



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, New Hampshire 03301

Bureau of Rail and Transit
December 10, 2021

REQUESTED ACTION

Authorize the Department of Transportation to enter into a contract with the New Hampshire Northcoast Corp., Ossipee, NH (VC#156085) for an amount not to exceed \$250,000.00 for track improvements on its privately-owned short line railroad, that runs between Rollinsford and Ossipee, NH in Strafford and Carroll Counties, effective upon Governor & Council approval through September 30, 2024. 100% Capital Funds.

Funding is available as follows:

FY 2022

04-96-96-960030-9346

Strafford & Carroll County Rail Improvements

034-500161 Capital Projects

\$250,000.00

EXPLANATION

Pursuant to the Laws of 2021, 21:1, XIV, 5, the State appropriated \$250,000.00 of capital budget funds to support the New Hampshire Northcoast Corp. rehabilitation project and match equivalent railroad funds. This agreement will also allow New Hampshire Northcoast Corp. to have materials ready for the start of the spring 2022 construction season in order to efficiently rehabilitate 5 bridges between Mile Post 73 and Mile Post 87.3, and a culvert at Mile Post 108 on the New Hampshire Northcoast Railroad in Ossipee, Milton and Somersworth, in the Counties of Strafford and Carroll, State of New Hampshire.

This agreement will provide funding for the New Hampshire Northcoast Corp. to make improvements to its 42-mile privately-owned short line railroad that runs between Rollinsford and Ossipee, NH. Improvements to and rehabilitation of this line will continue to allow rail freight movement of aggregate and other commodities and help provide safer operations and a safe increase in the weight and volume of rail cars on the corridor. Major components of the project include the rehabilitation and rebuilding of bridges between Mile Post 73.60 to Mile Post 87.3 on the main line and culvert at Mile Post 108 on the Ossipee Running Track. The repairs and improvements will allow the railroad to

maintain bridge capacity standards for 286,000 pound railroad cars and allow the railroad to better serve existing customers and attract new business.

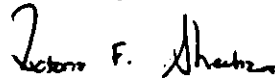
The total for this project is \$500,000.00. In addition to the State contribution of \$250,000.00, the New Hampshire Northcoast Corp. will provide matching funds for this project, in the amount of \$250,000.00.

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

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

Your approval of this resolution is respectfully requested.

Sincerely,

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

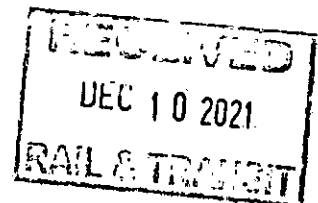
Victoria F. Sheehan
Commissioner

Attachments

**SPECIAL AGREEMENT (2021 NH CAPITAL BUDGET FUNDS)
NEW HAMPSHIRE NORTHCOAST RAIL IMPROVEMENT PROJECT**

**THE STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE NORTHCOAST CORP.**

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



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

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

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

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

Whereas, pursuant to Chapter 21:1XIV5, Laws of 2021, the State appropriated \$250,000 of capital budget funds to support the rehabilitation of 5 bridges between MP 73.60 and MP 87.3 and replace a culvert at MP 108 on the New Hampshire Northcoast Corp. in Ossipee, Milton and Somersworth in the Counties of Strafford and Carroll, State of New Hampshire.

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

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

1. AUTHORIZATION OF FUNDS

The NHDOT shall reimburse 50% of net project costs, not to exceed \$250,000, for the rehabilitation of 5 bridges on the New Hampshire Northcoast Railroad line in Somersworth and Milton, New Hampshire from MP 73.60 to MP 87.3, including the replacement of a culvert at MP 108 on the Ossipee Running Track. Funding for the Project shall include \$250,000 of Grantee funds and \$250,000 of State Capital Budget funds, with the overall Project totaling \$500,000.


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

2. PROJECT DESCRIPTION

The project consists of the rehabilitation of 5 bridges from MP 73.60 to MP 87.3 on the main line and a culvert replacement at MP 108 on the Ossipee Running Track of the New Hampshire Northcoast Corp. (NHNC) in Ossipee, Milton and Somersworth in Strafford and Carroll Counties, New Hampshire as described in the Scope of Work (EXHIBIT A). The work will be performed by or for the Grantee, and accepted by the NHDOT for reimbursement through Chapter 21:1XIV5, Laws of 2021, State of New Hampshire with funds provided by the Grantee and State Capital Budget funds.

3. DEFINITIONS

- A. Grantee – New Hampshire Northcoast Corp.
- B. Grantee's Representative - The Grantee shall designate a person to coordinate and manage all Grantee responsibilities regard the development of the Project.
- C. State – State of New Hampshire,
- D. NHDOT – New Hampshire Department of Transportation (through the Bureau of Rail & Transit).

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- E. Contracting Officer – Commissioner of NHDOT or the person designated by the NHDOT to coordinate and manage all NHDOT responsibilities regarding the Project.
- F. Agreement – SPECIAL AGREEMENT, NEW HAMPSHIRE NORTHCOAST RAIL IMPROVEMENT PROJECT.
- G. Scope – The Grantee shall furnish all personnel, facilities, equipment, and other materials and services (except as otherwise specified herein) necessary to perform the approved Project, as set forth in Exhibit A, Scope of Work, New Hampshire Northcoast Rail Corridor Improvement Project, Strafford and Carroll Counties, New Hampshire.
- H. Project Completion Date – **September 30, 2024**
- I. Net Project Cost – Eligible project cost less revenue (Project Income, i.e. rail salvage value)
- J. Project Cost – The total estimated cost of the Project as defined in the Scope of Work, which is described in the Proposed Track Rehabilitation Budget (Exhibit B), is \$500,000 and includes \$250,000 of State of NH Capital Budget funds and \$250,000 of NH Northcoast Corp. contributions. State reimbursement to the New Hampshire Northcoast Corp. under this Agreement shall not exceed \$250,000, which is State Capital Budget funds and represents 50% of net project costs.

4. CONTRIBUTION BY THE RAILROAD (Grantee)

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

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

5. REPORTING

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

6. REIMBURSEMENT PROCEDURES

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

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

7. GENERAL PROVISIONS

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

8. INDEMNIFICATION

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

9. PROJECT RECORDS

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

- A. Project Accounts – Grantee agrees to establish and maintain for the Project either a separate set of accounts or accounts within the framework of an established accounting system.
- B. Documentation of Project Cost and Program Income – All costs charged to the Project, including any approved services contributed by the Grantee or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Grantee agrees to maintain accurate records of all Program Income derived from Project implementation.

- C. Checks, Orders, and Vouchers – The Grantee agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

10. THIRD PARTIES

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

11. CONDITIONAL NATURE OF AGREEMENT

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

12. INTERPRETATION AND PERFORMANCE

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

13. ENTIRE AGREEMENT

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

14. TERMS

All of the provisions set forth in this Agreement, excepting Sections 9 and 18, shall be satisfactorily completed by the Project Completion Date of September 30, 2024. The Projection Completion Date may be changed with written concurrence between NHDOT and the Grantee.

15. NOTICE

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

To the NHDOT:

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

Attention: Louis A. Barker
Railroad Planner

To the Grantee:

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

Attention: Kevin Verrill
Operations Manager

16. SEVERABILITY

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

17. PROJECT COMPLETION, AUDIT, AND CLOSEOUT

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

18. CONTINUATION OF SERVICE, MAINTENANCE AND LIEN

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

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

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

19. TERMINATION AND DEFAULT

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

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

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

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

Grantee: New Hampshire Northcoast Corp.

Date: 12/9/21 By: Dean M. Boylan
(Name)
President
(Title)

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK

On 12/9/21, before the undersigned officer personally appeared Dean M. Boylan known to me (or satisfactorily proven) to be the President of the corporation identified in the foregoing document, and acknowledged that he executed the foregoing document.

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

12/9/21
Date

Julie L. O'Brien
Notary Public



State of New Hampshire, Department of Transportation

Date: 12/9/21 By: Patrick C. Herlihy
(Name)
Patrick C. Herlihy
Director
(Title) Aeronautics, Rail and Transit

The foregoing Agreement, having been reviewed by this office, is approved as to form and execution this 23 day of Dec., 2021.

THE OFFICE OF THE ATTORNEY GENERAL

By: Emily C. Stanish
Assistant Attorney General

Initial DMB

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

Date: _____

By: _____
Secretary of State

EXHIBITS TO AGREEMENT

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

Initial OMP

**EXHIBIT A
RAILROAD REHABILITATION PROJECT
SCOPE OF WORK**

Rehabilitation of Steel Beam Bridge, MP 73.60, Somersworth: The work includes granite wing wall repair, abutment & wing wall repointing and shimming bridge seats.

Rehabilitation of Steel Beam Bridge, MP 74.30, Somersworth: The work includes granite wing wall repair, abutment & wing wall repointing and shimming bridge seats.

Rehabilitation of Steel Beam Bridge, MP 85.40, Milton: The work includes granite wall repair, abutment - wing wall repointing, remove / replace detreating concrete under the bridge seats, shim all bridge seats and provide traffic control.

Rehabilitation of Granite Stone Arch, MP 85.90, Milton: The work includes granite wing wall repair, abutment & wing wall repointing and shimming bridge seats.

Rehabilitation of Timber Pile Trestle, MP 87.30, Milton: The work includes installation of new wood shims under all super structure beams including an existing condition survey prior to the start of work. Installation of concrete staples in various locations on the concrete abutments to minimize separation.

Replace Ossipee Runaround Culvert, MP 180.00: The work includes the removal of the corrugated metal pipe and replace with 18" RCP Pipe including a new head wall and stabilize the embankment.

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**EXHIBIT B
RAILROAD REHABILITATION PROJECT
PROJECT BUDGET**

Town	Mile Post	Structure	Superstructure	Total Cost	State Capital Funds	NH Northcoast Funds
Somersworth	73.60	Granite Block Walls	Steel Beam Open Deck Over water	\$ 30,000	\$ 15,000	\$ 15,000
Somersworth	74.30	Granite Block Walls	Steel Beam Open Deck Over water	\$ 30,000	\$ 15,000	\$ 15,000
Milton	85.40	Granite Block Walls	Steel Girders Open Deck / Road Below	\$ 90,000	\$ 45,000	\$ 45,000
Milton	85.90	Granite Stone Arch	Stream	\$ 233,000	\$ 116,500	\$ 116,500
Milton	87.30	Stone / Concrete Abutments	Timber Pile Trestle Open Deck Water Below	\$ 67,000	\$ 33,500	\$ 33,500
Ossipee	108	Corrugated Metal & Concrete Culvert	Stream	\$ 50,000	\$ 25,000	\$ 25,000
TOTAL				\$ 500,000	\$ 250,000	\$ 250,000

Note: Project funds can be shifted between items as necessary to address individual item's actual expenses coming in over or under budget; however the total amount of State Capital Funds shall not exceed \$250,000.

Initial OMB

EXHIBIT C

Insert Certificate of Good Standing

Initial DMB

State of New Hampshire

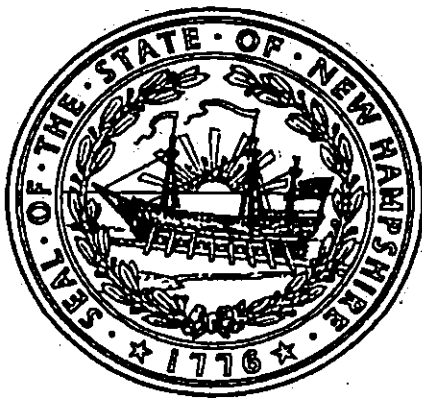
Department of State

CERTIFICATE

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

Business ID: 92653

Certificate Number: 0005476720



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 7th day of December A.D. 2021.

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

William M. Gardner
Secretary of State

EXHIBIT D

Insert Certificate Corporation Vote/Authority

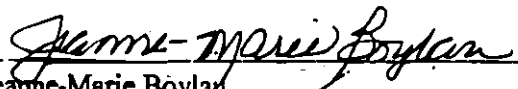
Initial EMJ

Certificate of Authority

I, Jeanne-Marie Boylan, Secretary of New Hampshire Northcoast Corp., a New Hampshire corporation, do hereby certify that Dean M. Boylan as President of New Hampshire Northcoast Corp. is authorized to execute any and all documents that may be necessary to enter into a contract with the State of New Hampshire.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract for which this certificate is attached. This authority remains valid for thirty (30) days from the date of this Corporate Resolution. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

In witness whereof, I have hereunto set my hand as the Secretary of New Hampshire Northcoast Corp., this 9th day of December 2021.



Jeanne-Marie Boylan
Secretary
Duly Authorized

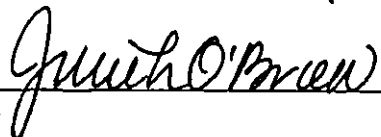
Notarization

*Commonwealth of Massachusetts
County of Suffolk*

On December 9, 2021, before me, Julie O'Brien, the undersigned officer, Jeanne-Marie Boylan, personally appeared and acknowledged herself to be the Secretary of New Hampshire Northcoast Corp. and that she, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.





Julie O'Brien
Notary Public

Commission Expires: March 31, 2028