



Victoria F. Sheehan  
Commissioner

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

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William Cass, P.E.  
Assistant Commissioner

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

Bureau of Rail & Transit  
October 13, 2022

**REQUESTED ACTION**

The Department of Transportation requests placing this item on the Consent Calendar.

Authorize the Department of Transportation to enter into an Operating Agreement with the New Hampshire Central Railroad, Inc. (NHCR), Vendor 157337, North Stratford, New Hampshire, for the use of the state-owned portions of the North Stratford-Beecher Falls Railroad Corridor and portions of the Berlin, Groveton and Mountain Division Railroad Corridors in Coos County, NH for freight railroad service, effective upon Governor and Council approval through December 31, 2032, with a provision for renewal for an additional 10-year period, subject to Governor and Council approval, through December 31, 2042.

Income from the agreement will be credited as follows:

04-096-096-964010-2991  
Special Railroad Fund  
009-407323 Agency Income

**EXPLANATION**

The Department of Transportation owns a portion of the North Stratford-Beecher Falls Railroad Corridor and portions of the Berlin, Groveton and Mountain Division Railroad Corridors, including sections that remain available for freight railroad services and connect at North Stratford and Groveton, NH to the regional and national freight railroad network. These sections of state-owned corridors have been included in Operating Agreements between the Department of Transportation and two freight railroad providers, and approved by the Governor and Council, since May 12, 1993.

More recently, on March 28, 2012 the Governor and Council approved an Operating Agreement between the Department of Transportation and the New Hampshire Central Railroad, Inc. (NHCR) to provide rail freight service on the active sections of the state-owned North Stratford-Beecher Falls, Berlin, Groveton and Mountain Division Railroad Lines and connect at North Stratford and Groveton, NH to the regional and national freight railroad network for the period of May 1, 2012 through December 31, 2021.

Pursuant to Section 1.15 of the current Operating Agreement, NHCR notified the Department on December 2, 2020 that it wished to renew its operating agreement. The Department and NHCR began active negotiations for the terms of a new 10-year Operating Agreement and twice requested additional

time; a 6-month extension, Amendment #1, was approved by Governor and Council, as Item 5C, on December 8, 2021, and a 6-month extension, Amendment #2, was approved by Governor and Council, as Item 5G, on June 29, 2022 and extended the completion date until December 31, 2022. The Department and NHCR have negotiated a renewed Operating Agreement for a ten-year period through December 31, 2032. This renewed Agreement allows NHCR and its shippers to continue to use the line, including for the delivery and transloading of plastics, fuels, and other products.

This Agreement has been reviewed and approved by the Office of the Attorney General for form and execution. Copies of the fully executed Agreement 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 Agreement will be on file with the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,



Victoria F. Sheehan  
Commissioner

Attachments

**OPERATING AGREEMENT**

**ON THE  
STATE-OWNED PORTION OF THE NORTH STRATFORD-BEECHER FALLS  
CORRIDOR, AND PORTIONS OF THE BERLIN, GROVETON, AND MOUNTAIN  
DIVISION RAILROAD CORRIDORS**

**BETWEEN**

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION**

**AND**

**NEW HAMPSHIRE CENTRAL RAILROAD, INC.  
NORTH STRATFORD, NH**

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## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_ 2022, between the State of New Hampshire, through the New Hampshire Department of Transportation, 7 Hazen Drive, P.O. Box 483, Concord, NH 03302-0483 (“the State”) and New Hampshire Central Railroad, Inc., PO Box 165, North Stratford, NH 03590-0165 (“the Contractor”), collectively referred to as (“the Parties”).

WHEREAS, the State owns a portion of the North Stratford-Beecher Falls Railroad Corridor and portions of the Berlin, Groveton and Mountain Division Railroad Corridors, as more particularly described in Section 2.1; and

WHEREAS, the Contractor provides Service on the North Stratford-Beecher Falls Railroad Corridor and portions of the Berlin, Groveton and Mountain Division Railroad Corridors pursuant to an Operating Agreement between the State and New Hampshire Central Railroad, Inc. dated February 17, 2012; and

WHEREAS, pursuant to Section 1.3 of the Operating Agreement dated February 17, 2012, the State and the Contractor desire to enter into a new Operating Agreement pursuant to the following terms and conditions:

### ARTICLE I - GENERAL CONDITIONS

1.1. DEFINITIONS – As used herein, the following terms have the meanings indicated:

- a. **“Completion Date”** means December 31, 2032, unless this Agreement is otherwise extended or renewed in accordance with Section 1.3.1 of this Agreement.
- b. **“Contracting Officer”** means the Commissioner of the New Hampshire Department of Transportation (NHDOT), or her successor or her 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.
- c. **“Contractor”** means New Hampshire Central Railroad, Inc., PO Box 165 North Stratford, NH 03590-0165.
- d. **“Contractor’s Representative”** means representative of the Contractor responsible for making contract decisions and will be the Contractor’s contact for the Contracting Officer.
- e. **“Effective Date”** means the date this Agreement is approved by the Governor and Council of the State of New Hampshire.
- f. **“Facilities”** – collectively means the real estate, track, culverts, bridges, signals, signage, switches, structures, buildings, and related railroad transportation property over which Service is to be provided.

- g. **“Final Report”** – means a 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 Completion Date.
- h. **“FRA”** means the Federal Railroad Administration of the United States Department of Transportation.
- i. **“In-Service Area”** means the active portion of the Line as follows:
  - a. North Stratford-Beecher Falls Section from MP P 131.93 (Station 1714+90) in North Stratford, New Hampshire to MP P 139.18 (Station 2100+00) in Columbia, New Hampshire
  - b. Berlin-Groveton Section from MP C 125.00 in Whitefield to MP C 145.76 in Northumberland; and
  - c. Mountain Division Section from MP P 100.91 to MP P 103.30 in Whitefield, New Hampshire.
- j. **“Line”**, as more particularly described in Section 2.1 of this Agreement, means the state-owned:
  - a. North Stratford-Beecher Falls Section beginning in North Stratford at MP P 131.93 (Engineering Station 1714+90) and heading Northerly to MP P 145.21 (Engineering Station 2409+50) in Colebrook
  - b. Berlin Railroad Section beginning in Bethlehem at MP C 119.86 and heading easterly to MP C 130.70 in Whitefield
  - c. Groveton Railroad Section beginning at MP C 130.70 (P 101.91) in Whitefield and heading northerly to MP C 145.76 in Northumberland
  - d. Mountain Division Section beginning in Whitefield at MP P 100.91 and heading northwesterly to MP P 111.57 in Lunenburg, Vermont.
- k. **“Major Maintenance Expenditure”** means any expenditure to address a condition on the Line that interrupts or is likely to lead to the interruption of Service or a condition that results or could result in bridge weight capacity restrictions on the Line while the condition exists. Major Maintenance Expenditures include, but are not limited to, bridge failures/rehabilitation, slope failures, culvert failures, major washouts, bridge weight capacity upgrades, and crossing rehabilitation or reconstruction.
- l. **“Out-of-Service Area”** means the inactive portion of the Lines as follows:
  - a. North Stratford-Beecher Falls Section from MP P 139.18 (Station 2100+00) in Columbia to MP P 145.21 (Station 2409+50) in Colebrook, New Hampshire; and
  - b. Berlin-Groveton Section from MP C 119.86 in Bethlehem to MP C 125.00 in Whitefield, New Hampshire; and
  - c. Mountain Division Section from MP P 103.30 in Whitefield, New Hampshire to MP P 111.57 in Lunenburg, Vermont.
- m. **“Gross Operating Revenue”** means those revenues derived by the Contractor from providing Service and Car Storage on the Line.
- n. **“Operations Manager”** means the Contractor’s representative responsible for day-to-day operation and maintenance on the State-owned line who will be the contact for the Bureau of Rail and Transit personnel.
- o. **“Operating Year”** means January 1 to December 31.

- p. “**Service**” means revenue freight trains carrying goods or returning from delivering goods on behalf of shippers and receivers on the Line.
- q. “**STB**” means the Surface Transportation Board.
- r. “**Subcontractor**” means an individual, partnership, firm, corporation, or any combination thereof, or joint venture, to whom the Contractor subcontracts any part of this Agreement.
- s. “**Termination Report**” means a 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.
- t. “**User Fee**” means the fee to be paid by the Contractor to the State for use of the Line to provide Service and Rail Car Storage, as more particularly defined in Article IV of this Agreement.

## 1.2. EFFECTIVE DATE/COMPLETION OF SERVICES.

- 1.2.1 Notwithstanding any provision of this Agreement to the contrary, this Agreement, and all obligations of the Parties hereunder, is subject to the approval of the Governor and Council of the State of New Hampshire. This Agreement shall become effective on the date the Governor and Council approve this Agreement.
- 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.
- 1.2.3 After termination of the Agreement the Parties shall be relieved of all obligations hereunder, except the Contractor shall at its own expense terminate its operations, relinquish the property, and file documents for discontinuance of service with the STB, and submit the final User Fee payment and a Final Report in accordance with the format and schedule of reports described in **Exhibit A** attached hereto and incorporated herein by this reference (hereinafter “Report and Payment Schedule”). Further, the Contractor’s continuing duty to maintain financial records per Section 4.5.1, the Contractor’s duty to defend, indemnify and hold harmless the State per Section 1.12.1, and the Contractor’s hiring limitation in Section 1.6.2 shall survive termination of this Agreement.

## 1.3. RENEWAL OF AGREEMENT.

- 1.3.1 The Contractor shall notify the State by **certified mail** no earlier than 18 months before the Completion Date, but 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 January 1, 2033. If the Contractor and the State cannot agree upon a new operating agreement by June 30, 2032 or the State is not satisfied with the Contractor’s level of service during the term of this Agreement, the State may at that time solicit new Requests for Proposals to operate

the Lines and have no further obligations for renewal of this Agreement with the Contractor.

**1.4. CONTRACTOR'S REPRESENTATION AND WARRANTIES.**

1.4.1 The Contractor represents and warrants the following:

- a. The Contractor is a corporation duly organized, validly registered with the New Hampshire Secretary of State, and in good standing under the laws of New Hampshire, 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 which 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.
- e. The Contractor's Representative is:

Edward W. Jeffrey, President  
New Hampshire Central Railroad, Inc.  
PO Box 165  
North Stratford, NH 03590-0165  
(603) 922-3400  
[ewj@myfairpoint.net](mailto:ewj@myfairpoint.net)

- f. The Operation Manager is:

Edward W. Jeffrey, General Manager  
New Hampshire Central Railroad, Inc.  
PO Box 165  
North Stratford, NH 03590-0165  
(603) 922-3400

**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 with appropriate jurisdiction 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, gender identity, disability, sexual orientation, national origin, or military status 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.

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 provided that the hiring of any such person as a result of a response to any general solicitation for employment through an untargeted advertisement made in the ordinary course of business shall not constitute a breach of this provision. This provision shall survive termination of this Agreement.

#### **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"):

- a. failure to perform the Service satisfactorily or on schedule as reasonably determined by the Contracting Officer;
- b. failure to submit any report required hereunder;

- c. failure of the Contractor to maintain the records required hereunder, or to permit access thereof;
  - d. failure to pay the User Fee to the State as required hereunder; and/or
  - e. 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 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 written notice of termination
  - 1.7.2.2 Treat this Agreement as breached and pursue any of its remedies at law or in equity, or both.

## **1.8. TERMINATION OF AGREEMENT.**

- 1.8.1 In the event this Agreement is terminated for any reason prior to the Completion Date, the Contractor shall comply with Section 1.2.3 and deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a Termination Report.
- 1.8.2 If at any time after the Effective Date the Contractor conducts Service fewer than sixty (60) days during any Operating Year, the State may terminate this Agreement. Upon termination the Parties shall be subject to Section 1.8.1.
- 1.8.3 In the event of a termination or expiration of this Agreement, the Contractor agrees that it shall, at its sole expense, obtain the necessary approvals from the STB to discontinue operations and turn over operating authority to a new railroad operator at the Contractor's sole expense.

## **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. TAXES AND UTILITIES.**

- 1.10.1 All railroad or corporate taxes assessed by the State of New Hampshire, including those specified in New Hampshire RSA 82, or the Federal Government as a result of this Agreement are the responsibility of the Contractor.
- 1.10.2 The Contractor shall be responsible for arranging and paying for any and all utility services, including but not limited to water, gas, and electricity, required for the Facilities during the term of this Agreement.
- 1.10.3 The Contractor shall not deduct from the User Fee payments to the State any costs for taxes and/or utilities paid by the Contractor.

**1.11. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

- 1.11.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the Contracting Officer. For purposes of this paragraph, a Change of Control shall constitute an assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.
- 1.11.2 None of the Service shall be subcontracted by the Contractor without the prior written consent of the Contracting Officer. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which the State is not a party.

**1.12. INDEMNIFICATION.**

- 1.12.1 Unless otherwise exempted by law, the Contractor shall defend, indemnify and hold harmless the State, its agencies, officers and employees, from and against any and all claims, demands, losses, liabilities, penalties, fines, judgments, awards, and costs for any personal injury or property damages, or other claims asserted against the State, its agencies, officers or 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, its employees, lessees, or Subcontractors, including but not limited to negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this Section 1.12.1. 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 shall survive the termination of this Agreement.

### 1.13. INSURANCE.

1.13.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any Subcontractor to obtain and maintain in force, the following insurance:

A. Railroad Protective Liability and Contractual Liability Insurance shall be purchased with the State named as an Additional Named Insured in the following amounts:

- i. five million dollars (\$5,000,000) for normal freight service
- ii. seven million dollars (\$7,000,000) if hazardous materials are shipped, each occurrence, with a maximum deductible of twenty-five thousand dollars (\$25,000)

B. Commercial Automobile Liability Insurance covering all motor vehicles including owned, hired, borrowed, and non-owned vehicles. Limits of Liability: \$1,000,000 Combined Single Limit for bodily Injury & Property Damage.

C. In accordance with RSA 281-A, the Contractor shall maintain, and require any Subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of this Agreement. Where applicable, Federal Employer Liability Act Coverage Endorsement shall be included.

D. Pollution Liability Insurance issued to and covering the liability of the Contractor arising out of the pollution or impairment of the environment, including costs of investigation and clean-up, caused by or relating to the Contractor's performance of services under this Agreement. Coverage under this policy (or policies) shall have limits of liability not less than \$1,000,000 per occurrence.

1.13.2 The policies described in Section 1.13 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the New Hampshire Department of Insurance and issued by insurers licensed in the State of New Hampshire.

1.13.3 The Contractor shall furnish to the Contracting Officer a certificate(s) of insurance for all insurance required under this Agreement. The Contractor shall also furnish to the Contracting Officer, or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days

prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**1.14. WAIVER OF BREACH.**

1.14.1 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.

**1.15. NOTICE.**

1.15.1 Any notice by a party hereto to the other party shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and sent by registered or certified mail (return receipt requested) with the United States Postal Service addressed to the Parties at the following addresses:

To the State:                Railroad Planner  
New Hampshire Department of Transportation  
Bureau of Rail & Transit  
PO Box 483  
Concord, NH 03302-0483

To the Contractor:        Edward W. Jeffrey, General Manager  
New Hampshire Central Railroad, Inc.  
PO Box 165  
North Stratford, NH 03590-0165  
(603) 922-3400

**1.16. AMENDMENT.**

1.16.1 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.

**1.17. CONSTRUCTION OF AGREEMENT AND TERMS.**

1.17.1 This Agreement shall be governed, interpreted, and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

**1.18. THIRD PARTIES.**

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

**1.19. HEADINGS.**

1.19.1 The headings throughout this 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.

**1.20. DISPUTE RESOLUTION.**

1.20.1 The Contracting Officer shall be the State's representative. In the event of any dispute concerning this Agreement, the interpretation of this Agreement and the resolution of any disputes by the Contracting Officer shall be final.

**1.21. SEVERABILITY.**

1.21.1 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.

**1.22. ENTIRE AGREEMENT.**

1.22.1 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 consists of the state-owned portions of the North Stratford-Beecher Falls Railroad Line, Berlin Railroad Line, Groveton Railroad Line, and Mountain Division Railroad Line, as more particularly described as follows:

2.1.1 North Stratford to Beecher Falls Section: All of the property of every kind and description, real, personal and mixed that was acquired by the State of New Hampshire from the Maine Central Railroad Co., and recorded in the Coos Country Registry of Deeds on March 21, 1977, Book 595, Pages 167 – 170 and the Canaan, VT Town Clerk's Office on May 6, 1977, Book 27, Pages 113 – 115, said property being located in the Towns of

Stratford, Columbia, Colebrook, Stewartstown, NH and the Town of Canaan, VT. Said property specific to this Agreement includes all real property, railroad and other fixtures and devices on the railroad corridor formerly owned by the Maine Central Railroad Co., from MP P 131.93 (Engineering Station 1714+90), in North Stratford to MP P 145.21 (Engineering Station 2409+50) in Colebrook, as shown on the plans of Federal Valuation Survey dated June 30, 1916, Sheets 7 to 20, on file in the records of the New Hampshire Department of Transportation, Bureau of Rail and Transit.

2.1.2 Groveton/Berlin Section: Said property includes all real property, railroad and other fixtures and devices on the railroad corridor formerly known as the Berlin Branch, Concord & Montreal White Mountains Division from MP C 119.86 (Engineering Station 1359+77), as shown on Valuation Map 22/26, to MP C 125.00 (Engineering Station 1629+30), as shown on Valuation Map 22/31, and also from MP C 125.00 (Engineering Station 2+33), as shown on Valuation Map 24.2/1, to Engineering Station MP C 130.70 (315+20), as shown on Valuation Map 24.2/6, and also on the railroad corridor formerly known as the Upper Coos Railroad from MP P 101.91 (Engineering Station 131+41), as shown on Valuation Map 19/3, to MP P 112.46 (Engineering Station 687+31), as shown on Valuation Map 19/14 and thence on the railroad corridor known as the Concord & Montreal White Mountains Division from MP C 137.42 (Engineering Station 2275+50+/-), as shown on Valuation Map 22/44, to MP C 145.76 (Engineering Station 2715+83), as shown on Valuation Map 22/52, on file in the records of the New Hampshire Department of Transportation, Bureau of Rail and Transit.

2.1.3 Mountain Division Section: That portion of the Mountain Division from MP P 103.30 (Engineering Station 5060+25) in Whitefield, as shown on Valuation Map V17/53, to MP P 111.57 (Engineering Station 5503+79.2) in Lunenburg Vermont, as shown on Valuation Map V18/03, formerly owned by the Maine Central Railroad. The Contractor shall be responsible for obtaining STB authority for such operation.

2.1.4 Mountain Division Section: That portion of the Mountain Division from Engineering Station MP P 100.91 (Engineering Station 4942+66+/-) in Whitefield, as shown on Valuation Map 17/51 to MP P 103.30 (Engineering Station 5060+25) in Whitefield, as shown on Valuation Map 17/53, subject to terms of the Trackage Usage Agreement between the CSRR & NHCR dated July 31, 2007.

- 2.2 Upon written agreement signed by the Contractor and the Contracting Officer, the Contracting Officer and the Contractor may at any time reduce the scope of Facilities subject to this Agreement.
- 2.3 As permitted by RSA 228:67 and other applicable state law, the State may sell portions of the Facilities which, in the sole judgment of the Contracting Officer are not needed for present or future railroad operations. If the State sells any portion of the Facilities during the term of this Agreement, such portion shall automatically be excluded from the Facilities described in Section 2.1 and shall not be subject to this Agreement.

- 2.4.1 The Facilities 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 Contracting Officer, conflict with the operations described in Article III of this Agreement. The State reserves to itself all rents, fees and revenues derived from such grants.
- 2.4.2 To the extent permitted by law, the Contracting Officer expressly reserves the right to authorize public outdoor recreational activity, including but not limited to recreational trails and the activities set forth in RSA 212:34, I(c), on any portion of the Facilities during the term of this Agreement which do not, in the sole judgment of the Contracting Officer, conflict with the operations described in Article III of this Agreement. By entering into this Agreement, the Contractor agrees to permit such recreational activity on the Facilities. In the event public recreational use is authorized by the Contracting Officer, the Contracting Officer shall provide written notice to the Contractor and the parties shall cooperate and supply any necessary information to support such recreational use and ensure that the use does not interfere with the operations described in Article III of this Agreement.
- 2.4.3 The State reserves to itself all rents, fees, and revenues derived from any authorized public recreational usage. The State and the Contractor, as owner and occupant of the Facilities, respectively, shall be entitled to and avail themselves of any and all recreational immunities under the law, including but not limited to RSA 508:14 and RSA 212:34.
- 2.5 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 Contracting Officer. Such consent shall not be unreasonably withheld, delayed or conditioned. All alterations, changes, and improvements built, constructed, or placed on the Facilities by the Contractor, shall unless otherwise provided by written agreement between the Contracting Officer 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 of Way shall become the property of the Contractor, unless otherwise indicated in writing by the Contracting Officer.
- 2.6 At the Contracting Officer's 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 Contracting Officer's satisfaction.

## 2.7. LEASING TO SHIPPERS & RECEIVERS.

- 2.7.1 The Contractor, with prior written approval by the Contracting Officer, may lease portions of the Facilities to others, including shippers and receivers, for railroad-related purposes, including but not limited to the construction and operation of

railroad sidings, loading platforms, transloading facilities, and other railroad-related facilities. The Contracting Officer shall not unreasonably withhold, delay nor condition such approval. In no event shall the Contracting Officer approve a lease pursuant to Section 2.7 if the completion date of such lease is later than the Completion Date of this Agreement.

- 2.7.2 Leases pursuant to Section 2.7 shall be subject to appropriate local taxes, and revenues from such leases shall be included in the Contractor's Gross Operating Revenue.
- 2.7.3 To obtain the Contracting Officer's approval, the Contractor shall provide to the Contracting Officer written notice of its desire to lease a portion of the Facilities and shall submit a copy of the proposed terms of the lease between the Contractor and the Contractor's lessee. Leases under this Section 2.7 shall be subject to this Agreement and this Agreement shall be incorporated by reference into any such lease.
- 2.7.4 In the event the Contractor seeks to lease a portion of the Facilities pursuant to this Section 2.8, the Contractor agrees to require the lessee to agree to the following terms:
- a. INSPECTION. The State has the right to enter the leased premises in the case of emergency, or to inspect it or make necessary repairs, alterations, improvements, or to exhibit the leased premises to others, or whenever necessary to determine the condition of the leased premises.
  - b. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor's lessee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all claims, demands, losses, liabilities, penalties, fines, judgments, awards, and costs for any personal injury or property damages, or other claims asserted against the State, its officers or 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 lessee, its employees, or subcontractors, including but not limited to negligence, reckless or intentional conduct. 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 shall survive the termination of the lease between the Contractor and the Contractor's lessee.
  - c. MODIFICATIONS. The Contractor's lessee shall submit to the Contracting Officer a plan showing any proposed changes to the leased premises and shall obtain approval and permission from the Contracting Office prior to performing any work or modifications to the leased premises or its operations. In the event the plan is approved by the Contracting Officer, the Contractor's lessee shall

apply for and obtain all necessary State, federal, and local permits or approvals prior to performing any work or modifications to the leased premises.

d. INSURANCE. The Contractor's lessee shall, at its sole expense, maintain the following minimum insurance requirements:

i. Commercial General Liability: \$1,000,000 each occurrence and \$2,000,000 general aggregate. The General Liability policy shall include Railroad Endorsement CG 2417 or its equivalent. The State of New Hampshire, its agencies, and its agents and employees shall be named as additional insureds.

ii. Commercial Automobile Liability Insurance covering all motor vehicles including owned, hired, borrowed, and non-owned vehicles. Limits of Liability: \$1,000,000 Combined Single Limit for bodily Injury & Property Damage.

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

Workers' Compensation Insurance in the amount as required by N.H. RSA 281-A.

The policies described in this Section 2.7.4 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the New Hampshire Department of Insurance and issued by insurers licensed in the State of New Hampshire.

Notwithstanding the foregoing, the Contracting Officer, in her sole discretion and taking into account the scope and character of the lessee's operations, may increase the required liability insurance requirements.

2.7.5 The Contracting Officer reserves the right to require the Contractor and the Contractor's lessee to include additional terms beyond those set forth in Section 2.7.4 in any proposed lease if the Contracting Officer, in the Contracting Officer's reasonable discretion, determines that such terms are necessary after evaluating the nature of the lessee's proposed use of the Facilities.

### 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 In-Service Area of the Lines. The Contractor shall be solely responsible for all phases and requirements of its operation, including, but not limited to, dispatching, assignment of power and cars, scheduling, workforce, equipment, advertising, and marketing. The Contractor may charge a reasonable

fee for operations on the In-Service Area by other railroad operators. The Contractor may manage and operate Service in the Out-of-Service Area of the Lines should new business warrant Service.

- 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 and receivers and customary in Contractor's industry.
- 3.1.3 The Contractor will endeavor to negotiate mutually acceptable rates and terms of service with shippers and receivers and commence Service. If at any time after the Effective Date the Contractor operates the Service fewer than sixty (60) days during any Operating Year, the State may terminate this Agreement.
- 3.1.4 Notwithstanding any other provisions of this Agreement, the Contractor agrees to allow temporary Service by others in the event that the Contracting Officer reasonably determines that the Contractor is unable to provide Service for reasons other than inability to reach agreement with shippers and/or the Contracting Officer regarding rates and terms of service on the Lines. Notice of Service by others must be given to the Contractor in writing and such temporary Service shall cease when Contractor has shown to the reasonable satisfaction of the Contracting Officer that Contractor has regained the ability to provide Service.
- 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 Timetable.
- 3.1.6 The Contractor shall immediately report all incidents as required by RSA 367:56 and the "Rail Safety Section Notification Requirements" attached hereto as **Exhibit B** and incorporated herein.

## 3.2 CAR STORAGE TERMS AND CONDITIONS

- 3.2.1 Notwithstanding any other agreement to the contrary; the temporary storage of railcars within the Facilities shall not be prohibited, restricted or otherwise modified, unless by mutual written agreement, when located on the following portions of the Lines:
  - 3.2.2 North Stratford-Beecher Falls Section
    - 3.2.2.1 Track beginning at a point 200-feet north of the northerly most turn-out at MP P 133.6+/- (aka MP 1.6+/-) and ending at the end of the in-service section at MP P 139.18 (aka MP 7.18+/-) within Towns of Stratford and Columbia.
  - 3.2.3 All storage tracks within the North Stratford Terminal Area MP P 133.25 and MP P 133.6, not utilized for freight service operations, to include tracks owned by the Railroad or the NHDOT.

### 3.2.3 Groveton and Berlin Sections

3.2.3.1 Storage Tracks in Town of Lancaster, south of Page Hill Road, on side tracks easterly at MP P 112.13 to MP P 112.41 and westerly at MP P 112.20 to MP P 112.42 of the main track, provided that no cars will be stored beyond foul points of the main track.

3.2.3.2 Tracks located westerly of Hazen Road (approximate Mountain Division section MP P101.05) to MP P103.20 and former B&M Berlin section MP 126.00 to MP 128.15 within the Town of Whitefield

3.2.3.3 Siding located westerly of NH 116 within the Town of Whitefield (Approximate MP C125.17 to MP C 125.71).

### 3.2.4 Systemwide Limitations

3.2.4.1 Cars will not be permitted to be stored in any locations that will block Public or Legal/Authorized Private Crossings or interfere with the safe sight distance or block visibility of a crossing. This determination shall be made in the sole judgment of the Contracting Officer.

3.2.4.2 Cars will not be placed on major bridges, nor within one car length either side of a perennial stream or water course, as determined in the sole judgement of the Contracting Officer.

3.2.4.3 Cars will not be placed where they will obstruct the scenic view of significant viewsheds, or adjacent to the Connecticut and Ammonoosuc Rivers, as determined in the sole judgment of the Contracting Officer.

3.2.4.4 Locations that appear to or are alleged to create a significant safety risk or undue burden for abutting property owners, whether alleged by the abutting property owner or others, shall be reviewed on-site by the Contracting Officer and the Contractor before the Contracting Officer makes in its sole judgment as to whether car storage shall continue to be permitted in that location, if such permission is already granted, or whether is shall be granted in the near term. Nothing contained in Section 3.2.4 shall be construed as a surrender of the Railroad's privileges and rights granted by the Interstate Commerce Commission Termination Act of 1995.

## 3.3 Intentionally omitted.

## 3.4 MAINTENANCE.

3.4.1 The Contractor shall at all times during the term of this Agreement keep and maintain all Facilities in a reasonably safe condition for the use intended.

3.4.2 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-owned equipment shall be returned to the State in as good condition as when received, except for ordinary wear and tear.

3.4.3 FACILITIES – The Contractor shall be responsible for the proper upkeep and routine maintenance of the Facilities (“Maintenance of Way”). Maintenance of Way shall include, but not be limited to:

- a. Track maintenance, which shall include but not be limited to maintenance of rails, ties, and other track materials (“OTM”), track alignment, and all other maintenance and repairs necessary to preserve integrity of track surface and structure
- b. Bridge maintenance, as further described in Section 3.4.4., and which shall include but not be limited to maintaining bridge structure, including track, guard rails, timbers, and OTM, and all other maintenance and repairs necessary to preserve integrity of bridge structure
- c. Brush, tree and vegetation control (all brush and trees to be chipped or removed)
- d. Drainage systems and drainage structures
- e. All operating signals to be kept in good operating condition
- f. Crossing and switches to be kept in good operating condition. The Contractor shall provide a flagger during the passage of trains or other on-track movements for the protection of any crossing protected by signals where the signal is not operating for any reason.
- g. Snow removal and winter maintenance when needed for Service.
- h. Railroad signage, including ENS Signs and roadway at grade crossing signage consistent with MUTCD
- i. All other maintenance requirements set forth in Section 3.4

3.4.3.1 The Contractor shall be responsible to perform all work and routine maintenance necessary to maintain the In-Service Area of the Lines at FRA Class 1 Track Safety Standards or better. The Out-of-Service Area shall **meet** FRA Class 1 Track Safety Standards **prior to use** for Service. In any event, Contractor will expend no less than twenty (20%) percent of Annual Gross Operating Revenue on Maintenance of Way, exclusive of inspections (“Annual Maintenance Requirement”), during each Operating Year of this Agreement. The Contractor shall include a report of maintenance expenses in accordance with the Report and Payment Schedule (**Exhibit A**). The Contractor’s performance shall satisfy all obligations required of the owner of a railroad, set forth in Part 213 of the FRA Track Safety Standards (49 C.F.R §§ 213–213.369). Along with the Part 213 and Part 237, emphasis shall also be placed on railroad system drainage, unblocking culverts and ditch line routine maintenance to maintain storm flows. In the event the Contractor does not meet the Annual Maintenance Requirement for an Operating Year, the Contractor shall pay the remaining unspent portion of the Annual Maintenance Requirement to the State within sixty (60) days after the end

of the Operating Year. The payment shall be made payable to "Treasurer, State of New Hampshire" and shall be sent in accordance with Section 4.1.1. Any amounts paid to the State under this section shall exclusively be deposited into the Special Railroad Fund established by RSA 228:68 and shall only be expended in accordance with RSA 228:69.

#### 3.4.4 STRUCTURES (BRIDGES & CULVERTS) –

3.4.4.1 The Contractor shall be responsible for maintaining structures and shall make needed repairs necessary to keep structures safe for their intended use in providing Service. Said maintenance shall include, but not be limited to, the cleaning and removal of debris (bearings, flanges, bottom chords etc.), lubrication of bearing surfaces, scour and erosion protection and vegetation control within the general vicinity of the structure (brush and trees) including, but not limited to Bridge List, Exhibit E attached.

##### 3.4.4.2

The State as track and bridge owner and the Contractor as operator will be subject to the latest provisions of 49 CFR Part 237 - Bridge Safety Standards, and incorporated herein by reference. If the State is not able to pay the cost of performing the inspections required under 49 CFR Part 237 due to insufficient funds in the Special Railroad Fund established by RSA 228:68, the State shall provide written notice to the Contractor, and upon receipt of such notice, Contractor shall pay the cost of such inspections in order to operate Service and meet the requirements of 49 CFR Part 237. The Contractor shall have no right to recover from the State the costs of performing any such inspections. Notwithstanding any language in Section 3.4.3.1 to the contrary, Contractor's cost for inspections under this Section 3.4.4.2 may be credited towards Contractor's Annual Maintenance Requirement. The Contractor shall comply with the State's Bridge Management Program incorporated herein by reference and made a part hereof.

3.4.5 In the event a Major Maintenance Expenditure is required the Contractor shall assist in all necessary repairs and shall be responsible for 10% of each occurrence defined as a Major Maintenance Expenditure, but be limited in its direct financial contribution to ten thousand dollars (\$10,000.00) in the aggregate per Operating Year. However, the Contractor waives any claims to damages for any delays in repairing or reopening the Lines after such an occurrence and the State reserves to itself the decision whether, when and how such repairs and reopening will be done, in the reasonable discretion of the Contracting Officer. The Contracting Officer shall give priority to Major Maintenance Expenditures in the In-Service Area or other areas on the Lines in which the Contractor actively provides Service.

3.4.6 In the event a Major Maintenance Expenditure is required as a result of Contractor's failure to perform routine and proper maintenance as required in this Agreement, Contractor shall be responsible for the full cost of repairs.

- 3.4.7 If the Contractor fails to perform maintenance as required in Section 3.4, the State shall give written notice of such failure in accordance with Section 1.15. Failure to perform maintenance in accordance with Section 3.4 constitutes a material breach of this Agreement.
- 3.4.8 If within thirty (30) days of receipt of such notice, Contractor has not completed or taken steps to Contracting Officer's satisfaction to perform the required maintenance work, the State reserves the right to perform such maintenance work at Contractor's sole cost and expense.

### 3.5. INSPECTION.

- 3.5.1 IN-SERVICE AREA. The Contractor shall patrol the In-Service Area and formally inspect the track in accordance with FRA Track Safety Standards subpart F (49 C.F.R § 213.233) and record the inspection per 49 C.F.R. §213.241. The Contractor shall submit an inspection report within thirty (30) days after each inspection. Should any deviations from the requirements be found, the Contractor shall take immediate appropriate remedial action and provide written notice to the Contracting Officer of said remedial action.
- 3.5.2 OUT-OF-SERVICE AREA. The Contractor shall patrol the Out-of-Service Area at least three (3) times per year with at least three (3) months between patrols. The Contractor shall submit a patrol report within thirty (30) days of each patrol; electronic submission of patrol reports are strongly preferred. Should problems be found, including but not limited to those that may threaten the integrity of the infrastructure, the Contractor shall notify the Contracting Officer in writing of the problems and propose whether remedial action should be taken. The Contracting Officer, in her reasonable discretion, reserves to herself the decision whether, when and how such remedial action will be done. In the event Service is restored over any portion of the Out-of-Service Area, the Contractor shall patrol and inspect the area in accordance with Section 3.3.1 of this Agreement.
- 3.5.3 The Contracting Officer has the right to monitor the Contractor to ensure that the Contractor complies with the conditions of this Agreement and shall be granted reasonable access to the operations and the Facilities for this purpose. The Contracting Officer shall have the authority to direct the Contractor through its Operations Manager or his designee to remedy deficiencies from the requirements of FRA Part 213 Track Safety Standards as they apply to those classifications established in this Agreement.
- 3.5.4 The Contracting Officer may take any action, including the field inspection of any project site and the inspection of the Facilities, equipment, and all books and records of the Contractor relating to Service on the Line and of any contractor or Subcontractor relating to any project or task accomplished under this Agreement. The Contractor shall authorize access dates and times for these inspections.

3.5.4.1 The purpose of such inspection shall be, but is not limited to:

- a. Ensure that work complies with the contract specifications.
- b. Verify quantitative measures of materials installed, such as tie counts.
- c. Verify labor and materials charges for contracts providing for payment on an actual cost basis ("Force Account Work").
- d. Verify the quantities of uninstalled State-owned materials and the security of same against damage, theft, or use other than for approved projects.
- e. Provide any other information requested by the Contracting Officer.

### 3.6. CONSTRUCTION PROJECTS.

3.6.1 The Contracting Officer reserves the right to advertise and let construction rehabilitation projects within the confines of the Lines, provided that such projects do not unreasonably interfere with the Contractor's ability to provide Service. The construction contractor to whom this work may be awarded shall have the right to perform the work so described in the construction contract. The Contracting Officer shall have the right to adjust trips, published and not published, in the regular railroad schedule to accommodate the construction schedule.

3.6.2 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 Facilities will be safeguarded. The Contractor may require a flagger and/or railroad inspector at a construction site if the Contractor deems it necessary, the cost of said services to be paid by the constructing entity to the Contractor.

3.6.3 The Contractor may be called upon to construct sidings to new shippers and receivers on the Lines. Any and all costs and expenses related to the construction of sidings and appurtenances thereto shall be the responsibility of the shipper or receiver. The responsible shipper or receiver shall be billed for all costs and expenses after the Contracting Officer reviews the proposed plans, including, but not limited to location, alignment, materials, safety appliances, and the approvals are issued by the Contracting Officer.

3.6.4 Any expenditures by the State pursuant to this Section 3.6 shall not diminish the obligation of the Contractor pursuant to Section 3.4.3.1 or any other provision of this Agreement.

**3.7. FREIGHT TARIFFS.**

3.7.1 The Contractor shall endeavor to negotiate mutually acceptable rates and terms of service with shippers. Once the Contractor has negotiated such mutually acceptable rates, the Contractor shall submit the agreed upon rates to the Contracting Officer for review. In the event that the State reasonably believes that the agreed upon rates are too low, the Contracting Officer may elect to not approve such rates and mediate with the Contractor and shipper(s) regarding higher rates. Notwithstanding the foregoing, in the event that a shipper and the Contractor cannot agree on appropriate rates, the Contractor's then current published tariff rates shall apply.

**3.8 FORCE MAJEURE.**

3.8.1 In no event shall any party be deemed in default of this Agreement for any loss, damage, injury, delay, failure or inability to meet all or any portion of its obligation caused by or arising from any event beyond its reasonable 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 Effective Date of this Agreement; by acts of God; by strikes or other labor trouble; by explosions, fires, or vandalism until such events are remedied.

**ARTICLE IV - USER FEE PAYMENTS, ACCOUNTING AND AUDITS**

**4.1. PAYMENTS AND REPORTING.**

4.1.1 The Contractor shall submit User Fee payments and reports required under this Agreement directly to:

New Hampshire Department of Transportation  
Bureau of Rail & Transit  
Railroad Planner  
7 Hazen Drive  
P.O. Box 483  
Concord, NH 03302-0483

4.1.2 In addition to mailing reports in accordance with Section 4.1.1, the Contracting Officer may require Contractor to also submit electronic copies of all reports required under this Agreement. If electronic submission is required, the Contracting Officer shall provide to the Contractor the acceptable email address(es) to which reports can be submitted.

## 4.2. SCHEDULE OF PAYMENTS AND REPORTS.

- 4.2.1 Payments shall be paid monthly, based upon the level of operation, as explained below. Payments shall be made no later than thirty (30) days after the end of each calendar month that Gross Operating Revenue is earned.
- 4.2.2 The Contractor shall be responsible for collecting revenues and for delivering freight traffic reports, car storage reports, tourist excursion rail service or other on-rail passenger service traffic reports, marketing reports, revenue reports and maintenance cost reports in accordance with the Report and Payment Schedule (**Exhibit A**). The Contractor shall submit all reports required under this Agreement in a form and substance satisfactory to the Contracting Officer.

## 4.3. USER FEE PAYMENT.

- 4.3.1 The Contractor shall pay five (5%) percent of its Monthly Gross Operating Revenues a User Fee to the State, payable to: "Treasurer, State of New Hampshire."
- 4.3.2 The Contractor may, where directed in writing by the Contracting Officer, deduct from User Fee payments the cost of specific expenditures including but not limited to Major Maintenance Expenditures.
- 4.3.3 Should any payment be received more than five (5) days after the due date, the State shall be entitled to a five (5%) percent late charge on that month's User Fee.

## 4.4. ACCOUNTING AND AUDITS.

- 4.4.1 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.
- 4.4.2 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.
- 4.4.3 If, as a result of any audit, the Contracting Officer determines that the amount paid to the State is more than the amount owed, the State will make repayment or credit the Contractor accordingly, so far as appropriations allow, the overpayment to the State.

## ARTICLE V - MARKETING EFFORT

- 5.1 The Contractor will make a commercially reasonable effort to market the Line in order to make Service 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 in accordance with the Report and Payment Schedule (**Exhibit A**).
- 5.2 All advertising devices including signs, banners, fixed and portable displays or anything else placed in the railroad right-of-way to attract attention to the railroad shall conform with local, State and Federal ordinances that apply to the abutting highway right-of-way or private property. All permanent advertising to be placed in the railroad right-of-way shall have prior written approval of the State. For the avoidance of doubt, railroad safety and operating signage shall not be considered permanent advertising.

## ARTICLE VI - OTHER OPERATORS

- 6.1 In all of its operations and use of the Facilities, the Contractor will cooperate with other potential operators in the use of the Facilities. Provided, however, that all other potential operators shall be required to enter into a mutually acceptable agreement with the Contractor regarding the terms and conditions relating to the use of the Facilities, including, without limitation, commercially reasonable terms and conditions relating to liability protection for the Contractor and compensation due to the Contractor relating to the use of the Facilities. Notwithstanding the foregoing, at all times Contractor's provision of Service shall have priority over all other users and Contractor shall retain dispatching control of the Line. Any compensation earned by the Contractor arising from other potential operators of the rail facilities shall be included in the Contractor's Monthly Gross Operating Revenue.

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IN WITNESS WHEREOF, we have hereunto set our hands on the 12 day of October, 2022.

**NEW HAMPSHIRE CENTRAL RAILROAD, INC.**

BY: [Signature]

TITLE: President/COO

THE STATE OF NH, COUNTY OF CODS

On this 12 day of Oct., 2022, before me, Kelly M. Laperle the undersigned officer, personally appeared Edward W. Jeffrey 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.

[Signature]  
NOTARY PUBLIC



**THE STATE OF NEW HAMPSHIRE**

BY: [Signature]

TITLE: COMMISSIONER

THE STATE OF NEW HAMPSHIRE, COUNTY OF MERRIMACK

On this 3<sup>rd</sup> day of November, 2022, before me, Natasha Field the undersigned officer, personally appeared Victoria Sheehan 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.

[Signature]  
NOTARY PUBLIC

**NATASHA A. FIELD - Notary Public**  
State of New Hampshire  
My Commission Expires May 1, 2024

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 7<sup>th</sup>, 2022.

OFFICE OF ATTORNEY GENERAL

BY: Samuel Burgess  
Assistant Attorney General

**APPROVED** by Governor and Executive Council on \_\_\_\_\_, 2022, ITEM # \_\_\_\_\_.

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

**EXHIBIT A**

Report and Payment Schedule

**EXHIBIT B**

Rail Safety Section Notification Requirements

**EXHIBIT C**

MAP OF THE LINE

**EXHIBIT D**

MAINTENANCE OF WAY REPORT

**EXHIBIT E**

BRIDGE LIST

**EXHIBIT A**  
**NEW HAMPSHIRE CENTRAL RAILROAD**  
**REPORT & PAYMENT DUE DATE SCHEDULE**

<b>JANUARY</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		March 1
Freight & Passenger Revenue Reports		March 1
<b>FEBRUARY</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		April 1
Freight & Passenger Revenue Reports		April 1
Marketing Report (Jan-June)		April 1
<b>MARCH</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		May 1
Freight & Passenger Revenue Reports		May 1
<b>APRIL</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		June 1
Freight & Passenger Revenue Reports		June 1
Marketing Report (Jan-June)		June 30
<b>MAY</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		July 1
Freight & Passenger Revenue Reports		July 1
MOW Report (Apr-June)		July 31
<b>JUNE</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		August 1
Freight & Passenger Revenue Reports		August 1
<b>JULY</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		September 1
Freight & Passenger Revenue Reports		September 1
<b>AUGUST</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		October 1
Freight & Passenger Revenue Reports		October 1
MOW Report (July-Sept)		October 31
<b>SEPTEMBER</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		November 1
Freight & Passenger Revenue Reports		November 1
<b>OCTOBER</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		December 1
Freight & Passenger Revenue Reports		December 1
Marketing Report (July-Dec)		December 31
<b>NOVEMBER</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		January 1
Freight & Passenger Revenue Reports		January 1
MOW Report (Oct-Dec)		January 31
<b>DECEMBER</b>		<b>DUE DATE</b>
Freight Operating, Car Storage & Passenger Revenue User Fees		February 1
Freight & Passenger Revenue Reports		February 1

**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION**  
**BUREAU OF RAIL & TRANSIT**  
**RAIL SAFETY SECTION**  
**NOTIFICATION REQUIREMENTS**

**INCIDENTS INVOLVING RAILROADS (RSA 367:56)**

NOTIFICATION **BY THE RAILROAD** IS REQUIRED FOR:

1. All incidents involving a fatality.
2. All grade crossing accidents.
3. All grade crossing signal system activation failures as defined in 49 CFR Part 234.5.
4. All incidents involving the leakage or spillage of material as a result of railroad operations or incidents.
5. All derailments involving cars containing commodities required to be placarded by 49 CFR Part 172
6. Derailments involving:
  - More than one (1) car, (include a power unit as a car), or
  - The car is not in the normal upright operating position, or
  - The car has traveled more than 200 feet derailed, or
  - The car has traveled through a grade crossing derailed.
7. Any incident involving the movement of on-track equipment, Motorcars, or Rail-Bikes that results in personal injury to a non-railroad employee.

**THE NOTIFICATION NUMBERS ARE:**

Monday – Friday  
0800 - 1600 hours

Railroad Inspector: (603) 271-2448 (office phone)  
 Bureau of Rail & Transit: (603) 271-2468  
 Bureau Administrator: (603) 271-3497  
 Railroad Operations Engineer: (603) 271-3465

Nights, weekends and holidays

NH Transportation Systems Management & Operations Systems (TSMO) 603-271-6862  
 • TSMO will contact the Railroad Inspector, Bureau Administrator, Railroad Operations Engineer and State Police as necessary and in accordance with written work instructions that include after-hours procedures.

Note: The Railroad Inspector must be contacted and/or a voicemail message left for him. If staff is unable to speak directly with Railroad Inspector, after leaving a message for the Inspector, proceed with contacting the Bureau Administrator and then Railroad Operations Engineer. Current staff (as of 10/07/2022: Railroad Inspector—Anthony Murphy, Bureau Administrator—(Division Director - Shelley Winters) & Railroad Operations Engineer – Chuck Corliss)

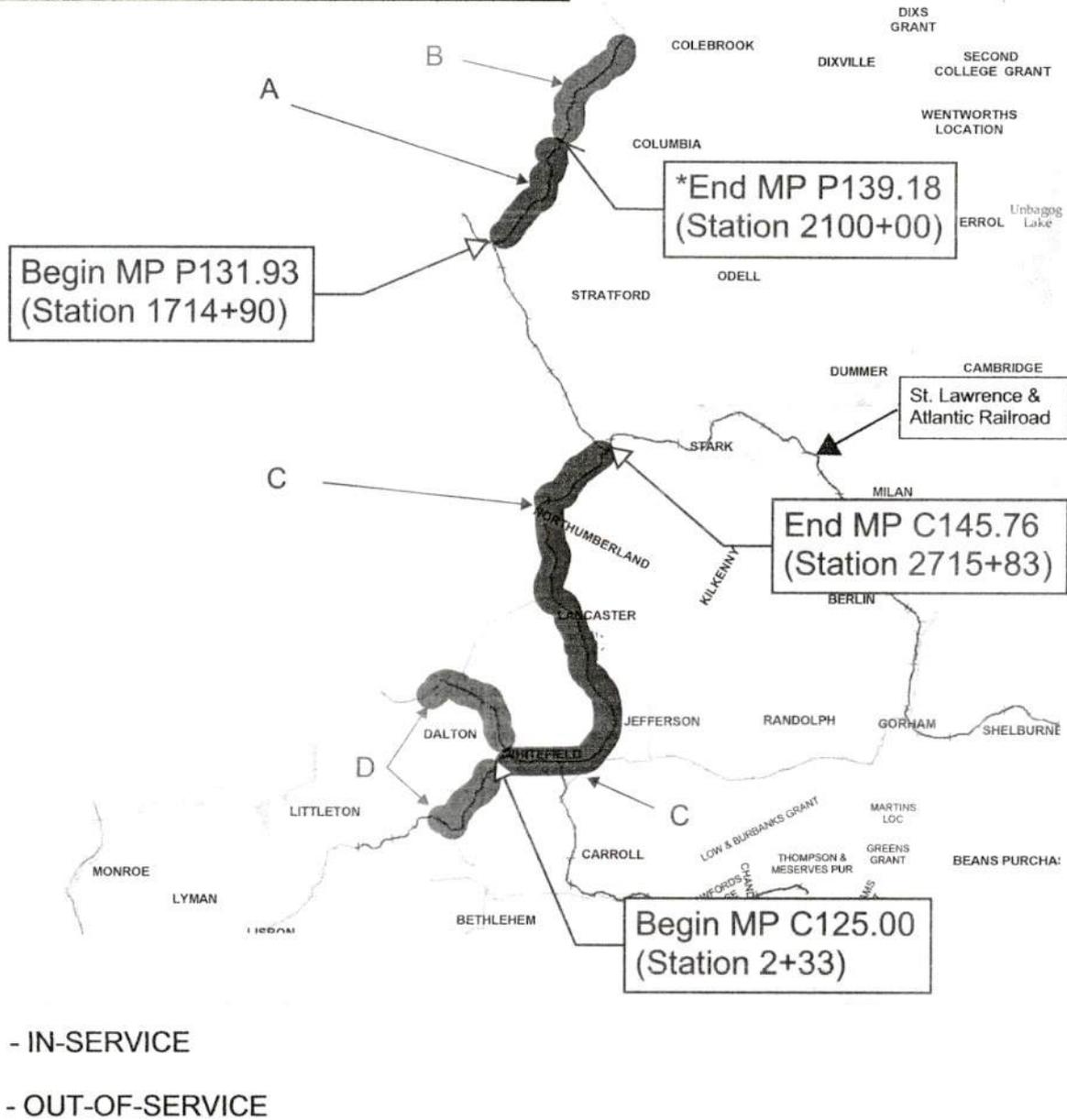
**THE INFORMATION NEEDED WILL BE:**

1. Name of the railroad
2. Name of the caller and call back number
3. Location of the incident, town, street, station, and ENS sign #etc.
4. Any fatalities or personal injuries
5. Any hazardous materials involved

**INCIDENTS THAT INVOLVE HAZARDOUS MATERIALS, PLEASE CALL 911, NOTIFY THE LOCAL FIRE DEPARTMENT. YOU ARE ALSO REQUIRED TO NOTIFY THE HAZARDOUS MATERIALS UNIT AT 1-800-346-4009 AND THE N.H. STATE POLICE DISPATCH AT 603-271-3636.**

Initial \_\_\_\_\_

**EXHIBIT C - MAP OF LINES**  
**NEW HAMPSHIRE CENTRAL RAILROAD - OPERATOR**  
**STATE OF NEW HAMPSHIRE - OWNER**  
 Date: July 27, 2022



Reference: NS-BF Branch (Stratford Secondary)	
A - In Service	Valuation Section 21, Sheet 7 - *{Sheet 14 (Station 2100+00, Gravel Pit) Sheet 16 (Station 2185+00, Columbia Bridge)}
B - Out of Service	Sheet 20 (Station 2417+68.4, Mohawk River) (Station 2409+50, Bridge Street)
Berlin/Groveton Branch (Groveton Secondary)	
C - In Service	Valuation Section 24.2, Sheet 1 - Sheet 6 (Whitefield) Valuation Section 19, Sheet 3 - Sheet 14 (Jefferson/Lancaster) Valuation Section 22, Sheet 44 - Sheet 52 (Lancaster/Groveton) Valuation Section 17, Sheet 51 - Sheet 53 (Mountain Division)
D - Out of Service	Valuation Section 22, Sheet 26 - Sheet 31 (Bethlehem-Whitefield) Valuation Section Section 17 Sheet 53 - Sheet 59 (Whitefield/Dalton) Valuation Section 18, Sheet 1 - 3 (Lunenburg/Gilman, Vermont)



NEW HAMPSHIRE CENTRAL RAILROAD  
BRIDGE LIST

12 May 2022

Groveton/Berlin Section

BRIDGE	SPANS	TYPE	LENGTH	CROSSING	BUILT
128.36	7	Timber Trestle	70'-6"	Johns River	
101.94	1	Steel Stringers	14'-0"	Cherry Brook	
110.24	1	DRT	119'-0"	Israel River	
111.69	1	TPG	25'-8"	Cemetery Road	
111.95	1	Timber Trestle	12'-0"	Stream	
138.74	1	DPG	25'-6"	Stream	1907
140.05	1	Concrete Slab	4'-6"	Stream	
141.93	3	Timber Trestle	34'-0"	Stream	
142.75	1	DPG	29'-0"	Dean Brook	
144.29	1	Concrete Box	4'-0"	Stream	
144.67	1	Timber Stringers	7'-6"	Stream	
145.35	1	TRT	164'-6"	Upper Ammonoosuc River	1883
Count: 12		Total length	509'-2"		

North Stratford to Beecher Falls Section

BRIDGE	SPANS	TYPE	LENGTH	CROSSING	BUILT
135.10	1	TPG	53'-10"	Lyman Brook	
137.23	1	DPG	20'-5"	Sweatt Brook	1912
137.75	1	DPG	18'-0"	Cone Brook	
Count: 3		Total length	92'-3"		
Total Count: 15		Total length	601'-5"		

# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that NEW HAMPSHIRE CENTRAL RAILROAD, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on July 06, 1992. 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: 175754

Certificate Number: 0005881848



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 11th day of October A.D. 2022.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan  
Secretary of State

# NEW HAMPSHIRE CENTRAL RAILROAD, INC.

PO BOX 165  
NORTH STRATFORD, NH 03590-0165

## ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS

The undersigned, being all of the directors of New Hampshire Central Railroad, Inc., a New Hampshire corporation (the "Corporation") organized and acting pursuant to the provisions of 8.21 of the New Hampshire Business Corporation Act (NH RSA 293-A), and every other power, do hereby consent to and adopt the following resolutions effective as of October 12, 2022, that the following actions be taken:

RESOLVED: That the Corporation is hereby authorized to enter into an Agreement with the State of New Hampshire, through the Department of Transportation, Bureau of Rail & Transit, specifically for railroad operation on facilities on the North Stratford-Beecher Falls, Berlin, Groveton and portions of the Mountain Division Railroad corridors.

FURTHER RESOLVED: To authorize Edward W. Jeffrey, duly appointed President and Chief Operations Officer to sign and execute on behalf of the corporation all documents necessary to effectuate said Agreement and to do any and all things, which in his discretion are necessary and proper in order to carry out the foregoing resolution.

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.

DATED: October 14, 2022



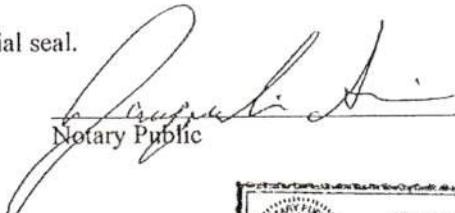
Director

STATE OF FLORIDA  
COUNTY OF PALM BEACH

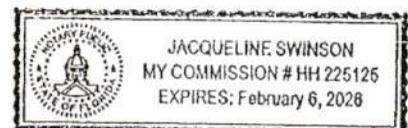
On, Oct. 14, 22, before the undersigned officer personally appeared the persons identified in the foregoing certificate, known to me (or satisfactorily proven) to be the Director of the corporation identified in the foregoing certificate, and acknowledged that he executed the foregoing certificate.

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

10-14-2022  
Date



Notary Public







SAM

JUN13'22 PM 1:17 RCVD



Victoria F. Sheehan  
Commissioner

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

G&C # 5G  
DATE 6-29-22



5G

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  
May 18, 2022

**REQUESTED ACTION**

The Department of Transportation requests placing this item on the Consent Calendar.

Authorize the Department of Transportation to enter into a contract amendment with the New Hampshire Central Railroad Corporation (NHCR), Vendor 157337, North Stratford, New Hampshire, to amend the completion date from June 30, 2022 to December 31, 2022 for the use of the state-owned portions of the North Stratford-Beecher Falls Branch, Berlin Branch, Groveton Branch, Mountain Division, and Adjacent Railroad Corridors for freight rail service, effective upon Governor and Executive Council approval, through December 31, 2022. The original contract was approved by Governor and Council on March 28, 2012, Item 130, and was amended by the Governor and Executive Council on December 8, 2021, Item 5C.

Income from the agreement will be credited as follows:

04-096-096-964010-2991  
Special Railroad Account  
009-407323 Agency Income

**EXPLANATION**

On March 28, 2012, the Governor and Council approved an Operating Agreement between the Department of Transportation and the New Hampshire Central Railroad Corporation (NHCR) to provide freight rail service on the state-owned portions of the North Stratford-Beecher Falls Branch, Berlin Branch, Groveton Branch, Mountain Division Railroad Line, and Adjacent Railroad Corridors for the period of May 1, 2012 through December 31, 2021. The original Operating Agreement was amended on December 8, 2021 and granted a six-month extension, through June 30, 2022, to allow the State time to develop an updated railroad operating agreement template.

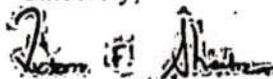
The Department and the Attorney General's Office has been actively developing an updated railroad operating agreement template, but that has yet to be finalized. Upon completion, that template will be used to actively negotiate final terms and conditions with NHCR to result in a new 10-year Operating Agreement that will then be submitted to Governor and Council for approval. As such, this subject amendment will extend the current Operating Agreement for six (6) months to allow time for completion of the template and final negotiations to conclude.

As the railroad line is active and NHCR has ongoing railroad operations, this amendment allows NHCR to continue to use the subject state-owned railroad lines to provide freight rail service while negotiations conclude and the State develops an updated operating agreement template.

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, appearing to read "Victoria F. Sheehan", written in a cursive style.

Victoria F. Sheehan  
Commissioner

Attachments

## AMENDMENT #2 TO OPERATING AGREEMENT

This AMENDMENT TO THE OPERATING AGREEMENT ("Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, 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 Hampshire Central Railroad Corporation, PO Box 165, North Stratford, NH 03590-0165, (hereinafter referred to as "the Contractor"), collectively referred to as ("the Parties").

WHEREAS, the State and the Contractor are parties to the Operating Agreement entitled "Operating Agreement on the State-Owned Portion of the North Stratford-Beecher Falls Branch, Berlin Branch, Groveton Branch, and Adjacent Railroad Corridors" dated February 17, 2012, approved by the New Hampshire Governor and Executive Council of New Hampshire March 28, 2012 and as amended by the Parties on December 8, 2021 ("Operating Agreement");

WHEREAS, pursuant to the Operating Agreement, the Contractor provides service on the North Stratford-Beecher Falls Branch, Berlin Branch, Groveton Branch, Mountain Division, and Adjacent Railroad Corridors, as more particularly described in Section 2.1 of the Operating Agreement ("the Line");

WHEREAS, pursuant to Section 1.1.1(k), the Completion Date of the Operating Agreement is June 30, 2022;

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 June 30, 2022; and

WHEREAS, the Parties desire for the Contractor to continue its use and operation of the 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 June 30, 2022 for an additional six (6) months. The amended Completion Date shall be December 31, 2022. The Operating Agreement shall terminate on December 31, 2022, unless terminated sooner in accordance with Section 1.8 or Section 1.9 of the Operating Agreement.
2. If the Parties enter into a new operating agreement on or before December 31, 2022, the current Operating Agreement shall automatically terminate upon the effective date of the new agreement.
3. Section 1.3.1 of the Operating Agreement shall be replaced with the following: If the Contractor and the State cannot agree upon a new agreement by December 31, 2022, 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.

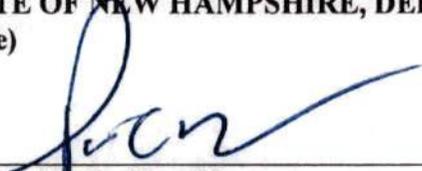
IN WITNESS WHEREOF, the Parties hereto have set their hands the date first-written above.

**New Hampshire Central Railroad Corporation  
(Contractor)**

By:   
Edward Jeffrey, President

Date: 4-22-22

**STATE OF NEW HAMPSHIRE, DEPARTMENT OF TRANSPORTATION  
(State)**

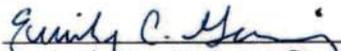
By:   
Patrick Herlihy, Director  
Division of Aeronautics, Rail & Transit  
New Hampshire Department of Transportation

Date: 5/31/22

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The foregoing Amendment, having been reviewed by this office, is approved as to form and execution on 6/7, 20 22.

OFFICE OF THE ATTORNEY GENERAL

By:   
Assistant Attorney General

Approved by Governor and Council on June 29, 20 22, Item # 56.

ATTEST:   
Secretary of State

# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that NEW HAMPSHIRE CENTRAL RAILROAD, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on July 06, 1992. 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: 175754

Certificate Number: 0005768536



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 28th day of April A.D. 2022.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan  
Secretary of State

**NEW HAMPSHIRE CENTRAL RAILROAD, INC.**

**ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS**

The undersigned, being all of the directors of **NEW HAMPSHIRE CENTRAL RAILROAD, INC.**, a New Hampshire corporation (the "Corporation"), acting pursuant to the provisions of §8.21 of the New Hampshire Business Corporation Act (R.S.A., Chapter 293-A), and every other power, do hereby consent to and adopt the following resolutions effective as of April 22, 2022 with the same force and effect as though adopted at the duly called and held 2022 annual meeting of the Corporation's board of directors on such date:

*Resolved:* The Corporation hereby ratifies, confirms and authorizes **EDWARD W. JEFFREY** to execute on behalf of the corporation an Amendment To Operating Agreement with the State of New Hampshire, acting by and through the New Hampshire Department of Transportation, Bureau of Rail and Transit to amend the existing agreement to include the following:

1. Section 1.1.1(k) of the Operating Agreement shall be amended to extend the Completion Date of June 30, 2022 for an additional six (6) months. The amended Completion Date shall be December 31, 2022. The Operating Agreement shall terminate on December 31, 2022, unless terminated sooner in accordance with Section 1.8 or Section 1.9 of the Operating Agreement.
2. If the Parties enter into a new operating agreement on or before December 31, 2022, the current Operating agreement shall automatically terminate upon the effective date of the new agreement.
3. Section 1.3.1 of the Operating agreement shall be replaced with the following: If the Contractor and the State cannot agree upon a new agreement by December 31, 2022, the state shall have no further obligations for renewal of the Operating Agreement with the Contractor.
4. All other provisions of the Operating Agreement not amended shall remain in full force and effect.

In witness whereof, we have executed this action by unanimous written consent of the directors of **NEW HAMPSHIRE CENTRAL RAILROAD, INC.** effective on the date first written above.

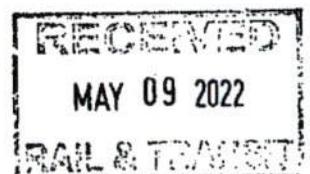
  
**EDWARD W. JEFFREY**  
Director

Filed with the records of **NEW HAMPSHIRE CENTRAL RAILROAD, INC.** on this 22nd day of April, 2022.

**ATTEST**

  
Secretary/Assistant Secretary

*Andrew B. Nolette*  
Andrew B. Nolette  
May 5, 2022





NEWHAMP-17

JPETITT

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/26/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**  
Hub International Mid-America  
8285 N Van Dyke Road  
Port Austin, MI 48467

**CONTACT: Julie Pettit**  
PHONE (AC, HQ, Exp): (888) 738-6400 FAX (AC, HQ, Exp): (888) 738-6557  
EMAIL: julie.pettit@hubinternational.com

**INSURED**  
New Hampshire Central Railroad  
PO Box 185, 2283 US Rte 3  
North Stratford, NH 03580-0185

INSURER AFFORDING COVERAGE	NAIC #
INSURER A: Aspen Specialty Insurance	10717
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

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

FORM	TYPE OF INSURANCE	ADD'L	POLICY	POLICY	POLICY	LIMITS
LTR		INSUR	NO	EXP	EXP	
		ROD		(MM/DD/YYYY)	(MM/DD/YYYY)	
A	<b>COMMERCIAL GENERAL LIABILITY</b> <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Railroad Liability  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PER <input type="checkbox"/> LOC OTHER:	X	RL004ED21	12/15/2021	12/15/2022	EACH OCCURRENCE: \$ 5,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ MED EXP (Any 6th person) \$ PERSONAL & ADY INJURY \$ GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ OTHER: \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER: \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ OTHER: \$
	<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	N/A			PER STATUTE    OFF-FA E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The following certificate holder is an additional insured but only with respect to liability arising out of the operation of the named insured.

**CERTIFICATE HOLDER**  
State of NH-Dept of Transport, Bureau of Railroads  
PO Box 483, 7 Hazen Drive  
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  
*Julie Pettit*

NOV 15 '21 PM 1:54 RCVD

5C  
2021



Victoria F. Sheehan  
Commissioner

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.  
Assistant Commissioner

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

Bureau of Rail & Transit  
October 20, 2021

**REQUESTED ACTION**

The Department of Transportation requests placing this item on the Consent Calendar.

Authorize the Department of Transportation to enter into a contract amendment with the New Hampshire Central Railroad Corporation (NHCR), Vendor 157337, North Stratford, New Hampshire, to amend the completion date from December 31, 2021 to June 30, 2022 for the use of the state-owned portions of the North Stratford-Beecher Falls Branch, Berlin Branch, Groveton Branch, Mountain Division, and Adjacent Railroad Corridors for freight rail service. This amendment is effective January 1, 2022, with Governor and Executive Council approval, through June 30, 2022. The current operating agreement was approved by Governor and Council on March 28, 2012, Item 130.

Income from the agreement will be credited as follows:

04-096-096-964010-2991  
Special Railroad Account  
009-407323 Agency Income

**EXPLANATION**

On March 28, 2012, the Governor and Council approved an Operating Agreement between the Department of Transportation and the New Hampshire Central Railroad Corporation (NHCR) to provide freight rail service on the state-owned portions of the North Stratford-Beecher Falls Branch, Berlin Branch, Groveton Branch, Mountain Division Railroad Line, and Adjacent Railroad Corridors for the period of May 1, 2012 through December 31, 2021.

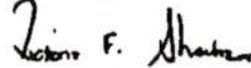
Pursuant to Section 1.3 of the current Operating Agreement, NHCR notified the Department on December 2, 2020 that it wished to renew its operating agreement. The Department and the Attorney General's Office has been actively developing an updated railroad operating agreement template, but that has yet to be finalized. Upon completion, that template will be used to actively negotiate final terms and conditions with NHCR to result in a new 10-year Operating Agreement that will then be submitted to Governor and Council for approval. This subject Amendment will extend the current Operating Agreement for six (6) months to allow time for completion of the template and final negotiations to conclude.

As the railroad line is active and NHCR has ongoing railroad operations, this Amendment allows NHCR to continue to use the subject state-owned railroad lines to provide freight rail service while negotiations conclude and the State develops an updated operating agreement template.

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,



Victoria F. Sheehan  
Commissioner

Attachments

**OPERATING AGREEMENT**

**ON THE  
STATE-OWNED PORTION OF THE NORTH STRATFORD-BEECHER FALLS  
BRANCH, BERLIN BRANCH, GROVETON BRANCH AND ADJACENT RAILROAD  
CORRIDORS**

**BETWEEN**

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

**AND**

**NEW HAMPSHIRE CENTRAL RAILROAD INC.  
NORTH STRATFORD, NEW HAMPSHIRE**

**February 17, 2012**

Contractor Initials E.W.J.  
Date 2/21/12

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	<b>CERTIFICATE OF VOTE</b>	
	<b>CERTIFICATE OF INSURANCE</b>	

Contractor Initials EWJ  
Date 2/2/12

## ARTICLE I - GENERAL CONDITIONS

### 1.1 DEFINITIONS

1.1.1 As used herein, the following terms have the meanings indicated:

- a. "Contractor"- New Hampshire Central Railroad Corp., PO Box 165 North Stratford, New Hampshire, 03590-0165.
- 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 February 17, 2012.
- 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 propane 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, 2012
- k. "Completion Date" - December 31, 2021.
- 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

Contractor Initials EWJ  
Date 2/21/12

Agreement for an additional ten (10) year period beginning January 1, 2022. If the Contractor and the State cannot agree upon new Operating Agreement by July 1, 2021, the State may at that time solicit proposals from other persons to operate the Facilities and have no further obligations for renewal of this Agreement with the Contractor.

#### 1.4 MAINTENANCE OF ACCESS

- 1.4.1 Expiration of this operating agreement or any subsequent operating agreement shall not interfere with the right of the contractor (New Hampshire Central Railroad, Inc.) to maintain and enjoy rail access to its railroad car repair facility and trackage owned by contractor in Columbia, adjacent to the state owned North Stratford to Beecher Falls Branch Railroad Corridor's main line and sidetracks until 31 December 2023. The contractor may retain operating rights granted by the ICC in Finance Docket 32309, or any subsequent operating rights granted by the STB or successor agency in order to maintain access to its rail served facility, subject to the right of any replacement freight operation on the railroad corridor to utilize said railroad corridor.

#### 1.5 CONTRACTOR'S REPRESENTATION AND WARRANTIES

- 1.5.1 The Contractor represents and warrants the following:

1.5.11 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;

1.5.12 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;

1.5.13 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

1.5.14 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.

#### 1.6 COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

- 1.6.1 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.

- 1.6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

- 1.6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of

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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.

1.7 PERSONNEL.

- 1.7.1 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.
- 1.7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date, 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.
- 1.7.3 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.

1.8 EVENT OF DEFAULT/REMEDIES.

- 1.8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):
  - 1.8.1.1 failure to perform the Service satisfactorily or on schedule;
  - 1.8.1.2 failure to submit any report required hereunder;
  - 1.8.1.3 failure of the Contractor to maintain the records required hereunder, or to permit access thereof; and/or
  - 1.8.1.4 failure to perform any other covenant, term or condition of this Agreement;
- 1.8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
  - 1.8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

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

1.9 TERMINATION.

1.9.1 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.

1.10 CONTRACTOR'S RELATION TO THE STATE.

1.10.1 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.

1.11 ASSIGNMENT/DELEGATION/SUBCONTRACTS.

1.11.1 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.

1.12 INDEMNIFICATION.

1.12.1 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 1.12.1 shall survive the termination of this Agreement.

1.13: INSURANCE.

1.13.1 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:

1.13.1.1 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.

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1.13.2 The policies described in subparagraph 1.13.1 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.

1.13.3 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.

1.13.4 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.

#### 1.14 WAIVER OF BREACH

1.14.1 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.

#### 1.15 NOTICE.

1.15.1 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.

#### 1.16 AMENDMENT.

1.16.1 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.

#### 1.17 CONSTRUCTION OF AGREEMENT AND TERMS.

1.17.1 This Agreement shall be constructed 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.

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1.18 THIRD PARTIES.

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

1.19 HEADINGS.

1.19.1 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.

1.20 SEVERABILITY.

1.20.1 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.

1.21 ENTIRE AGREEMENT.

1.21.1 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:

2.1.1 North Stratford to Beecher Falls Branch: All of the property of every kind and description, real, personal and mixed that was acquired by the State of New Hampshire from the Maine Central Railroad Co., and recorded in the Coos County Registry of Deeds on March 21, 1977, Book 595, Pages 167 - 170 and the Canaan, VT Town Clerk's Office on May 6, 1977, Book 27, Pages 113 - 115, said property being located in the Towns of Stratford, Columbia, Colebrook and Stewartstown, NH and the Town of Canaan, VT. Said property includes all real property, railroad and other fixtures and devices on the railroad corridor formerly owned by the Maine Central Railroad Co., from Engineering Station 1714+90, MP P131.93 in North Stratford to Engineering Station 2417+68.4, MP P145.21 in Colebrook, as shown on the plans of Federal Valuation Survey dated June 30, 1916, Sheets 7 to 20, on file in the records of the New Hampshire Department of Transportation, Bureau of Rail and Transit.

2.1.2 Groveton/Berlin Branch: Said property includes all real property, railroad and other fixtures and devices on the railroad corridor known as the Berlin Branch, Concord & Montreal White Mountains Division from Engineering Station 1359+77, MP C 119.86, as shown on Valuation Map 22/26, to Engineering Station 1629+30, MP C 125.0, as shown on Valuation Map 22/31, and also from Engineering Station 2+33, MP C 125.0, as shown on Valuation Map 24.2/1, to Engineering Station 315+20, MP C 130.7, as shown on Valuation Map 24.2/6, and also on the railroad corridor known as the Upper Coos Railroad from Engineering Station 131+41, MP P 101.91, as shown on Valuation Map 19/3, to Engineering Station 687+31, MP P 112.46, as shown on Valuation Map 19/14 and thence on the railroad corridor known as the Concord & Montreal White Mountains Division from Engineering Station 2275+50+/-, as shown on

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Valuation Map 22/44 to Engineering Station 2715+83, as shown on Valuation Map 22/52, on file in the records of the New Hampshire Department of Transportation, Bureau of Rail and Transit.

2.1.3 Mountain Division: That portion of the Mountain Division from Engineering Station 5060+25, MP P 103.3 in Whitefield, as shown on Valuation Map V17/53 to Engineering Station 5503+79.2, MP P 111.57 in Lunenburg Vermont, as shown on Valuation Map V18/03, formerly owned by the Maine Central Railroad. The Contractor shall be responsible for obtaining STB authority for such operation.

2.1.4 Mountain Division: That portion of the Mountain Division from Engineering Station MP P 100.91 in Whitefield, as shown on Valuation Map 17/51 to Engineering Station 5060+25, MP P 103.2 in Whitefield, as shown on Valuation Map 17/53 subject to terms of the Trackage Usage Agreement between the CSRR & NHCR dated July 31, 2007.

2.1.4.1 Main Line: The former Maine Central alignment from MP P 101.5 (former B&M MP C 128.15) and MP P 103.2 (former B&M MP C 126.00) is designated the Main Line. Former B&M Berlin Branch is designated as a sidetrack between MP C 126.00 and C 128.15.

- 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 Town of North Stratford-Columbia-Colebrook 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.

### 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,

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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 Contractor in writing by the State.
- 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 Passenger Liability and Contractual Liability with the State named as additionally insured in the amount of Ten Million (\$10,000,000) dollars at least five (5) days prior to commencement of passenger or tourist excursion operations.

## 3.2 CAR STORAGE TERMS AND CONDITIONS

- 3.2.1 Notwithstanding any other agreement to the contrary, the temporary storage of railcars on the leased Premises shall not be prohibited, restricted or otherwise modified, unless by mutual agreement, when located on the following trackage.
- 3.2.2 North Stratford-Beecher Falls Branch
  - 3.2.2.1 Mainline beginning at a point 200-feet north of the northerly most turn-out and ending at the end of track (MP 1.6+/- to MP 8.0+/-)
  - 3.2.2.2 All storage tracks within the North Stratford Terminal Area, not utilized for normal operations, to include tracks owned by the Railroad or the NHDOT.
- 3.2.3 Groveton and Berlin Branches
  - 3.2.3.1 Storage Tracks in Lancaster, south of Pine Hill Road, on tracks easterly and westerly of the Mainline, provided that no cars will be stored beyond foul points of the Mainline.
  - 3.2.3.2 Siding located westerly of Hazens Road (Approximate MP P101.05) to MP P103.2. (Former B&M Berlin Branch MP 126.00 to MP 128.15)

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3.2.3.3 Siding located westerly of NH 116 in Whitefield (Approximate MP C125.17 to MP C 125.71).

3.2.4 Systemwide Exceptions

3.2.4.1 Cars will not be placed in any locations that will block Public or Legal/Authorized Private Crossings or interfere with the safe sight distance or block visibility of a crossing.

3.2.4.2 Cars will not be placed on major bridges, nor within one car length either side of a perennial stream or water course. Exhibit attached:

3.2.4.3 Cars will not be placed where they will obstruct the scenic view of significant viewsheds or adjacent to the Connecticut and Ammonoosuc Rivers.

3.2.4.4 Locations that NHDOT determines create significant concerns for abutting property owners, shall be reviewed and the status determined by mutual agreement of the Railroad and the Contracting Official of the NHDOT. NHDOT and the Contractor will review these locations prior to this determination. Nothing contained in Section 3.2.4 shall be construed as a surrender of the Railroad's privileges and rights granted by the ICC Termination Act of 1994.

3.3 MAINTENANCE

3.3.1 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.

3.3.2 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
- 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.

3.3.2.1 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).

3.3.3 STRUCTURES (BRIDGES & CULVERTS, See Exhibit B) - The contractor shall be responsible for routine maintenance of structures required to keep them safe for the convenience of the railroad and the State; said maintenance shall include but not be

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limited to the cleaning and removal of debris, lubrication of bearing surfaces, scour and erosion protection.

- 3.3.4 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 3.3.2.1, 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.
- 3.3.5 The state as track and bridge owner and the contractor as operator will be subject to the provisions of 49 CFR Part 237 - Bridge Safety Standards, which become effective September 13, 2012. If the State is not able to perform or pay the cost of performing the required inspections, then the Contractor agrees to perform the inspections in order to operate and meet the requirements of 49 CFR Part 237.

### 3.4 INSPECTION

- 3.4.1 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 more 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.
- 3.4.2 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.
- 3.4.3 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 of Contractor and of any contractor or subcontractor relating to any project or task accomplished under this Agreement.
  - 3.4.3.1 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.

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### 3.5 CONSTRUCTION PROJECTS:

- 3.5.1 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 3.5 shall not diminish the obligation of the Contractor pursuant to Section 3.3.2.1 or any other provision of this Agreement.
- 3.5.2 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.
- 3.5.3 At the request of a shipper and with the concurrence of the State, the Contractor or a subcontractor approved by the State may construct sidings to new shippers on the Facilities at shippers' or the Contractor's expense. These sidings and appurtenances shall become the property of the State.
- 3.6 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.
- 3.7 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.

### 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)

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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)

**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 authorized by the State to use any portion of the Facilities. The State may at its discretion provide mediation of disputes involving the state-owned railroad corridor consistent with Article 1.1, F.

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ARTICLE VII - TERMINATION OF AGREEMENT

7.1 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.

IN WITNESS WHEREOF, we have hereunto set our hands on the 22 day of February, 2012.

NEW HAMPSHIRE CENTRAL RAILROAD CORP.

BY: [Signature]  
Pres. NHCRC

THE STATE OF <sup>Florida</sup> ~~NEW HAMPSHIRE~~, COUNTY OF PALM BEACH  
~~EWJ~~

On this 22 day of FEB, 2012, before me, CAROL J. PRIEST the undersigned officer, personally appeared [Signature] 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.



[Signature]  
NOTARY PUBLIC

THE STATE OF NEW HAMPSHIRE

BY: [Signature]  
Deputy Commissioner, Department of Transportation

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 March 13, 2012.

OFFICE OF ATTORNEY GENERAL

BY: [Signature]  
Assistant Attorney General  
D. M. Hill

APPROVED by Governor and Executive Council on 3/28, 2012, ITEM # 180.

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

Contractor Initials EWJ  
Date 2/21/12

NEW HAMPSHIRE CENTRAL RAILROAD			
NORTH STRATFORD TO BEECHER FALL BRANCH LINE			
BERLIN & GROVETON BRANCH LINES			
REPORT AND USER FEE DUE DATES			
JANUARY	FEBRUARY	MARCH	APRIL
1st - November Freight Operating, Car Storage & Passenger Revenue User Fees	1st - December Freight Operating, Car Storage & Passenger Revenue User Fees	1st - January Freight Operating, Car Storage & Passenger Revenue User Fees	1st - February Freight Operating, Car Storage & Passenger Revenue User Fees
1st - November Locomotive Rental	1st - December Locomotive Rental	1st - January Locomotive Rental	1st - February Locomotive Rental
1st - November Freight & Passenger Revenue Reports	1st - December Freight & Passenger Revenue Reports	1st - January Freight & Passenger Revenue Reports	1st - February Freight & Passenger Revenue Reports
30th - October - December M-O-W Report			30th - January - March M-O-W Report
MAY	JUNE	JULY	AUGUST
1st - March Freight Operating, Car Storage & Passenger Revenue User Fees	1st - April Freight Operating, Car Storage & Passenger Revenue User Fees	1st - May Freight Operating, Car Storage & Passenger Revenue User Fees	1st - June Freight Operating, Car Storage & Passenger Revenue User Fees
1st - March Locomotive Rental	1st - April Locomotive Rental	1st - May Locomotive Rental	1st - June Locomotive Rental
1st - March Freight & Passenger Revenue Reports	1st - April Freight & Passenger Revenue Reports	1st - May Freight & Passenger Revenue Reports	1st - June Freight & Passenger Revenue Reports
	30th - January - June Marketing Report	30th - April - June M-O-W Report	
SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
1st - July Freight Operating, Car Storage & Passenger Revenue User Fees	1st - August Freight Operating, Car Storage & Passenger Revenue User Fees	1st - September Freight Operating, Car Storage & Passenger Revenue User Fees	1st - October Freight Operating, Car Storage & Passenger Revenue User Fees
1st - July Locomotive Rental	1st - August Locomotive Rental	1st - September Locomotive Rental	1st - October Locomotive Rental
1st - July Freight & Passenger Revenue Reports	1st - August Freight & Passenger Revenue Reports	1st - September Freight & Passenger Revenue Reports	1st - October Freight & Passenger Revenue Reports
	30th - July - September M-O-W Report		30th - July - December Marketing Report

# NEW HAMPSHIRE CENTRAL RAILROAD, Inc.

North Stratford New Hampshire 03590

## CERTIFICATE of VOTES

I, Richard A. Currier, Secretary of the New Hampshire Central Railroad, Inc. do hereby certify that:

1. At the ANNUAL BOARD of DIRECTORS MEETING held on February 1, 2011, the following persons were elected to the offices set forth until their resignation or until they are removed by the Board of Directors or until their successors are elected by the Board of Directors:

President Edward W. Jeffrey  
Secretary Richard A. Currier

2. At a SPECIAL BOARD of DIRECTORS MEETING, duly noticed, held on 22 February 2012 the BOARD reaffirmed the authority granted to the President in the Resolution passed at the Special Board Meeting on 3 August 2011- a RESOLUTION authorizing Edward W. Jeffrey, in his capacity as President of the Corporation, to enter into a LEASE and OPERATING AGREEMENT between the State of New Hampshire DEPARTMENT of TRANSPORTATION BUREAU of RAIL and TRANSIT and the New Hampshire Central Railroad, Inc., for LEASE of the NORTH STRATFORD - BEECHER FALLS BRANCH; the GROVETON and BERLIN BRANCHES; Operating Rights to the GILMAN MILL and Operating Rights over a portion of the MOUNTAIN SUBDIVISION, sufficient to serve Presby Plastics; to be more fully defined in the LEASE and OPERATING AGREEMENT, following negotiations with the BUREAU.

3. Edward W. Jeffrey is the President of this Corporation, is still qualified and serving in such capacity, and the Resolution authorizing execution of the AGREEMENT remains in full force and effect as of this Date

22 Feb 2012

Date



Richard A. Currier, Secretary  
New Hampshire Central Railroad, Inc.

(SEAL)

STATE OF NEW HAMPSHIRE  
COUNTY of MERRIMACK

On FEB. 22, 2012 before the undersigned officer, personally appeared the person identified in the foregoing Certificate known to me (or satisfactorily proven) to be the Secretary of the Corporation identified in the foregoing Certificate, and acknowledged that he executed the foregoing Certificate.

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

FEB. 22, 2012

Date



Notary Public

FRANCES M. MONAHAN, Notary Public  
My Commission Expires November 28, 2012

## AMENDMENT TO OPERATING AGREEMENT

This AMENDMENT TO THE OPERATING AGREEMENT ("Amendment") is entered into this 22<sup>nd</sup> day of October, 2021, 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 Hampshire Central Railroad Corporation, PO Box 165, North Stratford, NH 03590-0165, (hereinafter referred to as "the Contractor"), collectively referred to as ("the Parties").

WHEREAS, the State and the Contractor, are parties to the Operating Agreement, entitled "Operating Agreement on the State-Owned Portion of the North Stratford-Beecher Falls Branch, Berlin Branch, Groveton Branch, and Adjacent Railroad Corridors" dated February 17, 2012, approved by the New Hampshire Governor and Executive Council on March 28, 2012 ("Operating Agreement");

WHEREAS, pursuant to the Operating Agreement, the Contractor provides service on the state-owned portions of the North Stratford-Beecher Falls Branch, Berlin Branch, Groveton Branch, Mountain Division, and Adjacent Railroad Corridors, 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 December 31, 2021;

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 December 31, 2021; and

WHEREAS, the Parties desire for the Contractor to continue its use and operation of the state-owned railroad lines described in Section 2.1 of the Operating Agreement 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 December 31, 2021 for an additional six (6) months. The amended Completion Date shall be June 30, 2022. The Operating Agreement shall terminate on June 30, 2022, unless terminated sooner in accordance with Section 1.8 or Section 1.9 of the Operating Agreement.
2. If the Parties enter into a new operating agreement on or before June 30, 2022, the current Operating Agreement shall automatically terminate upon the effective date of the new agreement.
3. Section 1.3.1 of the Operating Agreement shall be replaced with the following: If the Contractor and the State cannot agree upon a new agreement by June 30, 2022, 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.

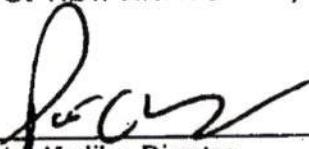
IN WITNESS WHEREOF, the Parties hereto have set their hands the date first-written above.

New Hampshire Central Railroad, Inc.  
(Contractor)

By:   
Edward Jeffrey, President

Date: 10-22-21

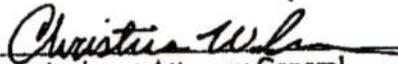
STATE OF NEW HAMPSHIRE, DEPARTMENT OF TRANSPORTATION  
(State)

By:   
Patrick Herlihy, Director  
Division of Aeronautics, Rail & Transit  
New Hampshire Department of Transportation

Date: 11/9/2021

The foregoing Amendment, having been reviewed by this office, is approved as to form and execution on November 10, 2021.

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 HAMPSHIRE CENTRAL RAILROAD, INC. is a New Hampshire Profit Corporation registered to transact business in New Hampshire on July 06, 1992. 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: 175754

Certificate Number: 0005458753



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire.

this 22nd day of October A.D. 2021.

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

William M. Gardner  
Secretary of State

**NEW HAMPSHIRE CENTRAL RAILROAD, INC.**

**ACTION BY UNANIMOUS WRITTEN CONSENT OF DIRECTORS**

The undersigned, being all of the directors of **NEW HAMPSHIRE CENTRAL RAILROAD, INC.**, a New Hampshire corporation (the "Corporation"), acting pursuant to the provisions of §8.21 of the New Hampshire Business Corporation Act (R.S.A., Chapter 293-A), and every other power, do hereby consent to and adopt the following resolutions effective as of October 27, 2021, with the same force and effect as though adopted at the duly called and held 2021 annual meeting of the Corporation's board of directors on such date:

*Resolved:* The Corporation hereby ratifies, confirms and authorizes **EDWARD W. JEFFREY** to execute on behalf of the corporation an Amendment To Operating Agreement with the State of New Hampshire, acting by and through the New Hampshire Department of Transportation, Bureau of Rail and Transit to amend the existing agreement to include the following:

1. Section 1.1.1(k) of the Operating Agreement shall be amended to extend the Completion Date of December 31, 2021 for an additional six (6) months. The amended Completion Date shall be June 30, 2022. The Operating Agreement shall terminate on June 30, 2022, unless terminated sooner in accordance with Section 1.8 or Section 1.9 of the Operating Agreement.
2. If the Parties enter into a new operating agreement on or before June 30, 2022, the current Operating agreement shall automatically terminate upon the effective date of the new agreement.
3. Section 1.3.1 of the Operating agreement shall be replaced with the following: If the Contractor and the State cannot agree upon a new agreement by June 30, 2022, the state shall have no further obligations for renewal of the Operating Agreement with the Contractor.
4. All other provisions of the Operating Agreement not amended shall remain in full force and effect.

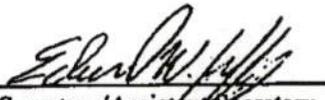
OCT 29 2021

In witness whereof, we have executed this action by unanimous written consent of the directors of **NEW HAMPSHIRE CENTRAL RAILROAD, INC.** effective on the date first written above.

  
**EDWARD W. JEFFREY**  
Director

Filed with the records of **NEW HAMPSHIRE CENTRAL RAILROAD, INC.** on this 27 day of October, 2021.

**ATTEST**

  
Secretary/Assistant Secretary







# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/04/2020

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> United Shoreline Insurance Services 8265 N. Van Dyke Rd  Port Austin MI 48467		<b>CONTACT NAME:</b> Julie Patti <b>PHONE (AC, Ho, Ext):</b> (889) 738-6400 <b>FAX (AC, Ho):</b> (889) 738-6557 <b>EMAIL ADDRESS:</b> juliepatti@shorelineins.com	
<b>INSURED</b> New Hampshire Central Railroad PO Box 165, 2283 US Rte 3  North Stratford NH 03590-0165		<b>INSURER(S) AFFORDING COVERAGE:</b> INSURER A: Liberty Surplus Insurance Corp INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

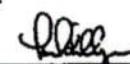
COVERAGES      CERTIFICATE NUMBER: CL2012402952      REVISION NUMBER:

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.

ITEM LTR	TYPE OF INSURANCE	ADDRESS	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  <input checked="" type="checkbox"/> Railroad Liability  GEN'L AGGREGATE LIMIT APPLIES FOR: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	Y	RL004ED20	12/15/2020	12/15/2021	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea accident) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY  <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> MON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY					
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE  <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory to RW) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ EL DISEASE - EA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$

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

The following certificate holder is an Additional Insured but only with respect to liability arising out of the operations of the Named Insured.

<b>CERTIFICATE HOLDER</b>  State of NH-Dept of Transport, Bureau of Railroads PO Box 483, 1 Hazen Drive  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 
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