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



*Victoria F. Sheehan*  
*Commissioner*

*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.

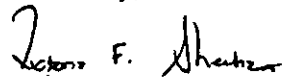
Pursuant to Section 1.15 of the current Operating Agreement, NECR notified the Department on April 30, 2019 that it wished to renew its operating agreement. The Department and NECR have been actively negotiating the terms of a new 10-year Operating Agreement however as the terms have not been finalized, 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,

A handwritten signature in black ink that reads "Victoria F. Sheehan". The signature is written in a cursive style with a large initial "V".

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.

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:   
Leonard Wagner, President

Date: 03/20/2020

Print Name and Title

**STATE OF NEW HAMPSHIRE**  
**Department of Transportation**

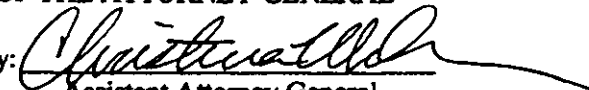
By:   
~~Patrick Tierlity, Director~~ Victoria F. Sheehan  
Division of Aeronautics, Rail & Transit Commissioner  
New Hampshire Department of Transportation

Date: 3/26/2020

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The foregoing Amendment, having been reviewed by this office, is approved as to form and execution on March 26, 2020.

OFFICE OF THE ATTORNEY GENERAL

By:   
Assistant Attorney General

Approved by Governor and Council on \_\_\_\_\_, 20\_\_\_\_, Item # \_\_\_\_\_.

ATTEST: \_\_\_\_\_  
Secretary of State

# State of New Hampshire

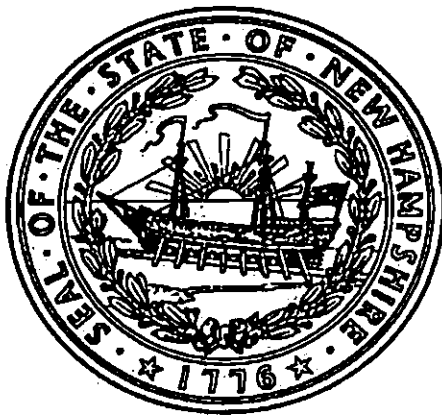
## Department of State

### 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: 0004852599



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 March A.D. 2020.

A handwritten signature in cursive script, 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**

**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

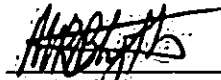
RESOLVED, that the Authorized Officers are hereby authorized to take or cause to be taken in the name and on behalf of the Corporation any and all such actions in addition to those specifically referred to in the foregoing resolutions, including, without limitation, paying fees and expenses, making use 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.

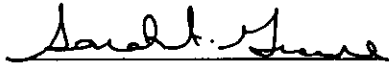
This written consent may be executed in two or more counterparts, each of which, when so executed, shall be deemed an original, and such counterparts together shall constitute but one and the same instrument.

*[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 Blyth  
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).

<b>PRODUCER</b> Marsh USA Inc. 1717 Arch Street Philadelphia, PA 19103 Attn: Philadelphia.certs@marsh.com	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No, Ext):</b> _____	<b>FAX (A/C, No):</b> _____
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
CN101924481--Railr-19-20 North		INSURER A : National Union Fire Ins Co. of Pittsburgh PA 19445
<b>INSURED</b> New England Central Railroad c/o Genesee & Wyoming Inc. 20 West Avenue Darien, CT 06820	INSURER B : Lexington Insurance Company	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

**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	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	<b>COMMERCIAL GENERAL LIABILITY</b> <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: _____					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ _____ \$	
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		CA1722337 (AOS) CA1722338 (MA)	11/01/2019 11/01/2019	11/01/2020 11/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ _____ \$	
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ _____ \$	
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N <input checked="" type="checkbox"/> N    N/A				PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$	
B	Railroad Liability Claims Made		026022521	11/01/2019	11/01/2020	Per Occurrence 5,000,000 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.

<b>CERTIFICATE HOLDER</b> The State of New Hampshire, Department of Transportation 7 Hazen Drive PO Box 483 Concord, NH 03302-0483	<b>CANCELLATION</b> 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**

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

**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, 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.

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 8<sup>th</sup> 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.

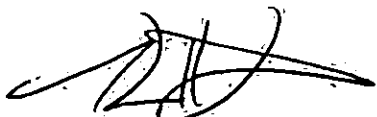
The Department hereby consents to an assignment of the Operating Agreement from the Claremont Concord Railroad Corporation to New England Central Railroad, Inc., 400 Meridian Centre, Suite 330, Rochester, NY, 14618 ("NECR"). By acceptance of the assignment of the Operating Agreement the NECR agrees to 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.

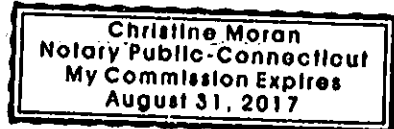
STATE OF Connecticut  
COUNTY OF Fairfield

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.

9/9/2015  
Date

  
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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Contractor Initials CF  
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 Dock 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 CF

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

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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 the 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.

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

CLAREMONT CONCORD RAILROAD CORP.

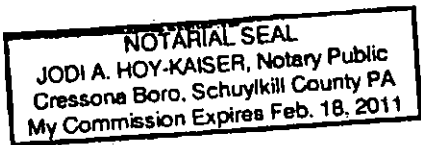
BY:

Christopher D. Freed

THE STATE OF Pennsylvania COUNTY OF Schuylkill

On this 5 day of October, 2009, before me, Jodi A. Hoy-Kaiser the undersigned officer, personally appeared Christopher D. Freed 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.



Jodi A. Hoy-Kaiser  
NOTARY PUBLIC

THE STATE OF NEW HAMPSHIRE

BY:

Jack W. Ferns  
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, Diane L. Hartford 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.

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

Diane L. Hartford  
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:

John J. Ill  
Assistant Attorney General

DEC 09 2009

APPROVED by Governor and Executive Council on \_\_\_\_\_

ATTEST:

Don Scanlon ITEM # \_\_\_\_\_

DEPUTY SECRETARY OF STATE

Contractor Initials CF

Date 10/5/09

**EXHIBIT A****CLAREMONT CONCORD RAILROAD, INC.****REPORT AND PAYMENT DUE DATES**

<b>JANUARY</b>	<b>FEBRUARY</b>	<b>MARCH</b>	<b>APRIL</b>
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
<b>MAY</b>	<b>JUNE</b>	<b>JULY</b>	<b>AUGUST</b>
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
<b>SEPTEMBER</b>	<b>OCTOBER</b>	<b>NOVEMBER</b>	<b>DECEMBER</b>
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	