

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
DIVISION OF PARKS AND RECREATION
BUREAU OF TRAILS
172 Pembroke Road
Concord, NH 03301
Tel. (603) 271-3254 Fax (603) 271-3553**

**SPECIFICATIONS FOR RAIL REMOVAL AND SALVAGE PROJECT
BERLIN BRANCH RAIL CORRIDOR
BETHLEHEM, NH**

PROJECT No. TB-2301

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NOTICE TO BIDDERS

**Project: #TB-2301 RAIL REMOVAL AND SALVAGE PROJECT ON THE BERLIN BRANCH
RAIL CORRIDOR IN BETHLEHEM, NH**

Sealed bid proposals for the above project will be accepted until 2:00 P.M., prevailing time, on Friday September 1st, 2023. Proposals should be mailed to: Attn: **Craig Rennie, Trails Bureau Chief, Department of Natural and Cultural Resources, 172 Pembroke Road, Concord, NH 03301.**

Specifications will be available to interested contractors at the Bureau of Trails HQ Office on Tuesday, August 17th, 2023 @ 172 Pembroke Rd, Concord, NH 03106

They may also be viewed at the following locations:

- 1.) State of New Hampshire Purchase and Property website: [Statewide Bids and Proposals](#).
- 2.) State of New Hampshire State Parks website: [RFPs & Projects](#).
- 3.) Construction Summary of New Hampshire Inc., 734 Chestnut Street, Manchester, NH 03104.
Tel. (603) 627-8856. View online at: <http://www.constructionsummary.com/>
- 4.) Alpha Graphics, 933 Islington Street, Portsmouth, NH 03801. Tel. (603) 436-3030
- 5.) Dodge Data & Analytics. Tel. 1-877-784-9556. View online at: www.construction.com
- 6.) Signature Press & Blueprinting, 45 Londonderry Turnpike, Hooksett, NH 03106.
Tel. (603) 624-4025
- 7.) Works in Progress, 20 Farrell Street, Suite 103, South Burlington, VT 05403. Tel. 1-800-669-7048.
View online at: <https://www.worksinprogress.com/> or <https://www.constructionjournal.com/>

All companies, corporations, and tradenames bidding must be registered as a **NH State Vendor** and have a **certificate of good standing** from the NH Secretary of State, Corporate Division (telephone 603-271-3246) in order to do business with the State of New Hampshire.

Bid Proposals must be made out on the forms provided in the specifications packet and submitted in a sealed envelope marked: **Bid Proposal: Rail Removal & Salvage Project, No. TB-2301.**



Craig Rennie
Trails Bureau Chief

STATE OF NEW HAMPSHIRE
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
DIVISION OF PARKS AND RECREATION
PLANNING AND DEVELOPMENT
172 Pembroke Road
Concord, N.H. 03301
TEL. 603-271-2606 FAX 603-271-2629

BID PROPOSAL FORM

PROJECT: #TB-2301 **RAIL REMOVAL & SALVAGE PROJECT ON THE
BERLIN BRANCH RAIL CORRIDOR IN BETHLEHEM,
NH**

MANDATORY PRE BID MEETING: Not Applicable

DATE BID OPENING: September 1st 2023 at 2:00 p.m.

MANDATORY CONSTRUCTION MEETING: Before construction commences.

START DATE: November 8th, 2023

COMPLETION DATE: No later than September 30th, 2024

Sealed bid proposals for the above project will be accepted until 2:00 p.m., prevailing time, on **September 1st, 2023**. Bids should be MAILED TO: Attn: Craig Rennie Trails Bureau Chief, Department of Natural and Cultural Resources, 172 Pembroke Road, Concord, NH 03301.

Please note on the outside of the envelope: **"Bid Proposal: Rail Removal & Salvage, Project No. TB-2301"**.

DATE: _____

PROPOSAL OF: _____
(Company Name)

GRAND TOTAL / LUMP SUM BASE BID: _____

STATE OF NEW HAMPSHIRE
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
DIVISION OF PARKS AND RECREATION
PLANNING AND DEVELOPMENT

PROPOSAL

Proposal of...

(Company name)

(Company address)

To furnish and deliver all materials and services except as noted and to perform all work in accordance with the Contract of the State of New Hampshire, Department of Natural and Cultural Resources for:.

Project #TB-2301 RAIL REMOVAL & SALVAGE PROJECT ON THE BERLIN BRANCH RAIL CORRIDOR IN BETHLEHEM, NH

Commissioner
Department of Natural and Cultural Resources
172 Pembroke Road,
Concord, N.H. 03301

Commissioner:

In accordance with the advertisement of the Department of Natural and Cultural Resources inviting proposals for the project herein before named and in conformity with the Plans and Specifications on file in the office of the Department of Natural and Cultural Resources, _____(firm name) hereby certifies that _____ is/are the only person, or persons, interested in this proposal as principals; that this proposal is made without collusion with any person, firm, or corporation; that an examination has been made of the Plans, of the Standard Specifications, and Special Attentions, Supplemental Specifications, and Special Provisions, all of which are attached hereto, and also of the site of the work; and I, or we, propose to furnish all necessary machinery, equipment, tools, labor, and other means of construction, and to furnish all materials specified in the manner and at the time prescribed; and understand that the quantities of work as shown herein are approximate only and are subject to increase or decrease, and further understand that all quantities of work are to be performed at the quoted prices.

To execute the form of contract and begin work within 15 (fifteen) days after the notice to proceed has been received or otherwise delivered to the contractor and to prosecute said work until its completion.

It is further proposed:

To guarantee all of the work performed under this contract to be done in accordance with the plans and specifications and contract documents.

The undersigned acknowledges receipt of the following addenda, issued if any, during the bidding time, and states that these have been incorporated in the proposal:

Addendum #1 dated _____

Addendum #2 dated _____

Addendum #3 dated _____

Dated _____

SCHEDULE OF VALUES FOR RAILROAD RAIL AND TIE REMOVAL PROJECT ON THE BERLIN BRANCH RAIL CORRIDOR IN LITTLETON, NH PROJECT # TB-2301

| Calendar Year 2023-2024 | Cost |
|---|---------------|
| Values | |
| Mobilization and Demobilization | |
| Removal of approximately 11,300'+/- of <u>railroad track</u> (equaling 22,600'+/- of rail length) rail joint bars, and all other rail components plates and transported to the NHDOT rail yard in Whitefield NH. | |
| Tie removal and disposal for entire project length | |
| Clean-Up, Restoration, and disposal of materials | |
| Allowance for unforeseen conditions | 10,000 |
| Total Lump Sum | |

NOTE: The Schedule of values must be completely filled out in order for bid proposal to be considered responsive.

ALLOWANCE #1: Unanticipated Modification and/or Additions to Contract Items:

Include in the Contract, a stipulated sum/price of **\$10,000** for use upon the Project Managers instruction. This Allowance will make money available for modifications and/or additions to contract items due to owner-initiated changes, or for unknown, latent or differing existing conditions. Contractor's costs for products, delivery, installation, labor, insurance, payroll, taxes, equipment rental, overhead and profit will be included in **Change Orders** authorizing expenditure of funds from this Allowance.

- a. Funds will be drawn from an Allowance only by Change Order. Contractor can proceed with Change Order Work against Allowance with direction from the Project Manager. The Contractor shall not proceed with any work that will exceed the amount of Allowance remaining.
- b. Credits can only be added to an Allowance by Alteration Order. The Contractor may not use a credit until an Alteration Order is fully executed.
- c. Notwithstanding the Contractors objection, the Project Manager may at any time reduce the funds remaining in the Allowance by Alteration Order.
- d. At Final Payment of the Contract, funds remaining in the Allowance will be credited to the State.

SIGNATURE PAGE

Company Name _____

Address _____

Phone _____

Fax _____

E-mail Address _____

Signature of Authorized Bidder _____

Print _____

Title _____

Address of Bidder _____
(if different than company)

Names and Addresses of Members of the Firm/Corporation

Name _____ address _____

Name _____ address _____

Name _____ address _____

GENERAL CONDITIONS

GENERAL

This contract is to be governed by all the applicable provisions of these specifications.

This project consists of dismantling approximately 22,600 lf +/- of out of service rail, plates, joint bars and Other Track Materials (OTM) and removal of RR ties from 2.25 miles (11,880') of abandoned rail corridor (650' of corridor more than track removal). The corridor will be developed into a year-round recreational trail. Contractor shall be responsible for transporting all rail, joint bars, plates and all other rail components to the NHDOT rail yard in Whitefield NH

BIDDING REQUIREMENTS

Bids shall only be accepted on the official Bid Proposal Forms, attached to these specifications. **Any bids submitted that are not on the official bid proposal forms will not be accepted.**

CONDITIONS AT SITE OR BUILDING

Bidders shall visit the site and be responsible for having ascertained pertinent local conditions such as: location, accessibility, general character of the site or building, the character and extent of existing work within or adjacent to the site, and any other work being performed thereon at the time of the submission of this bid.

RIGHT TO WORK IN N.H.

All bidders must be registered and have a **certificate of good standing** from the Secretary of State, Corporate Division, (telephone 603-271-3244) in order to do business with the State of New Hampshire.

All Bidders must obtain the certificate of good standing before the bid award is approved. Certificates of Good Standing can be obtained online through [NH Quickstart](#).

PROPOSAL SELECTION

In most cases the proposal submitted by the qualified bidder with the lowest base bid price shall be selected. However, the Department of Natural and Cultural Resources reserves the right to reject any or all proposals or advertise for new proposals as it judges to be in the best interest of the state.

CONTRACTORS QUALIFICATIONS

The successful bidder shall provide evidence upon request that they have been in the construction business successfully performing this type, scale, and quality of work for a minimum of five years.

EXECUTION OF CONTRACT

The Contractor's attention is called to the following:

EXECUTION AND APPROVAL OF CONTRACT. The contract shall be signed by the successful Bidder and returned, together with the contract bond, if applicable, within 10 days after the contract has been mailed or otherwise delivered to the Bidder. No contract shall be considered as in effect until it has been fully executed by all the parties thereto and, when the contract amount is more than \$10,000, the award has been concurred in by the Governor and Council.

FAILURE TO EXECUTE CONTRACT. Failure to execute the contract within 15 days after the contract has been mailed or otherwise delivered to the successful Bidder shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty which shall become the property of the Department, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest Bidder, or the work may be re-advertised as the Commissioner may decide.

STARTING DATE

The Contractor shall start work on **November 8th, 2023**, after the notice to proceed is received. The notice to proceed shall be issued immediately upon contract approval by the Governor and Executive Council.

PROTECTION OF EXISTING PROPERTY

It shall be the responsibility of the contractor to protect existing property and salvaged rail components from damage. Any damage caused by the contractor in the performance of the work shall be repaired or replaced at his expense to the satisfaction of the of the NHDOT Railroad Operations Engineer and DNCR Department Project Manager.

CODES

All work performed shall meet the provisions, if applicable, of

WORKMANSHIP

All work shall be performed in a neat workmanlike manner by skilled workmen who have been actively engaged in performing the type of work specified under this contract for the last two years.

CLEAN-UP

All debris from the project shall be cleaned up weekly and removed from the site at least on a monthly basis.

DEFAULT AND TERMINATION OF CONTRACT

If the Contractor...

- (a) Fails to begin the work under the contract within the time specified in the contract, or
- (b) Fails to perform the work with sufficient workmen and equipment or with sufficient materials to assure the prompt completion of said work, or
- (c) Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- (d) Discontinues the prosecution of work, or
- (e) Fails to resume work which has been discontinued, within reasonable time after notice to do so, or
- (f) Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- (g) Makes an assignment for the benefit of creditors, or
- (h) For any other cause whatsoever, fails to carry on the work in an acceptable manner...

The Commissioner will give notice in writing to the Contractor of such delay, neglect, or default.

If the Contractor or Surety does not proceed in accordance with the Notice, then the Commissioner will, upon written notification from the Project Manager of the fact of such delay, neglect or default, and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the prosecution of the work out of the hands of the Contractor. The Commissioner may enter into an agreement for the completion of said contract according to the terms and conditions thereof, or use such other methods as in his opinion will be required for the completion of said contract in an acceptable manner.

All extra costs and charges incurred by the Department as a result of such delay, neglect or default, together with the cost of completion of the work under the contract will be deducted from any monies due or which may become due said Contractor. If such expenses exceed the sum which would have been payable under the contract, then the Contractor and the Surety shall be liable and shall pay to the Department, the amount of such excess.

FAILURE TO COMPLETE THE WORK ON TIME

If the Contractor fails to complete all of the work or sections of the Project, within the time specified in the Contract, the sum given in the schedule that follows will be deducted from any money due the Contractor. This deduction will be made, not as a penalty, but as fixed, agreed liquidation damages for inconvenience to the State and for reimbursing the Department the cost of the Administration of the Contract, including engineering and inspection. Should the amount of money otherwise due the Contractor be less than the amount of such liquidated damages, the Contractor and his Surety shall be liable to the State for such deficiency.

Permitting the Contractor to continue and finish the work after the time fixed for its completion, shall in no way obligate the State to waive any of its rights under the Contract.

When the final acceptance has been duly made by the Project Manager, any liquidated damage charges shall end.

The fixed, agreed, liquidated damages shall be assessed in accordance with the following schedule.

| <u>ORIGINAL CONTRACT AMOUNT</u> | <u>AMOUNT OF LIQUIDATED DAMAGES</u> | |
|---------------------------------|-------------------------------------|-----------|
| | <u>PER WORKING DAY</u> | |
| From more than: | to and including: | |
| 0. | 25,000. | \$ 300.00 |
| 25,000. | 50,000. | \$ 400.00 |
| 50,000. | 100,000. | \$ 500.00 |
| 100,000. | 500,000. | \$ 600.00 |

CHANGES IN THE WORK

The Project Manager may at any time, by a written order, and without notice to the Sureties, make changes in the Specifications and completion date of this contract and within the general scope thereof.

In making any change, the additional cost or credit for the change shall be determined as follows:

- The order shall stipulate the mutually agreed upon lump sum price which shall be added to or deducted from the contract price. The contractor shall furnish an itemized breakdown of the prices used in computing the value of any change that might be ordered.
- If the price change is an addition to the contract price and the work is performed by the general contractor and not a subcontractor, it shall include the contractor's indirect costs as follows: Workmen's Compensation and Employee Liability, Unemployment and Social Security Taxes.
- In addition to the above indirect costs, the general contractor shall be allowed a markup not to exceed ten percent (10%). Said ten percent (10%) shall be all inclusive for overhead, supervision, and profit. In addition to this, an allowance shall be made for performance and payment bond additional premium.
- If the price change is an addition to the contract price and involves the work of the general contractor and subcontractor, the general contractor would be allowed ten percent (10%) on that part of the work performed by him and five percent (5%) on that part of the work performed by the subcontractor. The same percentages shall apply to subcontractors.
- On any change which involves a net credit to the Owner, no allowance for overhead and profit shall be figured.

INSURANCE REQUIREMENTS

No operations under this contract shall commence unless and until certification of insurance attesting to the below listed requirements have been filed with the Commissioner, approved by the Attorney General, and the Contract approved by the Governor and Council and a Notice to Proceed is issued.

Insurance requirements by paragraphs 1-4 below shall be the responsibility of the Prime Contractor. The Prime Contractor, at his discretion, may make similar requests of any subcontractor.

Following is the summary of minimum insurance requirements:

1. Workmen's Compensation Insurance (In accordance with RSA 281-A.)
 - a. Employers' Liability
 - 1.) \$100,000 each accident
 - 2.) \$500,000 Disease-policy limit
 - 3.) \$100,000 Disease-each employee

2. Commercial General Liability Insurance: Occurrence Form Policy: Include full Contractual Liability (see Indemnification Clause 9)., Explosion, Collapse, and Underground coverage's:
 - a. Limits of Liability:
 - 1.) \$1,000,000 Each Occurrence Bodily injury & Property Damage.
 - 2.) \$2,000,000 General Aggregate-Include per Project Aggregate Endorsement.
 - 3.) \$2,000,000 Products/Completed Operations Aggregate.
 - 4.) State shall be named as an additional named insured.

3. Commercial Umbrella Liability
 - a. Limits of Liability:
 - 1.) \$1,000,000 Each Occurrence
 - 2.) 1,000,000 Aggregate

4. General Insurance Conditions
 - a. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than thirty (30) days or ten (10) in cases of non-payment of premium after written notice thereof has been received by the State.

5. Indemnification:
 - a. The Contractor shall indemnify, defend, and hold harmless the State of New Hampshire, its Agencies, and its agents and employees from and against any and all claims, liabilities, suits or penalties arising out of (or which may be claimed to arise out of) acts of omissions of the Contractor or subcontractors in the performance of work covered by the Contract. This covenant shall survive the termination of the Contract. 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 by the State.

NOTE:

References to "the Project Manager" shall be understood to mean the Trails Bureau Chief in the Division of Parks and Recreation, in the Department of Natural and Cultural Resources.

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

| | | | |
|---|----------------------------|---|----------------------|
| 1.1 State Agency Name | | 1.2 State Agency Address | |
| 1.3 Contractor Name | | 1.4 Contractor Address | |
| 1.5 Contractor Phone Number | 1.6 Account Unit and Class | 1.7 Completion Date | 1.8 Price Limitation |
| 1.9 Contracting Officer for State Agency | | 1.10 State Agency Telephone Number | |
| 1.11 Contractor Signature <div style="text-align: right;">Date:</div> | | 1.12 Name and Title of Contractor Signatory | |
| 1.13 State Agency Signature <div style="text-align: right;">Date:</div> | | 1.14 Name and Title of State Agency Signatory | |
| 1.15 Approval by the N.H. Department of Administration, Division of Personnel <i>(if applicable)</i> By: _____ Director, On: _____ | | | |
| 1.16 Approval by the Attorney General (Form, Substance and Execution) <i>(if applicable)</i> By: _____ On: _____ | | | |
| 1.17 Approval by the Governor and Executive Council <i>(if applicable)</i> G&C Item number: _____ G&C Meeting Date: _____ | | | |

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 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, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 (“Effective Date”).

3.2 If the Contractor commences the Services prior to the Effective Date, all Services 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 Services performed.

3.3 Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance

hereof, and shall be the only and the complete compensation to the Contractor for the Services.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 The State’s liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable 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 employment opportunity laws and the Governor’s order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. The Contractor 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 this Agreement and all rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Contracting Officer specified in block 1.9, or any successor, shall be the State’s point of contact pertaining to this Agreement.

8. EVENT OF DEFAULT/REMEDIES.

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”):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

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) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State’s discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. In addition, at the State’s discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word “Property” shall mean all data, information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any Property which has been received from the State, or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

11. CONTRACTOR’S RELATION TO THE STATE. 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.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute 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 or indirect 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.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 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 it is not a party.

13. INDEMNIFICATION. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys’ fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State’s sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the Property.

14.2 The policies described in subparagraph 14.1 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.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, 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 Contractor shall furnish the Contracting Officer identified in block 1.9, or any successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. 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 the Services under this Agreement.

16. WAIVER OF BREACH. A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. 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 unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

20. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. THIRD PARTIES. This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. HEADINGS. 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.

23. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

24. FURTHER ASSURANCES. The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

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

26. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

PROJECT SPECIFICATIONS
RAIL REMOVAL & SALVAGE PROJECT
Berlin Branch Railroad – Bethlehem, NH

State of New Hampshire
Department of Natural and Cultural Resources
Division of Parks & Recreation, Bureau of Trails

Inactive Line/Trail Development

Project TB-2301

August 17th, 2023

PROJECT PARTICIPANTS

NH Department of Natural and Cultural Resources (DNCR), Division of Parks & Recreation, Bureau of Trails

NH Department of Transportation (NHDOT), Bureau of Rail & Transit

SCOPE OF WORK

DNCR will provide funding, from funds provided by the National Recreational Trails Program and Private Donations, for the removal and salvage of rail, rail components, ties and other RR related infrastructure, from the Berlin Branch railroad. The rail removal project will begin at the point next to Oxbow Drive approximately 650 ft north of where project TB-2101 ended, in Bethlehem, and end at a point 2.14 miles east on the trail to a point west of Wing Rd. in Bethlehem. Ending point delineation will be provided. See attached maps.

DNCR, Bureau of Trails will provide general supervision and administration during the course of the track removal project.

The CONTRACTOR will provide track construction expertise, skilled labor, specialized maintenance equipment, tools, and other materials required to complete the track removal work as follows:

1. The State of NH will provide access to the property for all dismantle and salvage work.
2. The railroad track section within the scope of work is approximately 2.14 miles in length, 11,300 ft of track (22,600 ft in rail length)
3. Dismantle, salvage and deliver all rail, joint bars, tie plates, switches, rail anchors, switch stands and all other track components to NHDOT, deliver and stack components in NHDOT's Whitefield NH rail yard. All rail items must be salvaged in their existing condition.
4. The contractor will be responsible for unloading all materials in the Whitefield yard including bunking for stacking rail.
5. Contractor may retain all railroad spikes and joint bar bolts for scrap. Scrap value must be part of the bid price consideration.
6. All timber ties, bolts, spikes and other materials shall be removed from the project area. Removal of these materials will be completed using a rake as necessary and followed by a magnet no less than 13 meg.
7. Clean-up and restore disturbed areas adjacent to the rail removal work. Dispose of all materials not salvaged to the NHDOT and DNCR.
8. Rail corridor must be graded/leveled and left in a condition capable of being groomed for winter snowmobile use.
9. Any timber ties present on the side of the corridor for the length of the project should be removed and disposed of, this includes the 650' of corridor that already had rails removed from Oxbow Road headed east.

TECHNICAL REQUIREMENTS

1. **Items to be salvaged to NHDOT and delivered to the NHDOT Bureau of Rail & Transit yard in Whitefield NH.**
 - Rail
 - All rail
 - Rail joint bars:
 - All joint bars
 - All compromise joint bars that may be present.
 - Tie plates:
 - All tie plates.
 - Other track materials (OTM)
 - All other rail components i.e. frogs, switches, switch stands, rail anchors that may be present etc.
 - **All rail materials shall be salvaged to NHDOT, including any rail items that may be currently damaged or deteriorated.**

2. Dismantling of rail, joint bars and tie plates

- All rail joint bars (and Compromise Joint Bars) SHALL be removed prior to any movement of the rail. No rail shall be allowed to be dragged while still connected to another section of rail.
- Joint bar bolts must be cut off with a saw or unbolted. **Cutting joint bar bolts off with a torch will not be allowed. Joint bars damaged by a cut off saw shall be replaced at the contractor's expense.**
- Tie plate removal shall be **completed with spike puller** as to not damage the plates, excavator bucket removal will not be allowed. Spikes shall be removed with a spike puller prior to the removal of the tie plate.
 - Mechanical spike pulling is allowed with equipment specifically made for this type of work. Such as a hand held hydraulic unit, (appearance similar to a jack hammer). Example website link: https://rrtools.com/product/spike-puller-hydraulic/?utm_source=bing&utm_medium=cpc&utm_campaign=Shopping%20-%201st%20Layer&utm_term=4586818918619282&utm_content=1167%20%3E%20670
 - Or, the common hy-rail diesel mechanical driven rolling unit which is a production type of unit that can remove them at a efficient pace. i.e. Nordco Spike puller. <https://www.nordco.com/products-catalog/maintenance-of-way/Spike-Pulling-Machines/Spike-Puller-Two-Rail---SP2R.htm>

3. Salvaged material packaging and delivery to NHDOT Whitefield

- All rail shall be stacked per the direction of NHDOT Railroad Operations Engineer or the Operator of the NH Central Railroad. Salvaged good condition timber ties may be used for bunking.
- All rail joint bars, tie plates, and rail anchors shall be stacked and crated in wooden boxes for delivery (i.e. wooden crates, i.e. 3x3x3 ft), no loose hauling and dumping of salvaged material allowed. Wooden boxed materials do not need to be stacked.
- All currently damaged rail and rail components shall be separated from other components for delivery and crated and delivered in the same manner as noted above.
- All deliveries shall be scheduled with the operator of the NH Central Railroad 2 weeks in advanced of the first delivery, contact person Ed Jeffrey, 603-922-3400.

4. Rail Components damaged by the contractor during salvage or delivery operations.

- Will be replaced by the contractor at current market value to the satisfaction of the NHDOT Railroad Operations Engineer and DNCR.

PROJECT SCHEDULE

Work is tentatively scheduled to begin on **November 8th, 2023**, pending Governor and Council Approval, and must be complete enough to allow winter trail preparation to begin in the fall. The final completion date for this project is **September 30th, 2024**.

SPECIAL CONDITIONS

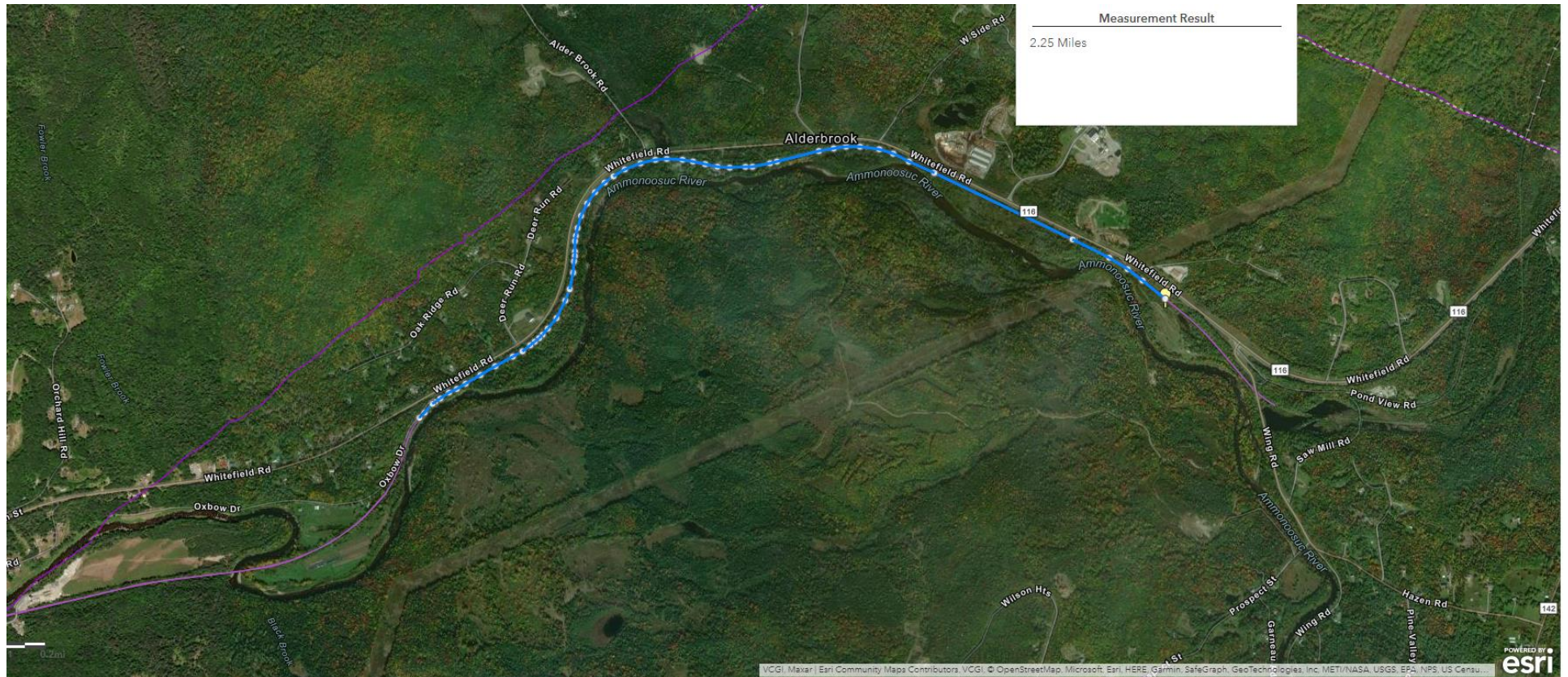
1. The track is currently out of service and shall remain out of service for the period of work and until needed for future transportation needs by the NHDOT.

OTHER REQUIREMENTS

1. Contractor hereby fully releases and discharges the State of New Hampshire, its successors, lessees and assigns, from any and all claims, demands, actions, causes of action of any kind or description whatsoever.
2. No payment in excess of the Bid/Contract amount will be allowed unless the additional work and cost is approved in writing by the DNCR and NHDOT prior to any additional work being started.

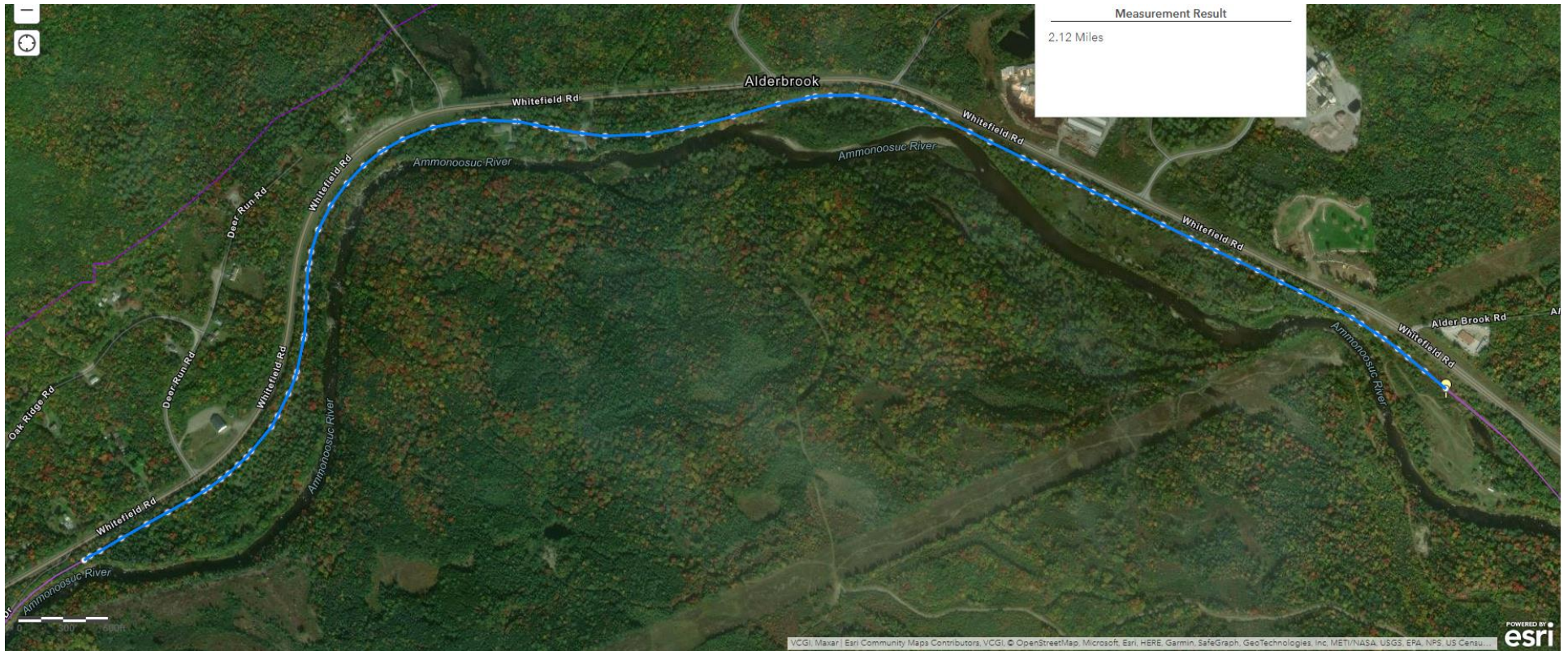
3. A Mandatory pre-construction meeting with NHDOT Railroad Operations Engineer and DNCR personnel is required prior to construction commencing.
4. A post construction inspection will be performed by NHDOT and DNCR personnel. Twenty percent of total project cost will not be paid until project is determined complete by both NHDOT and DNCR personnel.

Map of entire project length of 2.25 miles (11,880') of trail from Oxbow Dr. to a point close to Rt. 16 off of Wing Rd in Bethlehem. This section needs to have all ties removed as well as rails.



Map 1 of Project Area

Map of 2.12 miles (11,230') of trail from Oxbow Dr. to a point close to Rt. 16 off of Wing Rd in Bethlehem. This is 650' shorter than previous section because 650' of rails were removed from Oxbow end but ties were left in place. This entire section needs both rail and ties removed.



Map 2 of Project Area

Close up of previous map showing end point of abandonment on trail. Do not remove any rails or ties beyond the endpoint marked on this map. At mandatory pre-construction meeting this location will be shown to contractor and marked in field.



Map 3 of Project Area

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**State of New Hampshire
VENDOR APPLICATION**

VENDOR # _____
(Assigned by Purchase & Property)

NAME/LOCATION

Vendor Name: _____

DBA Name: _____

Remit Address: _____

City/Town: _____ STATE: _____ ZIP: _____

Business Address: _____

City/Town: _____ STATE: _____ ZIP: _____

Telephone #: _____ Toll Free #: _____ FAX #: _____

Website: _____ E-Mail (Main Office): _____

Electronic Payment Option: Please contact Treasury at treasury@treasury.state.nh.us or visit their website at www.nh.gov/treasury for further information on this option.

TYPE OF BUSINESS

(Note: Registration with the NH Secretary of State **MUST** be done **prior** to the awarding of any contracts) <http://www.nh.gov/sos/corporate>

| | | | | | | | |
|--|--------------------------|--------------------------------|-----------------------------|---------------------------------|--------------------------|--------------------------|--------------------------|
| INDIVIDUAL/SOLE-PROPRIETOR | <input type="checkbox"/> | PARTNERSHIP/LLP | <input type="checkbox"/> | CORP | <input type="checkbox"/> | LLC | <input type="checkbox"/> |
| ESTATE OR TRUST | <input type="checkbox"/> | HEALTHCARE/LEGAL SVS | <input type="checkbox"/> | GOV | <input type="checkbox"/> | NONPROFIT | <input type="checkbox"/> |
| Registered with NH Secretary of State? | _____ | State Incorporated In: | _____ | | | | |
| Minority Institutions | <input type="checkbox"/> | Minority Owned Large Business | <input type="checkbox"/> | Minority Owned Small Business | <input type="checkbox"/> | | |
| Disabled Veteran Business | <input type="checkbox"/> | Svs Disabled Veteran Owned | <input type="checkbox"/> | Veteran Owned Small Business | <input type="checkbox"/> | | |
| Physically Challenged Bus | <input type="checkbox"/> | SBA Cert Fin Disadvantaged Bus | <input type="checkbox"/> | SBA Cert Hist Underutilized Bus | <input type="checkbox"/> | | |
| SBA Cert Sm Disadvantaged Bus | <input type="checkbox"/> | Women Owned Sm Bus | <input type="checkbox"/> | Women Owned Large Businesses | <input type="checkbox"/> | | |
| Fed ID # (EIN/FIN): | _____ | | Historically Black Colleges | <input type="checkbox"/> | Small Business | <input type="checkbox"/> | |
| Social Security # (SSN): | _____ | | | | | | |

SIGNATURE BLOCK

I certify the above information to be correct and grant authorization to the State of New Hampshire to investigate any and all facts contained therein, including facility visitation.

Name and Title (**print or type**): _____

Signature: _____ Date: _____

ADDRESS BLOCK

<http://www.admin.state.nh.us/purchasing>

(Phone) 603-271-2201
(Fax) 603-271-2700

DIVISION OF PLANT & PROPERTY MANAGEMENT
BUREAU OF PURCHASE AND PROPERTY
STATE HOUSE ANNEX, ROOM 102
25 CAPITOL STREET
CONCORD NH 03301-6398



STATE OF NEW HAMPSHIRE

ALTERNATE W-9 FORM

PLEASE USE THIS FORM TO PROVIDE THE REQUESTED INFORMATION

VENDOR # _____
(Assigned by Purchase & Property)

Pursuant to IRS Regulations, you must furnish your Taxpayer Identification Number (TIN) to the State whether or not you are required to file tax returns. If this number is not provided, you may be subject to a 28% withholding on each payment made to you. To avoid this 28% withholding & to ensure that accurate tax information is reported to the IRS, A RESPONSE IS REQUIRED.

If a service provider is a part of a GROUP PRACTICE, it is the group name & TIN which is required on this Alternate W-9.
If the service provider is a SOLE PROPRIETOR, it is the individual name & TIN which is required on this Alternate W-9.

BUSINESS NAME: _____

ADDITIONAL or DBA NAME: _____

REMIT ADDRESS: _____

CITY/TOWN: _____ STATE: _____ ZIP: _____

BUSINESS ADDRESS: _____

CITY/TOWN: _____ STATE: _____ ZIP: _____

TAXPAYER IDENTIFICATION NUMBER (TIN) as used on IRS tax return

Social Security # (SSN): _____ Fed ID # (EIN/FIN): _____

PRINCIPAL ACTIVITY

[] Service Provider [] Product/Merchandise Provider [] Other Provider

List the principal type of service, product or other that is provided: _____

DESIGNATION (select ONLY THOSE which apply to you/your organization as provided to the IRS)

[] Individual/Sole-Proprietor [] Partnership/LLP [] Government
[] Corporation [] Estate or Trust [] Health Care Provider
[] LLC [] Non-Profit (attach exemption) [] Legal Services

Under penalty of perjury, I declare that the information provided is true, correct & complete, to the best of my knowledge & belief.

NAME & TITLE (print or type): _____

TELEPHONE #: _____ TOLL FREE #: _____ FAX #: _____

SIGNATURE: _____ DATE: _____

PLEASE RETURN WHEN COMPLETED TO: DIVISION OF PLANT & PROPERTY MGMT
BUREAU OF PURCHASE & PROPERTY
STATE HOUSE ANNEX - ROOM 102
25 CAPITOL ST
CONCORD NH 03301
(Phone) 603-271-2201
(FAX) 603-271-2700
http://www.admin.state.nh.us/purchasing