



THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION



36

William Cass, P.E.  
Commissioner

David Rodrigue, P.E.  
Assistant Commissioner

Andre Briere, Colonel, USAF (RET)  
Deputy Commissioner

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

Bureau of Right-of-Way  
April 9, 2024

**REQUESTED ACTION**

The New Hampshire Department of Transportation (Department), following RSA 4:39-c and 228:31, seeks authorization to sell approximately 0.062 acres of state-owned land situated on the northerly side of Range Road (a/k/a NH Route 111A) in the Town of Windham. The proposed buyer, Crystal Ball Enterprises, LLC (Buyer), has agreed to purchase the land for \$23,100, which includes the administrative fee of \$1,100. This transaction will take effect upon approval by the Governor and Executive Council.

The Department's Bureau of Finance and Contracts has confirmed that the parcel was initially acquired using 90% Federal Funds and 10% Highway Funds. Funding is to be credited as follows:

04-096-096-960015-0000-UUU-402156	<u>FY 2024</u>
Administrative Fee	\$1,100
04-096-096-960015-0000-UUU-409279	<u>FY 2024</u>
Sale of Parcel	\$2,200
(10% of \$22,000)	
04-096-096-963515-3054-401771	<u>FY 2024</u>
Consolidated Federal Aid	\$19,800
(90% of \$22,000)	

**EXPLANATION**

As noted above, the Department is reviewing a buyer's request to acquire a remnant parcel of land. This parcel was created after the former layout of Range Road was discontinued under New Hampshire RSA 230:55 through 230:60.

The Existing Right-of-Way Plan, prepared by The Dubay Group, Inc., which is included with this submission, illustrates the specific area to be conveyed.

The Department has deemed the sale of this parcel to be surplus to its operational needs, and it is available for disposal.

The sale will be subject to the following conditions:

- The buyer must obtain all local and state land use approvals before closing.

At the Long-Range Capital Planning and Utilization Committee meeting on March 10, 2023, the request (LRCP 23-004) was approved, authorizing the Department to proceed with the sale of approximately 0.062 acres of state-owned land. The sale price is set at the contributory value of \$22,000 with an additional administrative fee of \$1,100 (\$500 previously received).

The Department formally sought interest from the Town of Windham, following RSA 4:39-c, and the Town indicated it has no interest in acquiring the parcel.

Following RSA 204-D:2, the Department formally sought interest from the New Hampshire Housing Finance Authority, which has no interest in acquiring the parcel.

The Department respectfully requests authorization to proceed with the sale of this land, subject to the conditions noted above.

Respectfully,



William J. Cass, P.E.  
Commissioner

WJC/SJN  
Attachments

**STATE OF NEW HAMPSHIRE**  
**INTER-DEPARTMENT COMMUNICATION**

**LRCP 23-004**

**FROM:** Stephen G. LaBonte  
Administrator

**DATE:** February 2, 2023

**AT:** Dept. of Transportation  
Bureau of Right-of-Way

**SUBJECT:** Sale of State-Owned Land in Windham  
RSA 4:39-c

Approved by the Long Range  
Capital Planning & Utilization  
Committee March 10, 2023

**TO:** The Honorable Chairman  
Long Range Capital Planning and Utilization Committee

**REQUESTED ACTION**

The New Hampshire Department of Transportation (Department), pursuant to RSA 4:39-c, requests authorization to dispose of 0.062 +/- of an acre of state-owned land on the northerly side of Range Road (NH Route 111A) in the Town of Windham (Town). The sale will be direct to CE Properties, LLC (Grantee) for \$23,100.00, which includes an administrative fee of \$1,100.00, pursuant to RSA 4:40, III-A. The sale will be subject to conditions as specified in this request.

**EXPLANATION**

The Grantee submitted a request to acquire the portion of state-owned land as noted above. This parcel is within an area where the Grantee is in the process of obtaining approval from the Town for subdivision and development purposes. Please reference the Site Layout Plan prepared by The Dubay Group, Inc., attached herewith. Under RSA 230:55, through RSA 230:60, this disposal is also subject to a discontinuance of the former layout of NH Route 111A, which is in process. Please reference the Existing Right-of-Way Plan prepared by The Dubay Group, Inc., attached herewith.

The parcel is a portion of a larger parcel acquired in 1961. The state acquired portions of 4 parcels from Earnest Bottomley and Dora Boulger via an out-of-court settlement for \$8,650.00. After a departmental review, it was determined that the parcel is surplus to the Department's operational needs and available for disposal. This parcel will be conveyed "as is" with no additional conditions.

A Staff Appraiser from the Department evaluated the property and concluded it does not have an independent highest and best use. They then prepared a contributory value appraisal using the sales comparison approach that adheres to the requirements of the Uniform Standards of Professional Appraisal Practice. The property's contributory opinion of value as of April 15, 2020, was concluded to be \$22,000.00.

Pursuant to RSA 4:39-c, the Department will solicit interest from the Town of Windham. Pursuant to RSA 204-D:2, the Department will also solicit interest from the New Hampshire Housing Finance Authority.

The Department respectfully requests authorization to sell the parcel as outlined within this request.

SGL/SJN/  
Attachments



**Rob Dapice**  
Executive Director/CEO  
rdapice@nhhfa.org

DEPT. OF TRANSPORTATION  
BUREAU OF RIGHT OF WAY

APR 24 2023

**RECEIVED**

April 18, 2023

Stephen G. LaBonte, Administrator  
Bureau of Right of Way  
New Hampshire Department of Transportation  
JO Morton Building, Room 100  
7 Hazen Drive  
P.O. Box 483  
Concord, NH 03302-0483

RE: Windham property

Dear Mr. LaBonte:

New Hampshire Housing Finance Authority is not interested in purchasing the property located in Windham, described in your letter of March 17, 2023.

We would like to thank you for giving us the opportunity to review this parcel.

Sincerely,

**Robert B. Dapice**  
Executive Director/CEO

Enclosures

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2  
3  
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**TOWN OF WINDHAM, NH**  
**BOARD OF SELECTMEN MEETING**  
**January 22<sup>nd</sup>, 2024**  
**Community Development Department**  
**3 North Lowell Rd.**  
**Approved Minutes**

8 Attendance:

9 Chairman Ross McLeod- present  
10 Vice Chair Heath Partington- present  
11 Bruce Breton- excused  
12 Mark Samsel- present  
13 Roger Hohenberger- present

14  
15 Staff:

16 Brian McCarthy- Town Administrator

17  
18 Chief Caron addressed the Board and wanted to acknowledge Mr. Kevin Landry, the owner of Renzo  
19 Gracie. Chief Caron stated that Mr. Landry, his family and his business has been instrumental in training  
20 Windham law enforcement over the years. Mr. Landry stated that it is great honor to receive this award  
21 and to be acknowledged.

22  
23 Chief Caron then acknowledged Sgt. Van Hirtum for a promotion ceremony. Chief Caron then listed Sgt.  
24 Van Hirtum's accomplishments.

25  
26 Announcement/Liaison Reports

27  
28 There is a voting primary tomorrow between 7 am and 8 pm at Windham High School.

29  
30 The Deliberative Session will be held on February 2<sup>nd</sup> and will begin at 9 am. There will be a Board of  
31 Selectmen meeting held immediately after the conclusion of the Deliberative Session.

32  
33 Cheryl Haas/Recreation Department

34  
35 Ms. Haas addressed the Board to discuss waiving the RFP for the fireworks. There is only one available  
36 vendor. Ms. Haas stated that the cost went up \$500 since last year and it is now approximately \$8,100.

37  
38 **A motion was made by Mr. Hohenberger to waive the purchasing policy for the fireworks because**  
39 **there are only 2 companies who bid on the job have merged into one. Seconded by Mr. Samsel. Vote**  
40 **4-0.**

41  
42 The amount for the fireworks is under \$10,000 so it can be approved by the Town Administrator; it does  
43 not need to be approved by the Board.

44  
45 Ms. Haas stated that she is looking to waive the bid process for the pickleball courts to be installed at the  
46 Nashua Road fields. Ms. Haas stated that these are all valid, up-to-date bids. Mr. Hohenberger asked for  
47 specifics around the resurfacing. Ms. Haas stated that one of the courts will remain a tennis court and the

48 other will be 2 pickleball courts. Ms. Haas stated she sent it out to 6 vendors and she received 3 quotes  
49 back. Ms. Haas stated that typically, the process is posted to the town website but she is looking for the  
50 Board to approve the renovation of the courts without posting the prices since this was done for budgetary  
51 purposes, not for a formal RFP. Mr. McCarthy stated that Ms. Haas followed a similar process to  
52 gathering an RFP.

53  
54 **A motion was made by Mr. Hohenberger to waive the bid process for the Nashua Fields tennis  
55 court/pickleball court repair and renovation. Seconded by Mr. Samsel.**

56  
57 Ms. Haas stated that the renovation court should last for 3 years before needing to be resurfaced.

58  
59 **Vote 4-0. Motion passes.**

60  
61 **A motion was made by Mr. Hohenberger to notify LWCF that Windham Recreation will be  
62 converting the tennis court at Nashua fields to two pickleball courts. Seconded by Mr. Samsel. Vote  
63 4-0. Motion passes.**

64  
65 Campbell Farm

66  
67 Mr. Wayne Morris from the Conservation Commission addressed the Board. Mr. Morris stated that they  
68 would be looking to waive the bid process for a new sign. 36 by 72 inches is the size of the sign; these  
69 would be on granite posts.

70  
71 Chairman McLeod invited public comment.

72  
73 Mr. Dave Curto, Vice Chair of the Conservation Commission, addressed the Board. Mr. Curto stated that  
74 the paint is a very durable automotive paint for the sign. Mr. Curto stated that on the sign is a historic  
75 picture of a hay rake. Mr. McCarthy, a local businessman, has stated he is willing to donate the hay rake  
76 to the Conservation Commission.

77  
78 Mr. Morris stated that they would also like to develop a QR code on the corner of the sign which would  
79 allow people to connect to the town website. The money would be coming out of the current use funds.  
80 Chairman McLeod asked if the plan that would tie all the historic signs together. The Board, Mr. Morris  
81 and Mr. Curto discussed the cohesiveness of the signs, if they would have the same pattern as other signs  
82 in town. The Board discussed cost estimates of the signs. Mr. Samsel stated that he liked the ideas of  
83 being consistent with other signs in town.

84  
85 **A motion was made by Vice Chair Partington to waive the purchase policy for the Campbell Farm  
86 sign as presented. Seconded by Mr. Samsel. 3-1. Mr. Hohenberger opposed.**

87  
88 **Steve Labonte/ NHDOT**

89  
90 Mr. Steve LaBonte addressed the Board. Mr. Labonte reviewed the history of the lot. Mr. Labonte stated  
91 they would like to proposed selling the parcel to Crystal Ball Enterprises. The issue before the Board is if  
92 they might approve the selling of the parcel.

93  
94 Mr. Jacques Lopez, 2 Edgewood Road, addressed the Board. Mr. Lopez stated that this is a very small  
95 parcel. He sees that one future for the property is for development. It is required for a proposed  
96 development project and he sees this as an already encroached piece of land. Mr. Lopez stated that he  
97 does see that this has environmental purpose. Mr. Lopez stated that the strip of land is at the end of  
98 Edgewood Road and the property is right across the road from his home. Mr. Lopez stated that he was

99 willing to enter the process of trying to buy the property but he was told he was not an abutter. Mr. Lopez  
100 stated that he does not think this should be rubber stamped towards development.

101  
102 Mr. Patrick Nysten addressed the Board. Mr. Nysten said he wanted to speak to the environmental  
103 sensitivity to the area. Mr. Nysten stated that the streams were not shown on the plan as it was presented.  
104 Mr. Nysten stated that he has heard reports that there is a high-water table on the property and it does  
105 have a direct line to Canobie Lake. Mr. Nysten stated that the well heads are also nearby. Mr. Nysten  
106 stated that he does think the purchase of the property for the town would benefit the town on several  
107 levels. Mr. Nysten would like to see the Board defer the decision of the purchase of the property.

108  
109 Mr. Samsel asked about the 6-1 Planning Board vote regarding a plan on the abutting property.

110  
111 Ms. Vanessa Nysten, 4 Edgewood Road, addressed the Board. The land acquisition has potential benefits  
112 to the town, Mr. Nysten submitted evidence on the high chloride levels. Ms. Nysten stated that there are a  
113 lot of health risks related to PFAS in humans as well as animals. Ms. Nysten stated that she is submitting  
114 the forms as evidence. Ms. Nysten stated that she talked with someone at the DES and the lot is in 5  
115 different protected areas. Ms. Nysten then contacted a wetland scientist and Ms. Nysten stated that the  
116 well head protection area was found to be nearby. Ms. Nysten wanted to discuss the Windham Master  
117 Plan and then read from the Master Plan including information about the WPOD and the WWPD. Ms.  
118 Nysten asked that the Board vote to purchase this property for conservation.

119  
120 Mr. Karl Dubay addressed the Board. Mr. Dubay stated that the piece of property is extremely small. Mr.  
121 Dubay stated that this is a sliver of land that is over the side of a road. Mr. Dubay stated that he knows the  
122 Board has already voted to forgo the purchase of this for the town. This is a very small piece of property.  
123 Mr. Dubay sees this as a drive to take out development in town. Mr. Dubay stated that there has been no  
124 interest on this piece of property. Mr. Dubay sees this as a "spite purchase".

125  
126 Mr. Samsel asked what purpose this piece would provide for development. Mr. Dubay stated that it would  
127 be landscaped and it would still have a swale. There will be more recharge on the property. Mr. Dubay  
128 stated that this is really a shoulder of a road. Mr. Dubay stated that the access would be slid down towards  
129 the animal hospital. Mr. Dubay stated that he does not see the value of this piece of property to anyone  
130 else or any other department.

131  
132 Mr. Andrew Stahly, owner of Crystal Ball, addressed the Board. Mr. Stahly asked about the question of  
133 land access for him. Mr. Stahly is concerned about access to his business and property.

134  
135 Mr. David Reese, 2 Lakewood Road, addressed the Board. Mr. Reese stated that the project on the  
136 abutting property would be considered approvable. Mr. Reese stated that the drainages and the wetlands  
137 were not accurate on the original maps; there were incomplete or erroneous maps.

138  
139 Mr. Labonte stated that the he would like to know if the town would like purchase the property.

140  
141 Mr. Hohenberger reviewed the property based on the site walk he had attended. There were several  
142 wetland scientists present at the site walk. Mt. Hohenberger stated that the Planning Board did vote to  
143 preserve the property. Mr. Hohenberger stated that the Planning Board would like to keep this as part of  
144 town property because they are concerned about the wetland. Mr. Hohenberger stated that he is going to  
145 vote to purchase it because he sees this as part of the wetland in the area.

146  
147 Mr. Samsel is concerned that the Board of Selectmen is getting pulled into as area that is not their job.  
148 Mr. Samsel would prefer other parties be involved in the zoning of this property. Mr. Samsel would vote  
149 not to purchase it.

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Vice Chair Partington stated that this is a piece of property that kind of fell in their lap. Vice Chair Partington does think the purchase of the property would protect that very sensitive area.

Chairman McLeod stated that if they were to purchase the property, they can then make improvements to the area to help other properties and the surrounding areas; he does not see any harm in having this run its course through the Planning Board. Chairman McLeod cited a letter from Mr. Luke Hurley that said they did not see any conservation value on the property.

**A motion was made by Vice Chair Partington to purchase the proposed parcel of land from NHDOT. Seconded by Mr. Hohenberger. Vote 2-2. Motion fails. Chairman McLeod and Mr. Samsel opposed.**

Mr. Labonte stated that they would be taking this as a no vote and the Board will not be taking any action to purchase the property.

Review of the Draft of the 2024 Voter's Guide

Mr. McCarthy presented the voter's guide to the Board.

Chairman McLeod asked about language around "no means no" about the fiscal year. Mr. McCarthy said he would strike it.

Abstention indicated that a seated member of the Board declined to vote on a warrant article.

Article 3

The Board discussed getting rid of all the quotation marks. Mr. Samsel suggested grammar edits on the first page, third paragraph, would omit "would like to". Add with appropriations to pg. 12. Get rid of the second "as" on pg. 13. "Recommended by vote of selectmen at the public hearing"

Article 17

pg. 18, The Board discussed the term laminated timber.

Article 18

The term "passive recreation corridor" was discussed.

Article 5

Vice Chair Partington stated that the explanation is so strongly worded it sounds like malfeasance.

The Board discussed the potential safety issues mentioned.

Also, a voter can bring anything with them into the voting booth but a voter cannot leave any materials in the voting booth.

Mr. Hohenberger stated that the voter's guide is supposed to give voters information. The job of the voter's guide is to explain what the article is about. Mr. McCarthy stated that this is going to legal and it will be reviewed.

## PURCHASE AND SALES AGREEMENT

This **PURCHASE AND SALES AGREEMENT** ("Agreement") is made as on the 3<sup>rd</sup> day of April, 2024, by and between the State of New Hampshire, Department of Transportation, having a principal place of business at 7 Hazen Drive, Concord, New Hampshire 03301 (referred to as the "Department") and Crystal Ball Enterprises, LLC, or their designee at closing (under common control), with a principal address at 3 Bennington Road, Windham, New Hampshire 03087 (referred to as the "Buyer") (referred to individually as a "Party" and collectively as the "Parties").

### RECITALS

This Agreement relates to the sale of real estate located on the northerly side of Range Road (NH Route 111A), (the "Property"), more particularly described as: A portion of right-of-way acquired by the NH Department of Transportation via Commissioner's Return of Highway Layout, Section Twenty-Two-Interstate Route 93, Salem-Windham, I-93-1(40)3, P-5201A, 1961, recorded at the Rockingham County Registry of Deeds on May 1, 1961 in Book 1581, Page 109.

This Agreement is entered into upon the basis of the following facts and intentions of the Parties:

- I. The Department owns certain real estate located on the northerly side of Range Road (NH Route 111A), in Windham, New Hampshire, consisting of 0.062 +/- of an acre of unimproved land, within the Right-of-Way, as further described herein.
- II. The Department is disposing of a portion of the Right-of-Way totaling 0.062 +/- of an acre, as it has been determined that the subject property is surplus to the Department's needs.
- III. The Buyer is afforded the ability to acquire the Property in accordance with RSA 4:39-c.
- IV. The Buyer, subject to the contingencies set forth within this Agreement, desires to acquire the Property from the Department for the purposes of providing additional area to their abutting parcel.
- V. This Agreement is a binding contract that shall become effective upon approval of the Governor and Executive Council, pursuant to RSA 4:39-c.
- VI. All Parties signatories to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

*ml*

NOW, THEREFORE, the Parties hereby agree as follows:

1. **DESCRIPTION OF PROPERTY AND REAL ESTATE TRANSACTION:**

1.1. **General:** Pending the results of the Buyer's due diligence and other conditions outlined in this Agreement, the Department intends to sell to the Buyer, and the Buyer intends to acquire from the Department, the Property, consisting of 0.062 +/- of an acre of land, as shown on the Existing Right-of-Way Plan prepared by The Dubay Group, dated January 28, 2020, **Exhibit 1**.

1.2. **Purchase Price:** The Buyer shall acquire the Property for the sum of **TWENTY-TWO THOUSAND DOLLARS (\$22,000)** together with administration fees in the amount of \$1,100.00 of which the Department has received \$500.00 and the balance of \$600.00 shall be due at closing.

1.3. **Payment of Purchase Price:** The Purchase Price shall be paid in full by the Buyer, by certified check or bank check, made out to "Treasurer, State of New Hampshire", and presented to the Department at the closing and conveyance of the Property to the Buyer.

1.4. **Conditions of sale:** The subject property on the northerly side of Range Road (NH Route 111A) is being sold "AS IS, WHERE IS and WITH ALL FAULTS" and with the sale condition approved by the Long-Range Capital Planning and Utilization Committee, LRCP 23-004 on March 10, 2023. The following sale condition must be satisfied prior to closing:

1.4.1 Buyer is responsible to obtain all local and state land use approvals precedent to closing.

1.5. **Access to Property:** The Department hereby grants authorization to the Buyer, its employees, representatives, consultants, and agents to enter the Property for the purpose of completing due diligence and for all other purposes necessary to carry out the terms of this Agreement. All times and dates for such access shall require prior approval from the Department, and such approval will not be unreasonably withheld.

The Department and the Buyer shall coordinate all access to the Property by third parties working on behalf of the Buyer as part of the Buyer's due diligence.

The Buyer shall indemnify, defend, and hold harmless the Department from and against all claims, actions, damages, or losses arising out of the Buyer's activities pursuant to this paragraph during its inspection and subsequent tasks related thereto which are caused solely by the Buyer's negligence. The Buyer shall require all contractors who are retained for the purpose of completing due diligence or for any other purpose



necessary to carry out the terms of this Agreement, and who will need to access the Property, to obtain a certificate of insurance in the amount of \$2 million aggregate, \$1 million per occurrence naming the Department as an additional insured. The Buyer shall also require any such contractors to execute the Buyer's standard indemnification form naming both the Buyer and the Department as indemnified parties. The standard indemnification form shall be as follows unless written approval of a requested change is granted by both the Department and Buyer:

"The contractor agrees to indemnify, defend and save harmless the Buyer and State of New Hampshire Department of Transportation, their officials, officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by the contractor in the performance of this contract. This indemnification shall survive the expiration or early termination of this contract."

- 1.6. **Closing:** The Parties agree that the Closing shall occur within ninety (90) days after final approval of the sale by the Governor and Executive Council, unless otherwise mutually agreed by the Parties.
- 1.7. **Title and Deed Restrictions:** In addition to the terms and conditions set forth within this Agreement, the conveyance of the Property by the Department to the Buyer shall be of good and marketable title thereto by Quitclaim Deed ensuring that the Buyer holds marketable fee simple title to the Property subject to:
  - a) Easements, liens, restrictions, and/or encumbrances of record or any other matters of record in existence at the time of the Closing accepted and approved by the Buyer; and
  - b) Provisions of building and zoning laws in effect at the time of the Closing.
- 1.8. **Transfer Taxes and Recording Fees:** In accordance with NH CODE ADMIN.R. ANN REV 802.03(e), the Department is exempt from any Real Estate Transfer Tax.
- 1.9. **Department's Disclosures:** The Department makes no warranties or representations regarding environmental contamination or sub-surface conditions at the Property.

1.10. **Casualty and Condemnation:** In the event that the Property, prior to closing, is damaged by fire, flood, collapse, or other casualties, the Department, or the Buyer, at any time after the occurrence of such damage or casualty, may elect to terminate this Agreement by written notice, in which event all other obligations of the Parties hereunder shall cease and this Agreement shall thereupon be void and of no further force or effect. In the event of a casualty, the Department and the Buyer agree to hold each other harmless from any claim for any costs, damages, liabilities, or financial losses it may incur.

2. **Buyer's Contingencies:** The Buyer's obligation to Close on the acquisition of the Property shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Buyer any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the Buyer shall have no further obligation to the Department.

2.1. **Title: Time being of the essence,** upon execution of this Agreement by the Parties, the Buyer may perform a title examination of the Property within fifteen (15) days, to be reasonably satisfied that title to the Property is marketable and insurable. If upon examination of the title it is found not marketable or insurable, after identifying to the Department in writing any apparent title defects and providing the Department reasonable opportunity to cure them, this Agreement may be rescinded at the option of the Buyer or Department and all deposits shall be refunded to the Buyer, provided that written notice is delivered within the said time frame, **time being of the essence**. If no notice is given within the said time frame, then any objections to the title are waived.

## **REPRESENTATIONS AND WARRANTIES**

2.2. **Representations and Warranties of the Buyer.** The Buyer hereby represents and warrants that:

2.2.1. The execution and delivery of this Agreement and the performance of the Buyer's obligations hereunder have been duly authorized by such action as necessary, and this Agreement constitutes the legal, valid, and binding agreement of the Buyer, enforceable against the Buyer in accordance with its terms subject only to the conditions set out in this Agreement.

2.2.2. Subject to the conditions set out in this Agreement, neither the execution nor delivery by the Buyer of this Agreement, the performance by the Buyer of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Buyer of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law, charter, ordinance or

governmental regulation applicable to the Buyer, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Buyer is a party or by which the Buyer or any of its properties or assets are bound, or constitutes a default there under.

2.2.3. Except as set forth in this Agreement, no approval, authorization, order, or consent of, or declaration, registration, or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Buyer, except such as have been duly obtained or made or disclosed in this Agreement.

2.2.4. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Buyer, wherein an unfavorable decision, ruling, or finding would materially adversely affect the performance by the Buyer of its obligations hereunder or the performance by the Buyer of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Buyer in connection with the transactions contemplated hereby.

**2.3. Representations and Warranties of the Department.** The Department hereby represents and warrants to the best of its knowledge and belief that:

2.3.1. The Department has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery, and performance by it of this Agreement subject to the Department seeking and obtaining final approval by Governor and Executive Council pursuant to RSA 4:39-c. This Agreement will, upon execution and delivery thereof by the Department and upon approval by Governor and Executive Council, constitute valid, legal, and binding obligations of the Department enforceable against the Department in accordance with the respective terms thereof.

2.3.2. Neither the execution nor delivery by the Department of this Agreement, the performance by the Department of their obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Department of the terms or conditions hereof conflicts with, violates, or results in a breach of any constitution, law or governmental regulation applicable to the Department, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Department is a party or by which the Department or any

of its properties or assets are bound, or constitutes a default there under.

- 2.3.3. Except as set forth in this Agreement, no approval, authorization, order, or consent of, or declaration, registration, or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Department, except such as have been duly obtained or made.
- 2.3.4. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Department, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Department of their obligations hereunder or the performance by the Department of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Department in connection with the transactions contemplated hereby.

### 3. GENERAL PROVISIONS

- 3.1. **Cooperation:** The Buyer and the Department agree to cooperate with each other to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further documents as may reasonably be requested by the Department, the Buyer, or their representatives, agents, and consultants.
- 3.2. **Entire Agreement; Amendments.** This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification, or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.
- 3.3. **Binding Effect; Successors and Assignors.** The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees.



- 3.4. **Headings.** The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit, or expand the express provisions of this Agreement.
- 3.5. **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 3.6. **Governing Law.** This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.
- 3.7. **Enforceability.** Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
- 3.8. **Consent to Jurisdiction and Venue.** The Department and the Buyer submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County Superior Court. Both Parties hereby waive their right to a jury trial.
- 3.9. **Independent Parties.** The Department and the Buyer are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.
- 3.10. **Survival of Agreement.** The agreements, covenants, indemnities, representations, and warranties contained herein shall survive the execution and delivery of this Agreement.
- 3.11. **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 3.12. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture,



association, joint stock company, trust, unincorporated organization, or government, other than the Parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.

- 3.13. **Preservation of Rights.** Nothing herein or in any related Agreement shall limit or be construed to limit in any way rights or remedies the Buyer may have for the collection of real property taxes under law unless expressly set forth herein.
- 3.14. **Time of the Essence.** The Parties agree that time is of the essence in the performance of their respective obligations under this Agreement.
- 3.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.
- 3.16. **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any Buyer or other governmental Board, Committee, Commission, or Department, or excuse the parties from the requirement to apply for and receive all necessary permits and approvals from all applicable Buyer or other governmental Boards, Committees, Commissions, or Departments, including but not limited to the requirement that the agreement is approved by the Governor and Executive Council pursuant to RSA 4:39-c prior to the Department being required and/or authorized to convey the property to the Buyer.
- 3.17. **Warranties and Representations.** The Department and the Buyer each acknowledge that they have not been influenced to enter this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.
- 3.18. **Saving Clause.** In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any Court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not affected thereby shall remain in full force and effect.

**LIST OF EXHIBITS**

Exhibit 1 Existing Right-of-Way Plan prepared by The Dubai Group, dated January 28, 2020.

**[The remainder of this page left blank intentionally]**

*mu*

BUYER:

By: [Signature] Date: 4/3/24

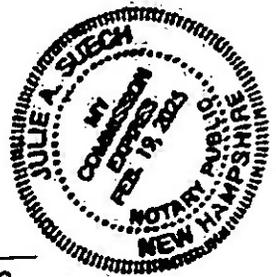
Printed: Dr. Melissa L. Magnuson  
Manager of Crystal Ball Enterprises, LLC  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF Rockingham

Signed or attested before me on 3 day of April, 2024.



[Signature]  
Justice of the Peace/Notary Public  
My Commission Expires: 2/19/25



SELLER:

STATE OF NEW HAMPSHIRE  
By: [Signature] Date: 4/5/24

Printed: Stephen G. LaBonte  
Administrator, Bureau of Right-of-Way  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK.

Signed or attested before me on 5<sup>th</sup> day of April, 2024.

[Signature]  
Justice of the Peace/Notary Public  
My Commission Expires: 11/25/24

(Seal)

SANDRA J. NEWMAN, Notary Public  
State of New Hampshire  
My Commission Expires Nov. 25, 2024

