	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>5/4/17</u>			
1.18 Approval by the Governor and Executive Council By:  <b>DEPUTY SECRETARY OF STATE</b> JUN 07 2017			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 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").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services 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 Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement, those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

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

6.1 In connection with the performance of the Services, 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.  
6.2 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.  
6.3 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.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, 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 Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.  
7.3 The Contracting Officer specified in block 1.9, 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.

## 8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

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

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

8.2.1 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;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

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

## 9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. **TERMINATION.** 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") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** 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.

12. **ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. **INDEMNIFICATION.** 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 paragraph 13 shall survive the termination of this Agreement.

## 14. INSURANCE.

14.1 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:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 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.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, 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 identified in block 1.9, 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 identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

#### **15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, 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. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. 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 the Services under this Agreement.

**16. WAIVER OF BREACH.** 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.

**17. NOTICE.** 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 in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** 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.

#### **19. CONSTRUCTION OF AGREEMENT AND TERMS.**

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.

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

**21. HEADINGS.** 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.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

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

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