



Victoria F. Sheehan  
Commissioner

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.  
Assistant Commissioner

Bureau of Rail and Transit  
June 5, 2019

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

**REQUESTED ACTION**

Pursuant to RSA 228:57 authorize the Department of Transportation to enter into a **RETROACTIVE** lease of a 65,100 square foot parcel of State-owned land located on the Northern Railroad Corridor in the City of Lebanon to Rymes Heating Oils, Inc. for \$21,538.00, retroactive to June 1, 2019 and effective upon Governor and Executive Council and ending April 30, 2020.

Rental income will be credited as follows:

FY 2019

04-096-096-964010-2991	
Special Railroad Account	
009-403532 Railroad Property Sale or Lease	\$21,538.00

**EXPLANATION**

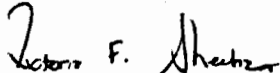
This request to enter into a lease agreement with Rymes is **retroactive** because the parties were unable to vet all railroad related issues, finalize lease terms and insurance requirements, and collect signatures in time to submit the lease for consideration by Governor and Council prior to June 1, 2019.

RSA 228:57 allows the Department to sell or lease portions of railroad property for the continued operation of a railroad. Pursuant to RSA 228:57, the Department of Transportation seeks to lease a 65,100 square foot parcel of the State-owned railroad corridor to Rymes Heating Oils, Inc. (Rymes). Rymes is currently utilizing the parcel in conjunction with active railroad operations by the New England Central Railroad (NECR), the entity with railroad operating rights to the subject property. The proposed lease will not interfere with NECR's active railroad operations because the parcel to be leased is adjacent to the railroad track that Rymes presently uses for unloading fuel products and related commodities pursuant to a Side Track Agreement between Rymes and NECR. In furtherance of current railroad operations, Rymes proposes to construct and maintain railroad fuel transload facilities.

Rymes has been utilizing the parcel pursuant to a temporary use agreement between Rymes and the Department, which expired on May 31, 2019. The Department proposes to lease the parcel to Rymes for an interim period while the operating agreement between the State and the railroad (NECR) is renegotiated and a more appropriate sublease is prepared between the railroad (NECR) and Rymes. The term of the lease shall terminate on April 30, 2020, or within thirty (30) days of the effective date of a new operating agreement between the State and NECR. The use of this parcel will enhance the railroad corridor's current use and a provision is included in the proposed lease relative to the removal or modification of the facility if necessary for improvements to railroad service.

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

**LEASE AGREEMENT**

THIS LEASE, made and entered into this 4<sup>th</sup> day of June, 2019, between the State of New Hampshire, Department of Transportation, hereinafter called the "LANDLORD", and Rymes Heating Oils, Inc., 257 Sheep Davis Road, Concord, NH 03301, hereinafter called the "TENANT".

WHEREAS, the LANDLORD is the owner of the hereinafter described property, which is not immediately required by the LANDLORD and has been requested by the TENANT to lease the property to the TENANT on an "as is" basis.

WHEREAS, the LANDLORD is willing to comply with said request, provided that the TENANT, as a condition to the occupancy of said premises, joins in the execution of this LEASE for the purpose of accepting each and every condition herein set forth during the occupancy of said premises by the TENANT.


NOW, THEREFORE, THIS LEASE WITNESSETH THAT:

**1. DEMISE OF THE PREMISES**

1.01 For and in consideration of the rent and the mutual covenants hereinafter stated, and the acceptance by the TENANT of each and every term and condition herein set forth, the LANDLORD hereby leases and demises to the TENANT the premises located in the City of Lebanon on the State-owned Northern railroad corridor and nearly opposite Engineering Station 3645+00+/- to 3650+00, as shown on the attached Railroad Valuation Section 32.1 Sheet 70 (EXHIBIT A).

**2. TERM AND EFFECTIVE DATE.**

- 2.01 The term of this lease shall begin on the 1st day of June, 2019 ("Lease Term").
- 2.02 This lease shall terminate on April 30, 2020, or within thirty (30) days of the effective date of a new operating agreement between the State of New Hampshire and New England Central Railroad, Inc. (hereinafter "Railroad Operator") for the Northern Railroad, unless terminated sooner in accordance with Condition 17.01 or 17.02.
- 2.03 The Effective Date of this Agreement shall be the date Governor and Council of the State of New Hampshire approve this LEASE ("Effective Date").
- 2.04 In the event that this LEASE does not become effective, the LANDLORD shall have no liability to the TENANT, including without limitation, any obligation to reimburse the TENANT for any costs incurred by the TENANT relating to its use of the premises. If the TENANT performs any alterations or improvements, or incurs any expenses associated with this LEASE prior to the Effective Date, the TENANT is doing so at the sole risk of the TENANT.

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3. **SECURITY DEPOSIT AND RENT**

3.01 Intentionally Omitted.

3.02 All real or personal property taxes assessed by the City of Lebanon as a result of this LEASE are not included in the rent and will be paid by the TENANT. In accordance with RSA 72:23, I(b), "failure of the lessee to pay any duly assessed personal and real estate taxes when due shall be cause to terminate said lease or agreement by the lessor."

3.03 Rent for the Lease Term shall be twenty-one thousand five hundred thirty-eight dollars (\$21,538), payable in advance, and due upon June 1, 2019. This payment shall be made payable to "TREASURER, STATE OF NH" and mailed to:

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
BUREAU OF FINANCE & CONTRACTS  
J. O. MORTON BUILDING  
PO BOX 483  
CONCORD NH 03302-0483

If the total rental amount is not paid within ten (10) days after the due date, the TENANT agrees to pay a late charge of 5% of the total rental amount due.

If this LEASE is terminated before April 30, 2020, the LANDLORD will reimburse the TENANT for the pro rata proportion of the remaining number of days for which rent has been paid in advance but during which the TENANT no longer occupy the premises.

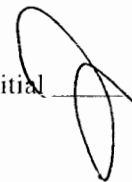
4. **QUIET ENJOYMENT**

4.01 The LANDLORD covenants and agrees that so long as the TENANT is not in default of any of the covenants and agreements of this LEASE, the TENANT's quiet and peaceful enjoyment of the premises shall not be disturbed or interfered with by the LANDLORD or any person claiming by or through the LANDLORD.

5. **USE OF PREMISES**

5.01 The premises shall be used and occupied by the TENANT exclusively as trans-load and short-term storage of fuel products transported by rail, and neither the premises nor any part thereof shall be used at any time during the term of this LEASE by the TENANT for the purpose of carrying on any other business, profession or trade of any kind. The TENANT shall comply with all laws, ordinances, rules and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of the demised premises during the term of this LEASE. The TENANT shall not use the premises in any manner that will disturb a neighbor's peaceful enjoyment of other property.

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- 5.02 The TENANT's use of the premises shall be as shown on EXHIBIT B and shall include the following equipment and site improvements: chain link fencing around its work area with lockable gates; two (2) storage tanks (currently unconnected and unused); a field office; site lighting.
- 5.03 The TENANT agrees that the purpose of this LEASE is to allow for the transportation and transloading of fuel products and is in furtherance of continued rail operations on the Northern Railroad. The TENANT's use of the premises shall not interfere with active railroad operations or the Railroad Operator's use of the railroad property.
- 5.04 No TENANT or visitor or invitee of the TENANT may park any motorized vehicle on any area, which is not designated specifically for parking. No unregistered motorized vehicles shall be stored upon the premises.

**6. MAINTENANCE OF PREMISES**

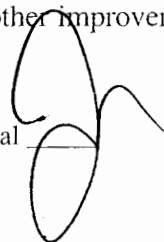
- 6.01 The TENANT acknowledges that the premises are in good order and repair at the beginning of the LEASE term, unless otherwise indicated by attached written statement. The TENANT shall at their own expense maintain the premises, including the structures and equipment located thereon, in a clean and sanitary manner. The TENANT shall not allow brush, leaves, grass or other plant matter, ice, snow, dirt or any other material to be placed on the premises.
- 6.02 The TENANT shall be responsible for any damage caused during this tenancy. The TENANT shall return the premises to the LANDLORD in as good order and condition as when received, ordinary wear and tear excepted. The TENANT agrees to be responsible for all single job repair costs. The LANDLORD reserves the right to select the persons or company to perform any such repairs. This provision shall survive the termination or expiration of this LEASE.

**7. DAMAGE TO PREMISES**

- 7.01 If the premises are damaged so as to render them untenable, then either party shall have the right to terminate this LEASE as of the date on which the damage occurs, through written notice to the other party, to be delivered within ten (10) days after the occurrence of such damage. However, should the damage or destruction occur as a result of any act or omission on the part of the TENANT or its invitees, then only the LANDLORD shall have the right to terminate this LEASE. Should the right to terminate be exercised, the rent for the current year shall be prorated between the parties as of the date the damage occurred.

**8. ALTERATIONS AND IMPROVEMENTS**

- 8.01 Except as otherwise provided for in this LEASE and the "Prosecution of Work" attached hereto as EXHIBIT C and incorporated by reference into this LEASE, the TENANT shall make no alterations to the premises or construct any building or make other improvements

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on the premises without the prior written consent of the LANDLORD. All alterations, changes, and improvements built, constructed, or placed on the premises by the TENANT, with the exception of fixtures removable without damage to the premises and movable personal property, shall, unless otherwise provided by written agreement between the LANDLORD and the TENANT, be the property of the LANDLORD and remain on the demised premises at the expiration or sooner termination of this LEASE.

**9. ENTRY AND INSPECTION**

9.01 The LANDLORD retains the right to enter the premises in the case of an emergency, or to inspect it or make necessary repairs, alterations, improvements, or to supply necessary or agreed services, or to exhibit the premises to prospective purchasers or tenants, workmen, contractors, or others, or when the TENANT has abandoned or surrendered the premises, or whenever necessary to determine the condition of the premises. Whenever practical the LANDLORD shall provide the TENANT with 24 hours notice prior to entry. Any indication of LEASE violations shall be grounds for immediate eviction action.

**10. ASSIGNMENT AND SUBLETTING**

10.01 Without the prior written consent of the LANDLORD, the TENANT shall not assign this LEASE, or sublet or grant any concession or license to use the premises or any part thereof. The LANDLORD may consult with the Railroad Operator prior to consenting to an assignment, subletting, concession, or license of this LEASE. A consent by the LANDLORD to one assignment, subletting, concession, or license shall not be deemed to be a consent to any subsequent assignment, subletting, concession or license. An assignment, subletting, concession, or license, by voluntary act of the Tenant, operation of law or otherwise, without the prior written consent of the LANDLORD or an assignment or subletting or operation of law, shall be void and shall, at the LANDLORD's option, terminate this LEASE.

**11. UTILITIES**

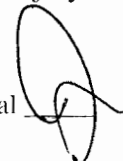
11.01 The TENANT shall be responsible for arranging for and paying for all utility services required on the premises.

12. Intentionally Omitted.

**13. INDEMNIFICATION AND INSURANCE**

13.01 The TENANT acknowledges that this LEASE is being requested for the TENANT's advantage and does not involve the Railroad Operator or LANDLORD's performance of their duties to the public. The TENANT further acknowledges that use of the premises by the TENANT will expose the LANDLORD and the Railroad Operator to additional liability to which they would not otherwise be exposed. Accordingly, the TENANT agrees that neither the LANDLORD nor the Railroad Operator shall be liable for injury or death

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of the TENANT or agent of TENANT, regardless of status as guest, invitee or trespasser, or for loss or destruction of or damage to any property of the TENANT or any agent of the TENANT while upon, or about, or in the use of the premises. The TENANT and its employees, contractors and agents agree to defend, indemnify, and hold harmless the LANDLORD, its officers, agents and employees, from and against any and all losses suffered by the LANDLORD, its successors and assigns, officers, agents, employees and operating railroad, from any and all claims, liabilities or penalties asserted against the LANDLORD, its successors and assigns, officers, agents 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 TENANT or from the use, maintenance, installation, removal or existence of this facility, regardless of any negligence on the part of the LANDLORD, the Railroad Operator or their agents or employees. Without limiting the foregoing, it is agreed that this covenant of indemnification shall apply to all cases of loss, damage, injury, death, cost or expense for which any party to this agreement may or shall be liable. For the purpose of this agreement, all persons using the premises shall be deemed agents of the TENANT. This covenant shall survive the termination of this LEASE.

13.02 The TENANT shall maintain Worker's Compensation Insurance or Pooled Risk Management Coverage in the amount as required by current State Statute.

13.03 The TENANT 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, designating "the State of New Hampshire" and the "New England Central Railroad, Inc." as additional named insureds:

13.03.1 Commercial General Liability:  
\$1,000,000.00 each occurrence/\$2,000,000.00 in the aggregate

13.03.2 Comprehensive Automobile Liability:  
\$500,000.00 combined single limit

13.03.3 Railroad Protective Public and Property Damage Liability:  
\$1,000,000.00 each occurrence/\$2,000,000.00 in the aggregate

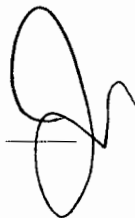
13.04 Procurement and delivery of a certificate indicating such insurance acceptable to the State is a condition precedent to the effectiveness of this LEASE. Nothing contained herein shall be construed as a waiver of sovereign immunity.

13.05 No provision of this LEASE is intended to waive any aspect of the State's sovereign immunity, and any possible counterclaims or defenses it may assert relative to any claim brought related to this LEASE or the premises.

#### 14. **HOLDOVER BY TENANT**

14.01 No holdover by the TENANT will be permitted.

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15. **DEFAULT**

15.01 The LANDLORD shall be the sole judge of what shall constitute a violation of the provisions of the LEASE, or the failure of the TENANT to otherwise abide by any of the covenants herein contained, and may order a discontinuance of the practices, or the performance of any of the work related to such default by giving the TENANT ten (10) days notice in writing. Failure of the TENANT to comply with the notice shall automatically give the LANDLORD the right to terminate this LEASE evict the TENANT and take full and complete possession of the premises.

16. **TERMINATION OF LEASE FOR CAUSE**

16.01 In the event that the TENANT shall default in the payment of any installment of rent or other sum herein specified and such default shall continue for ten (10) days after written notice, thereof, or if the TENANT shall default in the observance or performance of any other of the TENANT's covenants, agreements, or obligations hereunder and such default shall not be corrected within ten (10) days of written notice by the LANDLORD to the TENANT specifying such default and requiring it to be remedied then, and in such an event, the LANDLORD may serve a written notice of termination of this LEASE upon the TENANT and this LEASE and the term hereunder shall terminate and upon such termination the LANDLORD may immediately or at any time thereafter, without demand or notice enter into or upon the premises and repossess the same.

16.02 If it becomes necessary for the LANDLORD to institute suit for eviction or damages on account of rental arrears or violation of the terms of this LEASE, the LANDLORD shall be entitled to include in such suit for eviction or damages, a claim for attorney's fees and court costs incident thereto, which fees the TENANT hereby covenants and agrees to pay.

17. **TERMINATION FOR CONVENIENCE**

17.01 The LANDLORD may terminate the LEASE at any time by giving thirty (30) days notice thereof in writing, and may take full and complete possession of the premises hereby leased, at the end of said thirty (30) day period with no further liability of any nature whatsoever to the TENANT for so doing. Should the LANDLORD terminate this LEASE by giving the thirty (30) days notice during any period for which a full year's rent has already been paid, the LANDLORD will reimburse the TENANT for the pro-rata proportion of the remaining number of days for which rent has been paid in advance but during which the TENANT no longer occupy the premises.

17.02 The TENANT may terminate this LEASE Agreement at any time by giving at least thirty (30) days notice in writing, specifying in said notice the day (and the time of day) on which possession of the premises will be surrendered. The TENANT shall not vacate or leave the premises unattended on the day of surrender until the LANDLORD's representative shall have sufficient time to check the premises prior to taking formal possession thereof. In the event that the TENANT shall terminate this LEASE in accordance with the above



provisions, payment of rent shall cease at the end of the said thirty (30) day period, or at the end of the day on which possession shall be surrendered, whichever shall last occur.

**18. SURRENDER OF THE PREMISES**

18.01 In the event that the term or any extension thereof shall have expired or terminated, the TENANT shall peacefully quit and surrender to the LANDLORD the premises together with all improvements, alterations, or additions made by the TENANT, which cannot be removed without damaging the premises. The TENANT shall remove all personal property and shall repair any damage caused by such removal. The TENANT's obligations to observe or perform the covenants contained herein shall survive the expiration or termination of this LEASE.

**19. INDEMNIFICATION AND RELEASE FROM LIABILITY**

19.01 The TENANT further releases the LANDLORD, its agents and employees, from any and all claims or demands for damages or injuries of any nature whatsoever attributable to the taking, use and occupancy of any portion of the premises caused by the construction and maintenance by the State of New Hampshire of any transportation project or proposed project which abuts (or will abut) or may effect in any way the property herein leased.


**20. DISCRIMINATION PROHIBITED**

20.01 The TENANT hereby covenants and agrees that no person on the ground of race, color, national origin or sex, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the premises, and that in the construction of any improvements on, over or under such premises and the furnishing of services thereon, no person on the ground of race, color, national origin or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and that the TENANT shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

**21. MISCELLANEOUS**

21.01 LANDLORD's Agents. All rights and obligations of the LANDLORD under this LEASE may be performed or exercised by such agents as the LANDLORD may select.

21.02 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 registered or certified mail, postage prepaid, in a United States Post Office.

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To NHDOT/Landlord:

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

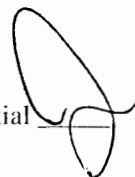
Attention: Louis A. Barker  
Railroad Planner

To the Tenant:

Rymes Heating Oils, Inc.  
257 Sheep Davis Road  
Concord, NH 03301

Attention: Mr. Brian G. Woodward  
Chief Financial Officer

- 21.03 Extent of Instrument, Choice of Laws, Amendment, etc. This LEASE, which may be executed in a number of counterparts, each of which shall have been deemed an original, but which shall constitute one and the same instrument, is to be construed according to the Laws of the State of New Hampshire, is to take effect as a sealed instrument, is binding upon, inures to the benefit of, and shall be enforceable by the parties hereto and their respective successors and assigns. This LEASE 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 unless no such approval is required under the circumstances pursuant to State law, rule or policy.
- 21.04 No Waiver of Breach. No assent, by either party, whether express or implied, to a breach of covenant, condition or obligation by the other party, shall act as a waiver of a right of action for damages as a result of such breach, or shall be construed as a waiver of any subsequent breach of the covenant, condition or obligation.
- 21.05 Unenforceable Terms. If any terms of this LEASE or any application thereof shall be invalid or unenforceable, the remainder of this LEASE and any application of such term shall not be affected thereby.
- 21.06 Entire LEASE. This LEASE embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.
- 21.07 No Waiver of Sovereign Immunity. No provision in this LEASE is intended to be nor shall it be interpreted by either party to be a waiver of the State's sovereign immunity.



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

TENANT:

By: [Signature]  
Print Name and Title  
Sam Rymas VP

Date: June 4, 2019

STATE OF NH  
COUNTY OF Merrimack

On, June 4th, 2019, before the undersigned officer personally appeared John Rymes known to me (or satisfactorily proven) to be the VP 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.

6/4/19  
Date

[Signature]  
Notary Public



LANDLORD:  
STATE OF NEW HAMPSHIRE  
Department of Transportation

By: [Signature]  
Commissioner

Approved by Attorney General this 7 day of June, 2019, as to form and execution.

By: [Signature]  
Assistant Attorney General

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

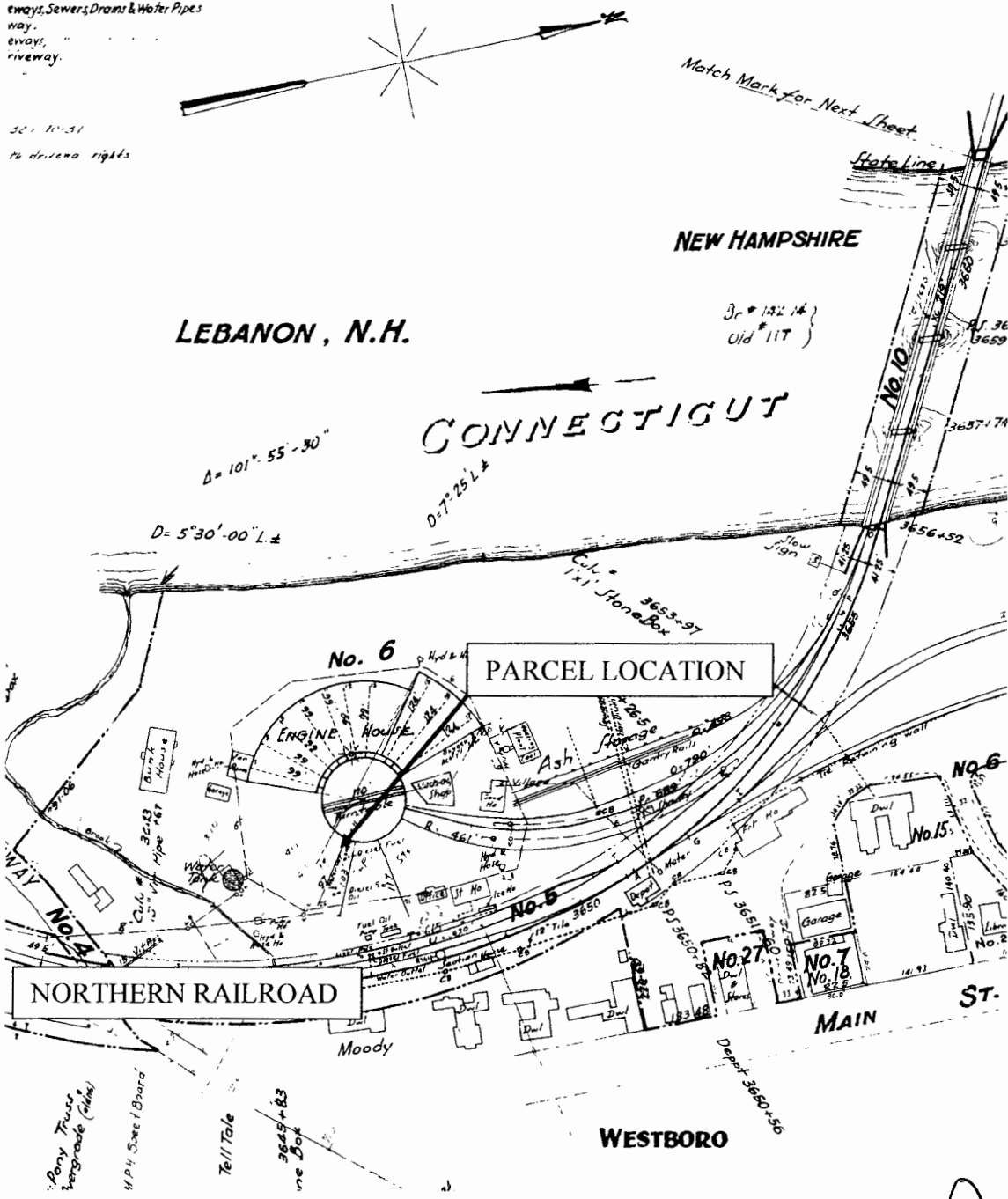
ATTEST: \_\_\_\_\_  
Secretary of State


Initial [Signature]

**EXHIBIT A**

**NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
BUREAU OF RAIL & TRANSIT**

**LEASED TO RYMES HEATING OILS, INC.  
Valuation Section 32.1 Sheet 70  
Engineering Station 3645+00 +/- to 3650+00  
LEASED AREA 65,100 +/- SQ. FT.**



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## **PROSECUTION OF WORK ON NH DOT RAILROAD PROPERTY**

### **DESCRIPTION OF WORK**

This Prosecution of Work covers the use of a portion of the State-owned Northern Railroad Line Westboro Railroad Yard in West Lebanon, New Hampshire by Rymes Heating Oils (“TENANT”) for the storage and staging of materials and equipment related to the transloading of Propane from railroad cars to delivery trucks. The TENANT will access the work site from Railroad Avenue on the east side of the railroad corridor. The TENANT is only authorized to cross the railroad corridor at existing crossings and not come any closer to the railroad tracks than 15 ft. at any other location.

A job office trailer, trucks, equipment, containers and tanks for the transloading, storage and transport of propane shall be located on the existing paved area easterly of the old engine house. This Prosecution of Work and the accompanying LEASE cover the portion of the NH DOT owned railroad property used by the TENANT that is outside the portion covered in the side track agreement between the TENANT and New England Central Railroad.

### **RAILROAD OWNER & OPERATOR**

The Railroad Corridor Owner and Operator in the subject area are:

State of New Hampshire Department of Transportation (Railroad Corridor Owner)  
Bureau of Rail & Transit  
PO Box 483  
Concord, New Hampshire 03302  
Tel. (603) 271-2468

New England Central Railroad (Railroad Operator)  
Mr. Jeffrey Castle, General Manager  
1 Depot Street  
Palmer, MA 01690  
Tel. (716) 827-2718

### **RAILROAD COORDINATION**

The portion of the NH DOT railroad property covered and described in the LEASE and shown in Exhibit A is located adjacent to an active railroad line that has both scheduled and unscheduled train traffic daily. The TENANT shall not impede train traffic or railroad activities in any way by the use of NH DOT railroad property. The TENANT shall check **DAILY** with the Railroad Operator to coordinate the TENANT’s work with anticipated train movements for that day. The State and the Railroad Operator shall not be held liable for any delays in the TENANT’s movements or work caused by the Railroad Operator blocking the crossings while moving and switching rail cars.

## **RIGHT-OF-WAY AND PROTECTION OF PROPERTY**

The TENANT shall not modify, excavate, bury materials or alter the NH DOT railroad property in any way without first obtaining written approval and permission of the NH DOT Bureau of Rail & Transit.

The TENANT shall not block or restrict access to the historical railroad structures, land leased or owned by the City of Lebanon or the City of Lebanon sewer facility in its use of NH DOT railroad property.

## **CONSTRUCTION REQUIREMENTS**

The TENANT shall comply with the following requirements to enter onto utilize the NH DOT Railroad property to perform their work:

1. The TENANT shall contact Dig Safe (1-888-344-7233) prior to starting any preparatory site work on the project. The TENANT is responsible for locating all underground utilities and preventing damage to them during their operations. The TENANT shall notify the NH DOT Bureau of Rail & Transit in advance of requesting a Dig Safe permit.
2. The TENANT shall submit a plan to the NH DOT Bureau of Rail & Transit showing any proposed facility changes and shall obtain the approval and permission from the Bureau of Rail & Transit prior to making any modifications to the storage area or operations.
3. The TENANT shall apply for and obtain all City of Lebanon Permits prior to making any changes to their operations or to their proposed modifications to the site.
4. No additional work or modifications to the site or transload operations on this site shall be made without the prior approval of the NH DOT Bureau of Rail & Transit. This includes making any hookups or modifications to the existing unused unconnected propane storage tanks sitting on the site.
5. The TENANT shall erect any required fencing and other protection measures necessary around the subject property and operations.
6. **Crossing Protocols** – The TENANT's, subcontractor's and supplier's vehicles and equipment shall come to a FULL STOP a safe distance from the tracks at all crossings. The vehicle operator shall look both ways to ensure a train is not coming before proceeding across the tracks.
7. The TENANT shall be responsible for all costs to repair damage to the railroad property caused by their work.
8. Upon termination of the LEASE, unless a subsequent lease is successfully entered into between the TENANT and the State or the Railroad Operator, the TENANT shall regrade the site, remove all of its equipment and materials and return all disturbed areas of the railroad property to their original condition. In addition the TENANT shall be responsible for 50% of the cost to repave the entire asphalt paved area when all of their operations are complete. Repaving must be completed within eight (8) months of the TENANT vacating the property. If not completed within 8 months the TENANT will not be responsible for 50% or any portion of the cost. The

## EXHIBIT C

TENANT will pay its portion directly to the paving contractor and the contractor should bill the TENANT directly for 50% of the cost. The TENANT's portion of the cost will not exceed \$10,000. (Note: This section shall be included in any prevailing lease.)

9. Upon termination and without a prevailing lease, the TENANT shall notify the NH DOT Bureau of Rail & Transit when all work on the railroad property has been completed, including all clean up, so the Bureau can send a representative to inspect the work area. The TENANT will be required to complete all cleanup work that is found to be unsatisfactory by the Bureau. If the TENANT does not complete the required work, including fence reconstructions and paying its apportioned cost for repavement, then the Bureau will hire other contractors to perform the work and bill the costs to the TENANT.

# State of New Hampshire

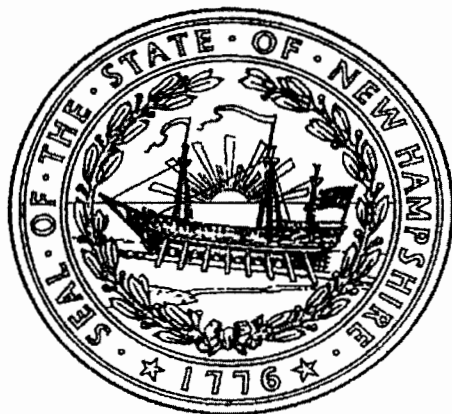
## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that RYMES HEATING OILS, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on November 07, 1973. 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: 14827

Certificate Number: 0004523091



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 3rd day of June A.D. 2019.

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State



**RYMES HEATING OILS, INC.**

**Unanimous Consent of Directors to Action  
in Lieu of Special Meeting**

The undersigned, being all of the directors of Rymes Heating Oils, Inc., a corporation organized and existing under the New Hampshire Business Corporation Act (NH RSA 293-A) (the "Company"), do hereby waive any and all notice requirements of the Company's Bylaws and consent pursuant to New Hampshire RSA 293-A:8.21, that the following actions be taken in lieu of a special meeting with such actions to be effective as of June 4, 2019:

RESOLVED: That the Company be authorized to become a party to, and perform its duties and exercise its rights under (i) the Lease Agreement (the "Lease") by and among the Company and the New Hampshire Department of Transportation, Bureau of Rail and Transit, in substantially the form attached hereto as Exhibit A and (ii) each of the other documents and agreements that are contemplated by the Lease or are otherwise necessary or useful in connection therewith, which documents and agreements shall be in a form acceptable to the Officers of the Company (together with the Lease, the "Transaction Documents");

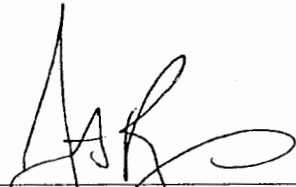
RESOLVED: That the Officers of the Company be, and they hereby are, and each of them acting singly hereby is, authorized, for and on behalf of the Company, to negotiate, execute and deliver the Transaction Documents for and on behalf of the Company and in its name, the execution of such Transaction Documents by such Officer to be conclusive evidence of the authorization of his or her approval of any change and of the authorization of his or her execution and delivery of such Transaction Documents;

RESOLVED: That the Officers of the Company be, and they hereby are, and each of them acting singly hereby is, authorized, for and on behalf of the Company and in its name, to execute, acknowledge, seal and deliver all such instruments, agreements and other documents, and to do all such acts and things, as they or any of them shall deem necessary, desirable or appropriate in order to consummate and perform the transactions described in and contemplated by the Transaction Documents, or to otherwise carry out the intent and purpose of any of the foregoing Resolutions; and

RESOLVED: That all actions heretofore taken by any Officer of the Company which would have been authorized if taken after adoption of the foregoing Resolutions be, and they hereby are, and each of them hereby is, approved, adopted, ratified and confirmed.

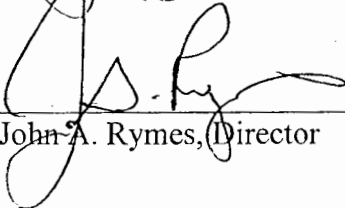
This Consent may be executed in any number of counterparts, all of which when taken together shall constitute a single original consent.

IN WITNESS WHEREOF, the undersigned have executed this written Consent as of the date first written above.



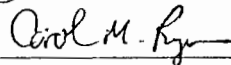
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James T. Rymes, Director



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John A. Rymes, Director



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Carol M. Rymes, Director

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 6/04/2019

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 any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: USI Insurance Services, LLC, 75 John Roberts Road, Building C, South Portland, ME 04106, 855 874-0123. CONTACT NAME: USI Insurance Services, LLC, PHONE (A/C, No, Ext): 855 874-0123, FAX (A/C, No): 877-775-0110. INSURED: Rymes Heating Oils, Inc., 257 Sheep Davis Rd., Concord, NH 03302. INSURER(S) AFFORDING COVERAGE: INSURER A: Citizens Insurance Company of America (31534), INSURER B: Hanover Insurance Company (22292), INSURER C: Certain Underwriters at Lloyds (85202), INSURER D: Allmerica Financial Benefit Ins. Co. (41840).

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.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability (ZBPD07788402), Automobile Liability (AWPD07789002), and Workers Compensation and Employers' Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Re: New England Central Railroad, 2 Federal Street, St. Albans, VT 05470. General Liability policy includes Contractual Liability Railroads Endorsement #CG2417 10 01. General Liability and Auto policies provide blanket additional insured status to New England Central (See Attached Descriptions)

CERTIFICATE HOLDER: State of New Hampshire, NH Department of Transportation, PO Box 483, Concord, NH 03302-0483. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: [Signature]

## DESCRIPTIONS (Continued from Page 1)

Railroad, Inc. and the State of New Hampshire as required by written contract.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/05/2019

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 any rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> USI Insurance Services, LLC 75 John Roberts Road, Building C South Portland, ME 04106 855 874-0123	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): <b>855 874-0123</b>		<b>FAX (A/C, No): 877-775-0110</b>
	<b>E-MAIL ADDRESS:</b>		
	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b> 22292
<b>INSURED</b> State of New Hampshire NH Department of Transportation New England Central Railroad PO Box 483 Concord, NH 03302-0483	<b>INSURER A :</b> Hanover Insurance Company		
	<b>INSURER B :</b>		
	<b>INSURER C :</b>		
	<b>INSURER D :</b>		
	<b>INSURER E :</b>		
	<b>INSURER F :</b>		

**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 INSR	SUBR 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 <input type="checkbox"/> OTHER						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ 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? <input type="checkbox"/> Y/N <input type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>Railroad Protective Liab.</b>			TBD	6/5/2019	6/5/2020	1,000,000 Occurrence 2,000,000 Aggregate

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

Re: New England Central Railroad, 2 Federal Street, St. Albans, VT 05470

Policy issued per written contract with Rymes Heating Oils, Inc.

**CERTIFICATE HOLDER**      **CANCELLATION**

<b>NH Department of Transportation</b> Bureau of Rail & Transit PO Box 483 Concord, NH 03302-0483	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



P.O. Box 3898  
 Concord, NH 03302-3898  
 (603) 224-7337

## CERTIFICATE OF INSURANCE

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.

**This is to certify that:**      Rymes Heating Oils, Inc      **Certificate #: 69**  
    Post Office Box 2948  
    Concord, NH 03302-2948

Is, at the issue date of this certificate, insured by the Company, under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and conditions and is not altered by any requirement, term or condition or other document with respect to which this certificate may be issued.

COVERAGE AFFORDED UNDER WC LAW OF THE FOLLOWING STATE:      NH

TYPE OF POLICY	EXP DATE	POLICY NUMBER	LIMIT OF LIABILITY	
	Continuous*			
	Extended			
	Policy Term			
Workers' Compensation Any Proprietor/Partner/Executive Officer/Member Excluded? Yes: <input type="checkbox"/> If yes, describe under Description of Operations below	01/01/2019-01/01/2020	P000654NHMTA2019	Bodily Injury By Accident	\$1,000,000
			Bodily Injury by Disease Policy Limit	\$1,000,000
			Bodily Injury by Disease Each Person	\$1,000,000
Description of Operations:				
ADDITIONAL COMMENTS:				

\*If the certificate expiration date is continuous or extended term, you will be notified if coverage is terminated or reduced before the certificate expiration date.

NOTICE OF CANCELLATION: (Not applicable unless a number of days is entered below.) Before the stated expiration date, the company will not cancel or reduce the insurance afforded under the above policies until at least 30 days. Notice of such cancellation has been mailed to:

NH MOTOR TRANSPORT ASSOCIATION SELF-INSURANCE GROUP TRUST

State of New Hampshire Department of  
 Transportation

PO Box 483  
 Concord, NH 033020483

Authorized Representative

Concord, NH	603-224-7337	06/04/2019
Office	Phone Number	Date Issued

POLICY NUMBER: ZBP D077884 02

COMMERCIAL GENERAL LIABILITY  
CG 24 17 10 01

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## CONTRACTUAL LIABILITY – RAILROADS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Scheduled Railroad:	Designated Job Site:
New England Central Railroad Inc, 2 FEDERAL ST, ST. ALBANS, VT 05470	36 Railroad Ave, West Lebanon, NH 03784

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement)

With respect to operations performed for, or affecting, a Scheduled Railroad at a Designated Job Site, the definition of "insured contract" in the Definitions section is replaced by the following:

**9. "Insured Contract" means:**

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

