

REPORT TO THE LEGISLATURE PURSUANT TO ACT 60 OF 2019 SECTION 30

Study on the Agency of Transportation's Use of Master License Agreements And Alternative Options

November 15, 2019

submitted to

The Vermont House and Senate Committees on Transportation

**Vermont Agency of Transportation
Policy, Planning, and Intermodal
Development Division**



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Authorizing Legislation

Sec. 30: A Study on the Agency of Transportation's Use of Master License Agreements and Alternative Options

The Agency of Transportation, in consultation with the Vermont League of Cities and Towns, shall report back to the House and Senate Committees on Transportation on or before November 15, 2019 concerning the use and contents of master license agreements and other agreements or contracts by the Agency of Transportation when a municipality, utility, or other person needs to use the right-of-way for the line of railroad owned by the State. The report shall include

1. the history of the Agency's use of master license agreements and other agreements or contracts, including the contents thereof;
2. alternatives to the use of such agreements;
3. whether a municipality or municipal operated utility can secure sufficient insurance coverage to enter into the Agency's current iteration of the standard conditions to the master license agreement it uses when a municipality, utility, or other person needs to use the right-of-way for the line of railroad owned by the State; and
4. what other states do when a municipality, utility, or other person needs to use the right-of-way for any state-owned railroad lines.

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Executive Summary

In June 2019, the Vermont General Assembly enacted Act 60 relating to miscellaneous changes to laws related to vehicles and the Department of Motor Vehicles. It included Section 30, a study of use of rail master license agreements (MLAs) by the Agency of Transportation (AOT). This report fulfills that requirement. Following is a brief summary.

History of Use

When railroads were first being built, the federal government granted them broad powers to support this new way to move people and goods. Early agreements with municipalities and others were unique to each instance. In the early 1900s, a move started toward master license agreements that covered multiple occupations of the railroad right-of-way in one uniform document. This was more efficient for municipalities, however railroads retained approval rights with their priority being uninterrupted, safe movement of trains.

The State of Vermont owns over 300 miles of rail right-of-way. Much of it is leased for use by Vermont Rail System. AOT and Vermont Rail System have over 50 MLAs with municipalities and municipal utilities as well as more with private entities. This report includes a summary of the current MLA Attachment B Standard Conditions and the full text of it as Appendix A.

Alternatives

The American Association of State Highway Officials (AASHTO) has explored MLAs through a Strategic Highway Research Program project and recommends them as a useful way to streamline routine matters.

Insurance

The MLA includes detailed requirements for insurance and indemnification. This is a complex subject. Insurance for any entity is dependent on a multitude of factors, including the scope and scale of a project, its associated risks, and local conditions that affect insurance rates. The reduction in risk that results from all parties following best safety practices is a positive outcome of MLAs. The insurance requirements in the Vermont MLA are generally similar to those in surrounding New England states.

Other States

For this report, the MLAs of Maine, New Hampshire, Massachusetts, and Connecticut were obtained and summarized. Each of these states own rail right-of-way that they lease to rail operators. This summary is included as Table 2 in the report.

1.0 Background

The State of Vermont owns 305 miles of rail line, approximately 53% of the active rail line miles. Of these miles, the Vermont Agency of Transportation (AOT) leases its active rail right-of-way to Vermont Rail System. That entity provides freight services under the following subsidiary railroads: Vermont Railway, Green Mountain Railroad, and Washington County Railroad. There are times when municipalities, public utilities, or other entities need to undertake work along or crossing the right-of-way. These instances are managed through a rail master license agreement (MLA).

1.1 What is a Master License Agreement (MLA)?

The purpose of a rail MLA is to create a consistent, efficient approach for a range of different utility or other types of work, and involve the applicant, the state, and the operating railroad.

Generally, MLAs include the following elements:

- document that defines the purpose and who is entering into the contract
- Attachment A that further illustrates the location of the facilities that the utility plans to install
- Attachment B that further defines who may do what and under what terms.

1.2 Legislation for This Study

In June 2019, the Vermont General Assembly enacted Act 60 of the 2019 Legislative session relating to miscellaneous changes to laws related to vehicles and the Department of Motor Vehicles. It includes Section 30: A Study on the Agency of Transportation's Use of Master License Agreements and Alternative Options. The complete text of this section follows.

The Agency of Transportation, in consultation with the Vermont League of Cities and Towns, shall report back to the House and Senate Committees on Transportation on or before November 15, 2019 concerning the use and contents of master license agreements and other agreements or contracts by the Agency of Transportation when a municipality, utility, or other person needs to use the right-of-way for the line of railroad owned by the State. The report shall include

1. the history of the Agency's use of master license agreements and other agreements or contracts, including the contents thereof;
2. alternatives to the use of such agreements;
3. whether a municipality or municipal operated utility can secure sufficient insurance coverage to enter into the Agency's current iteration of the standard conditions to the master license agreement it uses when a municipality, utility, or other person needs to use the right-of-way for the line of railroad owned by the State; and
4. what other states do when a municipality, utility, or other person needs to use the right-of-way for any state-owned railroad lines.

1.3 Summary of Vermont MLA

The MLA is a legal document that has been carefully refined over the years. In particular, Attachment B is a detailed definition of responsibilities and liabilities. **The summary of Attachment B that follows is an entry point for people not involved in the specific details but who desire an overview.**

I. DESCRIPTION OF AUTHORIZED FACILITIES

- The State and Railroad retain authority to approve or deny approval to the Utility for additional facilities.
- The Railroad and Utility shall coordinate planning and siting of the Utility's facilities to minimize the need to move facilities to accommodate the Railroad's expansion.
- If the Railroad needs to have any items installed by the Utility moved, the Utility will relocate them at its expense.

II. TERM AND RENEWAL

- The agreement is for five years. The Utility may renew for three more five-year terms. The Utility must advise the State and Railroad between one year and six months prior to the expiration if they want to renew. After that 20-year period this becomes a year-to-year agreement.

III. ANNUAL RENTALS

- Rent is due annually.

IV. CONSTRUCTION AND MAINTENANCE

- The State and Railroad grant the Utility access rights by the shortest practical distance to Utility sites.
- The Utility shall provide 10 day's notice if they wish to add to new facilities (except in the case of emergencies such as line breaks and downed poles).
- All Utility facilities construction must be approved in writing by the State and the Railroad. Facilities must be constructed, maintained, renewed, and operated in accordance with current applicable standards of the American Railway Engineering and Maintenance of-Way Association (AREMA), unless the State and Railroad agree in writing that those standards shall not apply to a specific proposed use.
- The Utility shall promptly maintain, relocate, repair and renew its facilities. If it doesn't respond to notice from the State or Railroad, it may be charged for that work.
- The State or the Railroad may engage engineering consultants to review any work proposed by the Utility, with prior notification to the Utility. The Utility agrees to reimburse reasonable costs for engineering consultants.
- The State or Railroad shall not be unreasonable in withholding approvals to undertake construction and maintenance on approved facilities.
- If the Utility fails to provide placing inspectors, watchers or flaggers as required by the Railroad, the Utility must pay liquidated damages.
- Specific guidance is provided for coordination of responsibility for suitable engineering review, inspectors, flaggers, etc.
- Before working in the ROW or within 25 feet from the centerline of the tracks ("Foul Space"), the Utility will provide 10 working day's notice except in case of emergencies.
- The Utility is solely responsible for all damages arising from the failure of the Utility or its contractor to comply with construction work requirements.
- The State and Railroad may inspect work. If anything is not in compliance, the Utility will be given opportunity to correct the situation. If it is not corrected, the State or Railroad will do the work and the Utility has 30 days to pay the charges.
- If the work delays a train, the Utility will pay damages at \$350 per hour.

V. INDEMNITY AND PUBLIC LIABILITY AGREEMENT

- The Utility acknowledges that its uses may expose the State and Railroad to additional liability to which they would not otherwise be exposed. Accordingly, the Utility agrees that the State and Railroad shall be fully protected and will not incur costs or liabilities as a result of granting use of the premises.

- The Utility agrees to defend, indemnify, and save the State, the Railroad, and all their authorized agents, harmless from and against any and all actions, penalties, liabilities, claims, demands, damages, or losses resulting from civil or criminal actions, arising directly or indirectly out of acts or omissions of the Utility, caused by or growing out of the Utility's use of the State's railroad property.
- The Utility agrees to defend, indemnify, and save harmless the State and the Railroad, and their authorized agents, from and against all claims, liability, demands, causes of action, cost, or expense arising directly or indirectly from the installation, maintenance, presence, or use of any authorized Facilities, irrespective of any negligence on the part of the part of the State and / or the Railroad, or their agents or employees.
- The Utility shall indemnify the State and the Railroad and their officers and employees in the event that the State, the Railroad, their officers, or their employees become legally obligated to pay any damages or losses arising from any act or omission of the Utility.
- If there is a claim or suit arising in part from anything to do with an act or omission of the Utility, the State or Railroad will provide notice and the Utility shall immediately provide a complete defense against the entire claim. After a final judgment or settlement, the Utility may request recoupment of specific defense costs through filing suit in the Washington Superior Court. The Utility shall be entitled to recoup costs only upon showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Utility.
- The Utility must obtain and maintain a variety of types of insurance for workers compensation and general liability and property damage (limits shall not be less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, and \$50,000 fire/legal liability). They all shall name the State, Railroad, and their officers and employees as additional insureds for liability. The section identifies minimum insurance limits, but no warranty is made that these are adequate to cover the interests of the Utility. Railroad Protective Liability Insurance (AAR-AASHTO Form) is also required, and must provide minimum limits of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 for the term of the policy and shall name the State, the Railroad, and the Utility as insured.
- Utility self-insurance requires notification and approval by the State and the Railroad. Licensed insurance shall be required if the State and the Railroad cannot be satisfied with Utility self-insurance.

VI. TERMINATION

- Utilities are responsible for removing facilities when they are no longer in use. This has to be done to the satisfaction of the State and Railroad. Otherwise, after 30 day's notice, this work may be done and charged to the Utility.
- The license and permission in the agreement does not create an estate or easement for the Utility.
- In the event of a breach of any of the terms of the contract, the State or Railroad may terminate the agreement or any part of it unless cured within 30 days. This includes for non-payment of invoices unless the invoice is being disputed by the Utility through the dispute resolution procedure.
- The Utility may terminate the agreement or its license for any particular facilities by giving the State and Railroad 30 day's notice.

VII. ASSIGNMENT

- This section defines assignment of the agreement to successors of the parties.

VIII. TAXES

- The Utility has to stay current on paying its Vermont taxes.

IX. MISCELLANEOUS

- The parties intend to harmonize all existing agreements and to make every crossing location covered by a prior agreement subject to this master agreement for the convenience of the parties.
- The parties agree that they will attempt to resolve any disputes by direct negotiations, with the State Rail Program Chief. Any disputes not resolved shall be referred to the State's Director of Policy, Planning and Intermodal Development. That decision may be appealed to the Secretary of Transportation. That decision may be appealed to the Vermont Transportation Board.
- If an ambiguity or question of intent arises with respect to any provision, the agreement will be construed as if drafted jointly by the parties and no presumption favoring or disfavoring either party.

2.0 History of Use

This section focuses on the history of the use of rail MLAs by the AOT. It also briefly explores other AOT agreements, including their contents.

2.1 How Long Has Vermont Used MLAs for Rail Projects?

Since the early days of building the railroads there have been agreements on how entities will interact. Efforts to standardize and streamline these agreements began in the 1920s and gained force in the mid-1970s in Vermont.

2.2 How Many Are There?

There are over 50 agreements with municipalities or municipal utilities signed by AOT. These go back to at least the late 1970s. The known agreements are listed in Table 1.

Table 1: Existing MLAs with Municipalities by Rail Line

Railroad	Municipality or Municipal Utility (and Purpose)
D&H Railroad (DHRT)	Castleton Fire District #1 (water pipes)
Green Mountain Railroad (GMRR)	Village of Bellows Falls (sewer & water) Cavendish (water pipes) Chester (water & sewer) Ludlow Electric (electricity) Town of Ludlow (sewer & water) Ludlow Telephone (telephone/cable/fiber)
Lamoille Valley Rail Trail (LVRT)	Town of Danville (sewer & water) Fairfield Fire District #1 (water Pipe) Hardwick Electric, (electricity) Town of Hardwick (sewer & water) Hyde Park Electric (electricity) Village of Hyde Park (sewer & water) Village of Johnson (water & Light) Morrisville Water Department (sewer & water) Morrisville Water & Light (wire occupations) Cady's Falls Coop (water Pipe) Village of Swanton (sewer & water) Village of Swanton (electricity) Town of Sheldon (sewer & water) Town of St. Johnsbury (sewer & water)
Missisquoi Valley Rail Trail (MVRT)	Village of Richford (sewer & water) Town of Enosburg Falls (sewer, water and electric occupations)
Vermont Railway (VTR)	Burlington Electric Department (electricity) Burlington Telcom (cable/fiber) Champlain Water District (sewer & water for So. Burlington, & Shelburne) Danby-Mount Tabor Fire District #1 (water pipes) Town of Middlebury (sewer & water) Town of Manchester (sewer & water) National Grid of New York (electricity) Town of Pittsford (sewer & water) Town of Rutland (sewer & water) Town of Rutland Fire District #1 (water pipes) Town of Shaftsbury (sewer & water) Town of Shelburne Fire District #1 (water pipes)

Table 1, continued

Railroad	Municipality or Municipal Utility (and Purpose)
	Town of Shelburne Water District #2 (water pipes) City of South Burlington Fire District #1 (water pipes) Vergennes-Panton Water District (sewer & water) Wallingford Fire District #1 (water pipes)
Washington County Railroad (WACR)	City of Barre (sewer & water) City of Montpelier (sewer & water)
Washington County Railroad-Connecticut River Line (WACR-CRL)	Village of Barton (sewer & water) Village of Barton Electric Department (electricity) Town of Bradford (sewer & water) Town of Fairlee (electrical line) Town of Fairlee, (sewer & water) Town of Hartford, (sewer & water) Village of Lyndonville (sewer & water) Town of Saint Johnsbury (sewer & water) Town of Lyndonville Electric Department (electricity) Village of Newbury (sewer & water) Village of Orleans (sewer & water)

2.3 How Have the Agreements Changed Over Time?

With the early extension of railroads in the 1800s, the federal government granted broad power in the interest of transporting people and goods. At the same time municipalities began to offer water, sewer and power services. As municipalities grew, agreements between them and railroads became more important.

The earliest agreements date from the late 1800s. These agreements were often for a single pipe or wire. To accommodate needs, the idea of a master agreement to cover multiple items or occupations of property belonging the railroad was born. The earliest agreement readily findable in Vermont is from 1922 between the Rutland Railroad Company and Consolidated Rendering that covered multiple utility crossings at the current location of Leddy Park in Burlington.

These early master agreements offered standardized terms and conditions to avoid need to write additional agreements for preapproved crossings. The utility had the convenience of being able work within the confines of the agreement. The railroad retained ultimate approval for safe installation of utilities on its property. Over the years the MLA has evolved to what is currently in use to accommodate the needs of utilities, however with a focus of providing safe transportation over railroad property.

2.4 Are There Other Related AOT Agreements?

There are requests to use or cross Vermont ROW in other transportation assets. .

- State road permits – Most often this is handled through Sec. 1111 permits. Utilities commonly request a blanket annual permit. For projects AOT has information on its [Permitting](#) page and on the US Department of Energy online Regulatory and Permitting Information Desktop (RAPID) [Toolkit](#).
- State road leases - Most state roads are considered covered by statute and handled by permit, however there are cases where AOT has purchased parcels such as for the interstate system. In these circumstances leases are developed for specific ROW needs. Two examples are
 - Canaan Fire District for installation of underground water line across by VT 114
 - Green Mountain Power for installation of aerial wires near VT 10
- Airports – It is rare for there to be crossings of airport lands.

3.0 Alternatives

A brief literature review was conducted for this study regarding alternatives to the use of MLAs and other such agreements. A particularly relevant resource is "[The Power of Master Agreements as Part of Railroad-DOT Mitigation Strategies](#)" which is an AASHTO SHRP2 report. It states that MLAs are a useful way to streamline routine matters. The related AASHTO SHRP2 R16 page provides national examples of MLAs.

4.0 Insurance

The third element requested in Sec 30 is to explore whether a municipality or municipal operated utility can secure sufficient insurance coverage to enter into the Agency's current iteration of the standard conditions to the master license agreement it uses when a municipality, utility, or other person needs to use the right-of-way for the line of railroad owned by the State.

Insurance products and coverage for any entity or person is dependent on a multitude of factors, including the scope and scale of a project, its associated risks, any group insurance policies, and local or individual conditions that affect insurance rates.

The existing MLAs with Vermont municipalities or municipal operated utilities were listed earlier in this report in Table 1. That there are over 50 MLAs suggests it is possible for municipalities or municipal operated utilities to secure sufficient insurance coverage although this study does not explore the existing agreements.

A basic survey of the MLAs of other New England states that own rail right-of-way suggests that the Vermont MLA is consistent with most of these states with regard to insurance and indemnity requirements.

Insurance and indemnification of state-owned rail lines is a complex matter. Some of the complexities are

- A state wants indemnification from the railroad that will lease its property. States also want the public good that comes from having active rail lines and rail trails.
- Railroads are required to indemnify the state but also seek to meet their commitment to their shareholders/owners and customers.
- Municipalities and municipal utilities are charged with providing services to their populations such as power, water, communication lines, and insurance of public facilities.
- These matters are difficult to fully grasp and balance. One example that may not be immediately evident is that when everyone uses current stringent work standards, risk is lowered for all.
- The needs and opportunities of states, railroads, municipalities, insurers, and the public all continue to evolve.

5.0 Rail MLAs in Other States

This section is an AOT staff exploration of how other states that own rail lines address needs of municipalities, utilities, and others to access their rail rights of way. The focus was nearby New England states for reason of shared conditions and issues. It is an exploration of complex matters so a contact is also provided at each state for follow-up if more detail is useful.

Transportation staff from Connecticut, Maine, Massachusetts, and New Hampshire graciously shared model and actual MLAs and related documents for this study. The documents gathered are listed below.

Connecticut Department of Transportation (CTDOT)

Julie Thomas, Supervising Rail Officer, CTDOT Rail: (203) 497-3383 or Julie.Thomas@ct.gov

- Sample Standard rail lease-municipality version (2016)
- Sample Standard railroad license-Metro-North (2015, revised 2019)
- Temporary right of entry with Verizon (2019)
- MLA for TCG-Connecticut fiber optic line with Metro-North (1996)
- Metro-North temporary license for Fibertech installation of fiber optic line (2019)
- Metro-North license with Frontier Communication for installation of fiber optic line (2016)

Maine Department of Transportation (MaineDOT)

Brian Reeves, Director, Rail Transportation Office of Freight and Business Services: (207) 624-3042 or brian.j.reeves@maine.gov

- Draft MLA with utilities template (2018), rail crossing fees (2019)
- Dedham pedestrian and vehicle crossing (2018)
- Emera electrical and communication line crossings and fees (2014)
- Consolidated Communications Incorporated utility crossing at Madawaska Subdivision (2018)

Massachusetts Department of Transportation (MassDOT)

MassDOT designates the Massachusetts Bay Transportation Authority as its agent for the purposes of granting and administering licenses on railroad rights-of-way. MBTA designates Massachusetts Realty Group as its real estate representative. www.mbtarealty.com/contact-us

- MBTA licensing guidelines from Massachusetts Realty Group (2019)
- [MassDOT/MBTA template for a license](#)
- These files and more information is available at www.mbtarealty.com/licenses/#fees

New Hampshire Department of Transportation (NHDOT)

Lou Barker, Railroad Planner, Bureau of Rail and Transit: (603) 271-2425 or Louis.Barker@dot.nh.gov

- Model lease
- Model crossing agreement
- P37 New Hampshire General Provisions Agreement

While each state has its unique properties, Table 2 that follows is an effort to summarize across the documents to provide a regional overview.

Table 2: Summary of Master License Agreements in New England States

	Vermont	Connecticut	Maine	Massachusetts	New Hampshire
How Facilities are Authorized	State and Railroad retain authority to approve or deny approval to utilities. The parties intend to harmonize all existing agreements and to make every crossing location covered by a prior agreement subject to this master agreement.	The Licensee agrees that no improvements shall be undertaken until written approval is received from the State, Railroad, and/or the appropriate Federal Regulatory Agency, if required.	State and any Operator may enter into a licensing agreement with a Utility. All Utilities facilities must meet Maine DOT standards and be approved.	State retains authority to approve or deny approval use. Licensor and Railroad(s) shall have the right to paramount use of the Line and the Premises at all times.	The Permittee shall submit any proposed alterations to the plans described in writing to the State for review and approval before implementing those alterations
Terms, Renewal, & Removal	5-year term, with the Utility permitted to renew for three more five-year terms, then year-to-year In the event of a breach of contract, the state or Railroad may terminate the agreement or any part of it unless cured within 30 days.	Upon termination of this Agreement, the Licensee will vacate the Premises, and agrees that no relocation benefits will be paid to the Licensee, time shall be of the essence.			Permittee shall pay to the State an initial fee of \$350, then \$50 administrative fee per annum for 10 years. This Agreement may be renewed for additional 10-year periods
Construction & Maintenance	Utility must notify the State and Railroad 10 days in advance of any work and it must be approved, though approval will not be withheld unreasonably. "Foul zone" is defined as in ROW or within 25' from centerline of track. Utility must maintain facilities or State or Railroad may undertake work and invoice Utility State or Railroad may procure consultants to review work and invoice the Utility.	Licensee shall restore the Premises. In the event the Licensee shall not fulfill this obligation within a reasonable time, the State shall have the work done and bill the Licensee. The Licensee shall promptly pay when billed without recourse. The Licensee agrees to maintain the Premises in a clean condition, to the satisfaction of the State. Ice and snow control of the sidewalks, if any, abutting the Premises	Utility must notify MDOT 10-days in advance of any work. Utility must maintain facilities or MaineDOT may make changes in the construction at the Utility's expense or may make repairs.	Licensee shall provide at least ten days' prior written notice of its desire to enter the Premises. Licensee must maintain facilities or State or Railroad may undertake work and invoice Utility. Failure to provide inspectors, watchers or flaggers will require reimbursement to the State and Railroad if such services are provided by the State and Railroad.	The permittee's work shall at no time interfere with the operation of the railroad by the State. The permittee will pay the cost of the State to inspect construction and a flagman, if necessary, at the judgment of the State. Any deficiencies in construction shall be promptly corrected to the mutual satisfaction of the Permittee and the State. A performance bond of \$15,000 will be required in the Temporary Use

	Vermont	Connecticut	Maine	Massachusetts	New Hampshire
	<p>Failure to provide inspectors, watchers or flaggers as required results in damages.</p> <p>Utility must pay \$350 per hour or part for any train delays caused by construction.</p>	<p>shall be the obligation of the Licensee.</p> <p>The Licensee agrees that it shall not permit hazardous substances or objectionable smoke, fumes, vapors, or odors, or accumulation of junk.</p>			<p>Agreement for constructing the Facility.</p>
Indemnity & Liability	<p>Utility agrees to defend, the State and Railroad from all claims irrespective of any negligence on the part of the State or Railroad</p> <p>Workers compensation, general liability, and property damage minimums - \$1 million per occurrence, \$2 million general aggregate, \$2 million products/operations aggregate, \$50,000 fire/legal liability</p> <p>Railroad Protective Liability Insurance minimums - \$2 million per occurrence, \$6 million general aggregate. Must name State and Railroad.</p>	<p>This is a brief summary of complex documents:</p> <p>(1) The Licensee releases all right to ask for damages from the State that have occurred to the Licensee in connection with the presence of the facilities of the Licensee</p> <p>(2)(a) The Licensee shall indemnify the State and Railroad against any claims arising in connection with the Agreement.</p> <p>(b) The Licensee shall not be responsible for indemnifying the State or Railroad from any liability arising due to the negligence of the State or Railroad.</p>	<p>Utility assumes all liability related costs associated with loss of life or property, injury or damage.</p> <p>Utility assumes all liability risks of damage to the Utility's property, whether or not negligence of MaineDOT caused any losses or damages.</p> <p>Public liability and property damage minimum policy amounts - \$1 million for injury or death of each person and \$1 million for each single occurrence, and property damage liability insurance for at least \$1 million per occurrence.</p>	<p>This is a brief summary of complex documents:</p> <p>Licensee releases from liability whether attributable to the fault or negligence of Licensor, Railroad(s), or otherwise, even if Licensor has been advised of the possibility of such damages. (Model Agreement)</p> <p>The Contractor shall indemnify the MBTA and the Railroad from any liabilities arising from the Contractor's work or its use of adjacent land. (Insurance Specification)</p> <p>Commercial and general liability minimum policy amounts - \$1 million per occurrence, \$3 million general aggregate. Umbrella liability coverage with limits of not less than \$5 million.</p> <p>Automobile liability insurance with limits of not less than 1 million.</p> <p>Railroad Protective Liability Insurance minimum policy amounts - \$5 million per occurrence, \$10 million general aggregate.</p>	<p>NHDOT uses two different model documents, however, all State documents refer to a single General Contract Agreement (P37) that states the Contractor shall indemnify the State from any losses suffered by the State and any claims arising out of the acts or omissions of the Contractor.</p> <p>Rail Crossing Agreement: Commercial and general liability minimums - \$1 million per occurrence, \$2 million general aggregate, \$500,000 for comprehensive automobile liability.</p> <p>Railroad Protective Liability Insurance minimum - \$1 million per occurrence, \$2 million general aggregate. Must name State and Railroad.</p>

6.0 Summary

Master license agreements provide a way to streamline the necessary agreements of a state together with their railroad operators and the municipalities and municipal utilities that need to access state-owned rail rights of way.

It is inherently complex to balance these needs especially in a world that continues to change. Some of the items that continue to change are regulations, technology for rail and municipal services, best practices for serving the public good, economics, insurance, and means of communication. Some of the elements that remain the same are the need to work together in a legal framework and in a way that is viable into the future.

Appendix A. Vermont Rail Master License Agreement Standard Conditions

This appendix contains the complete text of the Vermont Attachment B Master License Agreement Standard Conditions as of December 30, 2013.

**ATTACHMENT B
MASTER LICENSE AGREEMENT
STANDARD CONDITIONS
(DECEMBER 30, 2013)**

I. DESCRIPTION OF AUTHORIZED FACILITIES

1.01. Additional Authorized Facilities. Notwithstanding any provision herein to the contrary, neither the STATE nor the RAILROAD by executing this Master License Agreement warrants or represents its approval of any additional Facilities, it being intended by the parties that this Agreement shall set forth the terms under which the STATE and the RAILROAD may grant the UTILITY approval for additional Facilities in the future. It is the intention of the parties that in the event the UTILITY desires to obtain authorization for additional Facilities not included in Exhibit A, that the STATE and the RAILROAD may, each in its own discretion, review any and all such requests when made and approve or reject such requests. It is further agreed that this Master License Agreement does not in any way obligate the STATE or the RAILROAD to bargain with the UTILITY for additional approved Facilities in the event any request of the UTILITY is rejected by either or both the STATE and/or the RAILROAD. The STATE and the RAILROAD jointly, severally, and expressly retain the absolute authority to deny approval to the UTILITY for additional Facilities, which each in its sole discretion may deny, with or without cause. The UTILITY hereby acknowledges and agrees that the denial of any such proposed facilities shall not give rise to a cause of action in any jurisdiction.

1.02. Relocation of Authorized Facilities. The RAILROAD and the UTILITY shall coordinate in planning and siting the UTILITY's Facilities as to minimize the need to move the Facilities in the future to accommodate expansion and/or incorporation of any ancillary track or siding that the RAILROAD may require in its sole discretion. In the event that the RAILROAD's use and/or expansion of the Line and its sidetracks necessitates the moving of any of the UTILITY's Facilities, the UTILITY shall promptly, in a reasonable period of time according to the needs of the RAILROAD, relocate the Facilities. Any such relocation must be undertaken in accordance with all applicable provisions of this Agreement and shall be at the sole cost and expense of the UTILITY, for which cost and expense the UTILITY shall hold the STATE and the RAILROAD harmless.

II. TERM AND RENEWAL

2.01. Initial Term; Renewal. The initial term of this Agreement shall commence upon execution and shall continue thereafter for a period of five (5) years from the date of commencement. Subject to the provisions for notice and termination, as set forth herein, the UTILITY may renew this Agreement for three (3) additional terms of five (5) years each, but not to exceed a total period of twenty (20) years.

2.02. Exercise of Renewal Option. To exercise its right to renew, the UTILITY must advise the STATE and the RAILROAD in writing not earlier than one (1) year or later than six (6) months prior to the expiration of the original term or any renewal terms of its desire to renew this license.

2.03. Adjustments to Rent. Upon execution of this Agreement the amount of annual rent is the Grand Total referred to in Attachment A. It is understood by the parties that this amount may be increased or decreased periodically to reflect additions to or deletions from the UTILITY's Facilities, as made through Letters of Amendment to this Agreement. At the end of the first five-year period of this Agreement, the amount of annual rental shall be adjusted to reflect any increase in the Consumer Price Index – All Urban Consumers (CPI-U) for the previous five years and that rate shall be used each year for the next five year period. The STATE shall notify the UTILITY as to the amount of increase in the rent.

2.04. Revisions to Attachment A; Amendment Processing Fees. The STATE may revise Attachment A at any time to incorporate the influx of Letters of Amendment to this Agreement.

For each Letter of Amendment to this Agreement, the UTILITY shall pay the STATE the non-refundable sum of \$200.00, representing a portion of the cost of processing the amendment, and the RAILROAD the non-refundable sum of \$200.00 representing a portion of the cost of reviewing the amendment. At the end of the first five-year period of this Agreement, the STATE and the RAILROAD may adjust the amount of these fees to reflect any increase in the Consumer Price Index – All Urban Consumers (CPI-U) for the previous five years and that rate shall be used each year for the next five year period.

2.05. Holding Over. If the UTILITY shall continue in possession beyond the term named in this Agreement without objection by the STATE or the RAILROAD, then the holding over by the UTILITY shall be deemed to create a renewal of this Agreement from year to year, subject to the same terms and conditions of the initial term and always to the right of termination at any time during such renewal or extended term by any party in accordance with Article VI (Termination) of this Agreement.

III. ANNUAL RENTALS

3.01. Annual Rentals. Annual rent shall be due and payable prior to execution of this Agreement and thereafter prior to each anniversary date of this Agreement. A check for the total amount due shall be made payable to “Treasurer, State of Vermont” and sent to Vermont Agency of Transportation, Financial Services Division, National Life Building, One National Life Drive, Montpelier, VT 05633-5001.

IV. CONSTRUCTION AND MAINTENANCE

4.01. Right of Access. Subject to the terms and conditions of this Agreement, the STATE and the RAILROAD grant the UTILITY the right to travel over the Line’s right-of-way by the shortest practical distance to sites at which the UTILITY is installing, maintaining, or replacing its Facilities. Such sites are to be used by the UTILITY, its employees, or contractors under the direction of representatives of the STATE and the RAILROAD for the purpose of constructing, maintaining, and replacing the Facilities located within the Line’s right-of-way, as described in paragraph 1.01, above.

4.02. Additional Authorized Facilities; Notice of Intent. Prior to installation of any new Facilities not already inventoried on Attachment A, the UTILITY, in all cases, except in emergencies (such as line breaks and downed poles) where it is impossible to do so, shall provide ten (10) working days’ notice to the STATE and the RAILROAD, or its successors of its intent to install additional Facilities. In all events, the UTILITY must avoid interference with the operation of the RAILROAD or its successors.

4.03. Construction Work; General Conditions. The UTILITY agrees that all construction work within the Line’s right-of-way shall be subject to the following general conditions:

- (a) No construction work shall begin without prior written approval of the STATE and the RAILROAD.
- (b) The Facilities shall be constructed, maintained, renewed, and operated in accordance with current federal and state codes and regulations.
- (c) The Facilities shall be constructed, maintained, renewed, and operated in accordance with current applicable standards of the American Railway Engineering and Maintenance-of-Way Association (AREMA), except for such AREMA standards, if any, that the STATE and the RAILROAD agree in writing shall not apply to a specific proposed use.
- (d) Plans and contracts for all proposed construction work within the Line’s right-of-way shall be furnished for approval prior to construction to the STATE and the RAILROAD, and the work shall be performed in accordance with the approved plans and contracts.
- (e) The Facilities shall be maintained by and at the expense of the UTILITY to the reasonable satisfaction of the STATE and the RAILROAD.
- (f) The UTILITY shall at all times be obligated to promptly maintain, relocate, repair, and renew its Facilities within the Line’s right-of-way and shall, upon notice in writing from the STATE or the RAILROAD requiring it to do so, promptly make such maintenance, relocation, repair, and renewal as may be required by the STATE or the RAILROAD. If the UTILITY shall fail to make any such required maintenance, relocation, repair, or renewal, then the RAILROAD or the STATE may do such work or cause the same to be done at the sole cost and expense of the UTILITY.
- (g) All work herein or to be contemplated, of whatever nature, and for whatever purpose, shall be done and performed by the UTILITY and at such time and in such manner as shall be approved by the Chief

Engineering Officer of the RAILROAD or his or her duly authorized agents, provided, however, that nothing contained in this paragraph 4.03(g) shall limit or restrict the right of the RAILROAD or the STATE to perform the work contemplated in paragraph 4.03(f), above, in the event of the UTILITY's failure to do so.

- (h) If the STATE or the RAILROAD or both deem it advisable, in its or their reasonable discretion, to engage an engineering consultant to review any work proposed by the UTILITY within the Line's right-of-way, the STATE or the RAILROAD may do so, with prior notification to the UTILITY. The UTILITY agrees to reimburse the STATE or the RAILROAD or both for the reasonable costs of such an engineering consultant within thirty (30) days of receiving an invoice from the STATE or the RAILROAD.
- (i) Any and all approvals required under the terms of this Article, of either the STATE or the RAILROAD, shall not be unreasonably withheld.

4.04. Construction Work; Protective Services. The UTILITY agrees that construction work within the Line's right-of-way shall be subject to protective services as follows:

- (a) The UTILITY or its contractor shall provide inspectors, watchers, and flaggers as necessary based on the nature of the construction to protect workers and the tracks, traffic, and appurtenances of the STATE and the RAILROAD.
- (b) The character and extent of the flagging protection necessary shall be determined by the STATE and the RAILROAD in consultation with the UTILITY and its contractor. The RAILROAD shall be the sole judge of the existence of a hazard or potential hazard, and its judgment shall be binding on the UTILITY and its contractors.
- (c) All protective services, whether provided by the UTILITY, the RAILROAD, or the RAILROAD's contractor, shall be at the sole expense of the UTILITY.
- (d) If the RAILROAD's dispatcher deems it advisable, during the progress of any work of construction, maintenance, repair, renewal, or removal of the Facilities, the RAILROAD shall have the right to place inspectors, watchers, or flaggers for the protection of the property owned or in possession or control of the RAILROAD or its employees, patrons, or licensees. The UTILITY shall, within thirty (30) days of receipt of a bill by the RAILROAD, pay to the RAILROAD the actual cost and expense of such services.
- (e) In the event that the RAILROAD requires notice, placing inspectors, watchers, or flaggers pursuant to this paragraph 4.04, and the UTILITY fails to provide any one of them as required, with the exception being emergencies or when the RAILROAD dispatcher's consents to proceed without placing inspectors, watchmen or flaggers, then (1) for the first incident, the UTILITY shall pay the RAILROAD liquidated damages in the amount of \$500.00 immediately upon receipt of a Notice of Failure and Liquidated Damages Due; (2) for the second incident, the UTILITY shall pay the RAILROAD liquidated damages in the amount of \$1,000.00 immediately upon receipt of a Notice of Failure and Liquidated Damages Due; and (3) for any subsequent incidents, the UTILITY shall pay the RAILROAD liquidated damages in the amount of \$2,000.00 immediately upon receipt of a Notice of Failure and Liquidated Damages due. Any incidents under this provision will require mandatory training of the UTILITY by the RAILROAD as to proper protocols to be followed to prevent future incidents.

It is agreed and understood by the parties that at the end of the first five-year period of this Agreement, the hourly rate for liquidated damages shall be adjusted to reflect any increase in the Consumer Price Index – All Urban Consumers (CPI-U) for the previous five years and that rate shall be used each year for the next five-year period.

4.05. Construction Work; Use of Approved Contractors. Within the Line's right-of-way, all the UTILITY's Facilities must be of a type and design approved in advance by the RAILROAD. Any installation or other excavation work within the Line's right-of-way must be performed by the UTILITY's own forces (if qualified by the RAILROAD, as provided below) or by a contractor designated by the UTILITY and approved in advance by the RAILROAD. Under no circumstances shall the UTILITY allow any contractor other than a RAILROAD-approved contractor to work within the Line's right-of-way.

In the event that the UTILITY desires its own forces to become qualified to work within the Line's right-of-way and/or desires one or more of the UTILITY's contractors to become a RAILROAD-approved contractor, the RAILROAD, at the sole cost and expense of the UTILITY or the UTILITY's contractor, will provide appropriate training and certification. Such training and certification shall be made available to the UTILITY and/or its contractor within a reasonable period of time but in no event more than six (6) months from the date of a written request to the RAILROAD. These training and certification requirements apply to all employees and agents of the UTILITY and of the contractor working in the Line's right-of-way and to all subcontractors and their employees and agents working within the Line's right-of-way.

4.06. Construction Work; Advance Notice to the STATE and the RAILROAD. The UTILITY agrees that all construction work within the Line's right-of-way shall be subject to the following notification requirements:

- (a) Before entering the Line's right-of-way, or any area within twenty-five feet from the centerline of the tracks ("Foul Space"), for construction, repair, or maintenance of the Facilities, the UTILITY, in all cases except emergencies (such as line breaks or downed poles) shall give the STATE and the RAILROAD's dispatcher ten (10) working days' notice of its intent to access the Line's right-of-way.
- (b) The UTILITY or its contractor shall notify the RAILROAD's dispatcher each day before beginning work.
- (c) If inspectors, watchers, or flaggers are present, they must check in with the RAILROAD dispatcher each day prior to entering the Foul Space.
- (d) The UTILITY, its contractors, and inspectors, watchers, and flaggers must follow the RAILROAD dispatcher's instructions.
- (e) At the end of the day, the UTILITY, its contractors, and inspectors, watchers, and flaggers must notify the RAILROAD dispatcher that work has ended and that the work crew is clear of the Foul Space.
- (f) The UTILITY and its contractors must give the RAILROAD's dispatcher at least forty-eight (48) hours' advance notice of any condition constituting a railroad hazard, after initial notice has been given.
- (g) The UTILITY shall notify the RAILROAD's dispatcher at least forty-eight (48) hours before the start of any operation involving explosives on, or in the vicinity of, the railroad right-of-way, after initial notice has been given.
- (h) It shall be the responsibility of the UTILITY to coordinate its work with the RAILROAD by submitting a Railroad Worker's Clearance Form to the RAILROAD's dispatcher.
- (i) In any event, reasonable effort shall be made by the UTILITY to avoid interference with the normal operations of the RAILROAD.

4.07. Construction Work; Safeguarding Tracks, Traffic, and Appurtenances. When entering the Line's right-of-way, the UTILITY and its contractors shall abide by the following conditions:

- (a) Have in their possession on the job site the plans and contracts for the proposed construction work.
- (b) Perform all work in a manner that safeguards the tracks, traffic, and appurtenances of the STATE and the RAILROAD.
- (c) Ascertain and comply with the requirements of the RAILROAD relative to the work in the Line's right-of-way, and keep tracks clear of obstructions.
- (d) Maintain all equipment in first-class condition so as to fully prevent any failure that would cause delay in the operation of trains or damage to the STATE's or the RAILROAD's facilities. Equipment shall not be placed or operated adjacent to a track without first obtaining the permission of the RAILROAD. Equipment deemed unsatisfactory under paragraph 4.10(a) shall not be used.
- (e) Staging, falsework, and forms shall at all times be maintained with a minimum vertical clearance of twenty-

two (22) feet above the top of the high rail and a minimum side clearance of 8.5 feet from the center line of the track.

- (f) Pipeline crossings under the Line shall be in bored casings. Casings shall be detailed on plans and specified in contracts for all proposed construction work.
- (g) The UTILITY shall be solely responsible for all damages arising from the failure of the UTILITY or its contractor to comply with the requirements of this paragraph 4.07.

4.08. Construction Work; Hazards. No operation constituting a railroad hazard shall be carried on during the approach or passing of a train. Construction work that would cause a railroad hazard shall be subject to protective services as provided by paragraph 4.04. Notice of hazards shall be required as provided by paragraph 4.06. The following conditions shall be deemed to constitute railroad hazards:

- (a) An operating track shall be considered fouled and subject to hazard when any object or operation is brought closer than twenty five (25) feet to the center line of the track.
- (b) A signal line or communications line shall be considered fouled and subject to hazard when any object is brought closer than four (4) feet to any wire or cable.
- (c) An electric supply line shall be considered fouled and subject to hazard when any object is brought closer than ten (10) feet to any wire.
- (d) Cranes, trucks, power shovels, or any other equipment shall be considered as fouling and subjecting to hazard a track, signal line, communication line, or power supply line when working in a position that failure of equipment with or without load could foul the track, signal line, communication line, or power supply line.
- (e) Railroad operations will be considered subject to hazard when explosives are used on, or in the vicinity of, the railroad right-of-way.
- (f) Railroad operations will be considered subject to hazard when operations involve swinging booms or chutes that could in any way come nearer than fifteen (15) feet to the center line of any track.

4.09 Construction Work; Railroad Facilities Changes. Costs of changes to railroad facilities due to work in the Line's right-of-way shall be borne as follows:

- (a) When required by the nature of the construction work, the RAILROAD will install, maintain, protect, and remove a temporary crossing for the sole use of the UTILITY or its contractor and at the UTILITY's sole expense.
- (b) Temporary and permanent changes of tracks, signal, communication, and/or electric supply lines and/or any other railroad facilities, made necessary by or to clear the permanent work of the UTILITY will be made, or caused to be made by the RAILROAD without expense to the UTILITY.
- (c) Any other temporary or permanent changes made or services furnished by the RAILROAD for the UTILITY will be at the UTILITY's sole expense.

4.10 Construction Work; Inspection. Work in the Line's right-of-way shall be subject to inspection as follows:

- (a) The STATE and the RAILROAD may inspect equipment used by the UTILITY or its contractors. The UTILITY and its contractors shall discontinue the use of equipment that the STATE or the RAILROAD deems unsatisfactory.
- (b) If deemed necessary by either the STATE or the RAILROAD, the STATE or the RAILROAD will furnish and assign an engineer or inspector for general inspection purposes during construction. Any inspection service

provided by the STATE will be at the expense of the UTILITY. Any inspection service provided by the RAILROAD will not be at the expense of the UTILITY if construction is completed within the specified time limit.

- (c) If construction is not completed within the specified time limit and if, in the opinion of the RAILROAD, the services of an engineer or inspector will then or still be required, the services will be provided, and the cost thereof will be charged to the UTILITY.
- (d) If the STATE or the RAILROAD determines that an inspector is required because of poor quality construction, non-compliance with this Agreement, and/or unreasonable time taken to complete construction, costs of inspection shall be paid for by the UTILITY.
- (e) The UTILITY shall accept all charges incurred by the STATE or the RAILROAD to correct conditions caused by the UTILITY's or its contractors' non-compliance with this Agreement. The STATE and the RAILROAD shall provide the UTILITY with reasonable notice before taking action to correct non-compliance and shall provide the UTILITY with a reasonable opportunity to correct the non-compliance.
- (f) The UTILITY shall remit payment within thirty (30) days of receiving a statement of charges from the STATE or the RAILROAD pursuant to this paragraph 4.10. Costs under this paragraph 4.10 shall include salary, benefits, expenses, overhead, and all related construction costs.

4.11. Liquidated Damages. If at any time a delay to train service is caused by the UTILITY, then the UTILITY shall pay the RAILROAD liquidated damages at the rate of \$350.00 per hour, or fraction thereof, and for each additional hour or fraction thereof, to cover any and all damages resulting from the delay, as assessed by the RAILROAD. Charges will begin when the train arrives at the work site and will end at the time the train has passed the work site. Payment by the UTILITY shall be due within thirty (30) days of receipt of the bill from the RAILROAD.

It is agreed and understood by the parties that at the end of the first five-year period of this Agreement, the hourly rate for liquidated damages shall be adjusted to reflect any increase in the Consumer Price Index – All Urban Consumers (CPI-U) for the previous five years and that rate shall be used each year for the next five-year period.

V. INDEMNITY AND PUBLIC LIABILITY AGREEMENT

5.01. Avoidance of Cost or Liability to the STATE or the RAILROAD. The UTILITY acknowledges that its existing and proposed uses or occupancies of the Line are for the advantage of the UTILITY and do not involve the STATE's or the RAILROAD's performance of any duties to the public. The UTILITY further acknowledges that its existing and proposed uses or occupancies of the Line may expose the STATE and the RAILROAD to additional liability to which they would not otherwise be exposed. Accordingly, the UTILITY hereby agrees that the STATE and the RAILROAD shall be fully protected and kept free of all avoidable interference and that neither the STATE nor the RAILROAD will incur any costs or liabilities whatsoever as a result of their granting the use of the premises described herein or the presence of any obstacle or obstruction resulting from the UTILITY's use or occupancy of the Line.

5.02. Independence; Liability. The UTILITY will act in an independent capacity and not as officers or employees of the STATE or the RAILROAD.

The UTILITY agrees to defend, indemnify, and save the STATE, the RAILROAD, and their authorized agents, affiliates, subtenants, licensees, shareholders, officers, representatives and employees harmless from and against any and all actions, penalties, liabilities, claims, demands, damages, or losses resulting from any civil or criminal actions, arising directly or indirectly out of acts or omissions of the UTILITY, its contractors, agents, employees, servants, guests or business visitors, caused by or growing out of the UTILITY's use of the STATE's railroad property. The UTILITY agrees that the STATE and the RAILROAD shall not be liable for any injury to the UTILITY or for the injury or death of any agent of the UTILITY or for loss or destruction of or damage to any property of the UTILITY or any agent of the UTILITY while upon, about, or in the use, repair, or installation of any authorized Facilities. Further, the UTILITY hereby agrees to defend, indemnify, and save harmless the STATE and the RAILROAD and their authorized agents, affiliates, tenants, subtenants, licensees, shareholders, officers, representatives, and employees from and against any and all claims, liability, demands, causes of action, cost, or expense arising directly or indirectly from any injury to or death of persons, or loss or

destruction of or damage to property, that results directly or indirectly from the installation, maintenance, presence, or use of any authorized Facilities, irrespective of any negligence on the part of the STATE and/or the RAILROAD, or their agents or employees. Without limiting the foregoing, it is agreed that this covenant of indemnification shall apply to all cases of loss, damage, injury, death, cost, or expense for which any party to this Agreement may or shall be liable that result directly or indirectly from the installation, maintenance, presence, or use of the Facilities. For the purpose of this Agreement, all persons using or associated with any authorized Facilities in connection with the UTILITY's installation, maintenance, or use of such Facilities shall be deemed agents of the UTILITY. It is the express intent of the parties hereto that the UTILITY's duty to indemnify shall include the duty to defend the STATE and the RAILROAD and their authorized agents, affiliates, tenants, subtenants, licensees, shareholders, officers, representatives, and employees against any and all of the claims listed in this paragraph, including, but not limited to, attorney's fees and costs.

The UTILITY shall defend the STATE and the RAILROAD and their officers and employees against all claims or suits arising in whole or in part from any act or omission of the UTILITY or of any agent of the UTILITY. The STATE or the RAILROAD shall notify the UTILITY in the event of any such claim or suit, and the UTILITY shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement, the UTILITY may request recoupment of specific defense costs and may file suit in the Washington Superior Court in Montpelier, Vermont requesting recoupment. The UTILITY shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the UTILITY.

The UTILITY shall indemnify the STATE and the RAILROAD and their officers and employees in the event that the STATE, the RAILROAD, their officers, or their employees become legally obligated to pay any damages or losses arising from any act or omission of the UTILITY.

5.03. Insurance. Before exercising any rights under this Agreement the UTILITY must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the UTILITY to maintain current certificates of insurance on file with the STATE through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the UTILITY for the UTILITY's operations. These are solely minimums that have been established to protect the interests of the STATE and the RAILROAD.

Workers Compensation: With respect to all operations performed, the UTILITY shall carry workers compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the UTILITY shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Per Occurrence
- \$2,000,000 General Aggregate
- \$2,000,000 Products/Completed Operations Aggregate
- \$ 50,000 Fire/Legal Liability

The UTILITY shall name the STATE, the RAILROAD, and their officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The UTILITY shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

The UTILITY shall name the STATE, the RAILROAD, and their officers and employees as additional insureds for liability arising out of this Agreement.

5.04. Railroad Protective Liability Insurance. In addition, the UTILITY shall furnish evidence that, during any period of installation, repair, demolition, or maintenance on railroad property, the UTILITY and/or its contractor has obtained Railroad Protective Liability Insurance (AAR-AASHTO form) providing for coverage for bodily injury, death, and property damage. Such a policy must provide minimum limits of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 for the term of the policy and shall name the STATE, the RAILROAD, and the UTILITY as insureds. At least seven (7) days prior to any installation, repair, or maintenance on railroad property, the UTILITY shall submit to the STATE an acceptable original insurance policy to be in force the entire term of the work or longer if the STATE so specifies.

The UTILITY shall require any UTILITY contractor performing work on STATE-owned railroad property to defend, indemnify, and hold harmless the STATE and the RAILROAD and their officers and employees from liability and any claims, suits, judgments, and damages arising as a result of the contractor's performance of the work. The contractor shall also carry workers compensation insurance in accordance with the laws of the State of Vermont, general liability insurance in accordance with the coverages specified in paragraph 5.03, above, and automotive liability insurance (no less than \$1,000,000 combined single limit) covering all motor vehicles, including owned, non-owned, and hired, used in connection with the work to be performed.

5.05. Evidence of Insurance. The insurance required in paragraphs 5.03 and 5.04 above shall be placed with a reputable insurance company authorized to do business in the State of Vermont. Certificates of insurance shall be delivered to the STATE and the RAILROAD as proof of compliance within ten (10) days of execution of this Agreement or, in the case of Railroad Protective Insurance, before commencement of any construction work on railroad property. The insurance policy(ies) must provide that insurance will not be terminated or canceled without thirty (30) days' advance notice to the STATE and the RAILROAD. These insurance amounts shall not be deemed as limiting the UTILITY's obligation to defend, indemnify, and save harmless the STATE and the RAILROAD as provided in this Agreement.

5.06. Self-Insurance. If the UTILITY is or intends to become a self-insurer, it shall so notify the STATE and the RAILROAD. If not reasonably satisfied that the UTILITY is able to cover the risks assumed, the STATE or the RAILROAD may so notify the UTILITY, in which event the UTILITY shall immediately obtain coverage from a licensed insurer, as described above in paragraphs 5.03 and 5.04, above.

VI. TERMINATION

6.01. Abandonment; Restoration of Railroad Right-of-Way. In the event that any Facilities are abandoned by the UTILITY at any time after construction, the UTILITY shall forthwith remove the abandoned Facilities and appurtenances from the Line's right-of-way and shall do so to the satisfaction of the STATE and the RAILROAD. In case of the UTILITY's failure to remove abandoned Facilities, either the RAILROAD or the STATE may notify the UTILITY of its intention to remove the abandoned Facilities. In the event that the UTILITY does not, within thirty (30) days from such notification, remove its abandoned Facilities, the RAILROAD or the STATE may do so at the sole expense of the UTILITY. The license and permission herein granted shall not be deemed or interpreted to create an estate or easement in the UTILITY or any right other than a license.

6.02. Breach; Default; Termination. In the event of breach or default of any of the terms and provisions herein, the STATE or the RAILROAD may terminate this Agreement or any part thereof unless cured within thirty (30) days of written notice of such termination. It is agreed and understood that the UTILITY's failure to pay within thirty (30) days any invoice submitted to the UTILITY (such as for engineering consulting services, construction inspection, or flagging) shall constitute a material breach unless the invoice is being disputed by the UTILITY through the dispute resolution procedure set forth in paragraph 9.04 of this Agreement.

6.03. Early Termination. The UTILITY may voluntarily terminate this Agreement or its license for any particular Facilities authorized under this Agreement by giving the STATE and the RAILROAD thirty (30) days' notice.

VII. ASSIGNMENT

7.01. Binding Effect; Consent to Assignment. This Agreement is binding on the parties hereto and their respective successors and assigns. However, the UTILITY may not assign this Agreement, or any part thereof, without the prior written approval of the STATE and the RAILROAD, which consent will not be unreasonably withheld.

VIII. TAXES

8.01. Responsibility for Taxes. This Agreement does not exempt the UTILITY from any taxes or assessments levied by any federal, state, or local government.

8.02. Vermont Tax Compliance. As required by Vermont law (32 V.S.A. § 3113), the UTILITY certifies, under the pains and penalties of perjury, that it is good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of this Agreement. Notwithstanding any other provision of this Agreement, the STATE reserves the right to deny any renewal, extension, consent, or permission under this Agreement unless the UTILITY and any proposed assignee first provide the STATE with written certification of tax compliance.

IX. MISCELLANEOUS

9.01. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement, supersedes all prior oral or written offers, negotiations, agreements, understandings, and courses of dealing between the parties relating to the subject matter of this Agreement, and is subject to no understandings, conditions, or representations other than those expressly stated in this Agreement. This Agreement may only be modified by a writing which states that it modifies or amends this Agreement and which is signed by all parties.

It is the express intent of the parties to harmonize all existing agreements and to make each and every crossing location along the Line covered by a prior agreement now subject to the terms and conditions of this master Agreement for the convenience of the parties.

As between the STATE and the RAILROAD, this Agreement shall be subordinate to their current lease or operating agreement, as subsequently renewed and amended.

9.02. Topic Headings. The topic headings of the articles, sections, or paragraphs in this Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

9.03. Notice. Except as specifically provided elsewhere in this Agreement, any notice or other communication in connection with this Agreement shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and delivered by hand or sent either (a) by registered or certified mail (return receipt requested) with the United States Postal Service; or (b) by Federal Express or similar overnight courier furnishing evidence of receipt to the sender. Any party may change the address at which notices are to be received by notice given as set forth above.

9.04. Dispute Resolution. The parties agree that they will attempt, in the first instance, to resolve any disputes that may arise under this Agreement by direct negotiations, with the STATE represented by its Rail Program Chief. Any disputes not resolved by such direct negotiations shall be referred to the STATE's Director of Policy, Planning and Intermodal Development. In the event that the UTILITY is aggrieved by the decision of the Director of Policy, Planning and Intermodal Development, then the UTILITY, within 30 days of the Director's decision, may appeal in writing to the Secretary of Transportation through the Director of Policy, Planning and Intermodal Development, requesting a hearing. The notice of appeal shall completely outline the nature and extent of the question or questions appealed and shall provide copies of any supporting documentation. The decision of the Secretary of Transportation may be appealed to the Vermont Transportation Board, as provided by 19 V.S.A. § 5(d)(4).

9.05. Waiver. Any waiver at any time by any party hereto of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any subsequent default or matter. No delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall be deemed to be a waiver of such right.

9.06. Subordination to Other Licenses, Leases, and Grants. This Agreement is subject and subordinate to any and all permits, leases, and grants heretofore made and now in effect upon the premises over which the UTILITY's Facilities are to be installed, as well as any and all other licenses, leases, and grants that may be made hereafter by the STATE and/or the RAILROAD during the term of this Agreement which do not materially interfere with the UTILITY's exercise of the rights licensed hereunder.

9.07. Attorney's Fees. In case the STATE and/or the RAILROAD shall bring suit to compel performance of, or to recover for breach of, any covenant, agreement, or condition contained in this Agreement, the UTILITY shall pay to the STATE and/or the RAILROAD reasonable attorney's fees in addition to the amount of judgment and costs.

9.08. Document Preparation and Processing Fee. In addition to the rent specified above, the UTILITY agrees to pay the STATE the non-refundable sum of \$300.00 and to pay the RAILROAD the non-refundable sum of \$500.00, representing a portion of their costs of preparing, reviewing, and processing this document.

9.09. Interpretation of Agreement. If an ambiguity or question of intent arises with respect to any provision of this Agreement, the Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this Agreement.

Appendix B. Consultation with Vermont League of Cities and Towns

Sec. 30 states that AOT shall prepare this report in consultation with the Vermont League of Cities and Towns. Their full comments are included as Appendix B.



November 14, 2019

Zoe Neaderland, Planning Coordinator
 Vermont Agency of Transportation (VTrans)
 Policy, Planning, & Intermodal Development
 Barre City Place, 219 N. Main St,
 Barre VT 05641

Dear Zoe:

Thank you for the opportunity to comment on the draft Study on the Agency of Transportation’s Use of Master License Agreements and Alternative Options. I understand that these comments are later than you would have liked however, receiving the draft on November 6 and needing to respond by November 12, was not a possibility.

The report is a recitation of the current status of Master License Agreements in Vermont and other New England states. We did not notice that it offers recommendations for action.

1.3 Experience at the municipal level is that the Master License Agreement (MLA) is a document written by the VTrans and delivered to municipalities for signature. Failure to agree to its conditions results in denial of access to do necessary utility work, work that in many instances is mandated by other agencies of state government.

Municipalities have no argument with the need to comply with most requirements of the Master License Agreement. Regarding section III of the agreement description, our experience is that rents may or may not be justified. Municipalities working in their own right of way to make necessary repairs to necessary infrastructure protecting the public health, safety and welfare, should not need to pay VTrans or a rail company rent for use of its own right of way.

With respect to Section IV, we believe all agreements to do work in a rail right of way should be negotiated by the VTrans, rail company, relevant regulatory agency (such as ANR for permitted water conveyance infrastructure) and the municipality, taking into account any overlapping rights of way.

The imposition of indemnity agreements at Section V, is our most pressing concern with the MLA’s. The municipality should not be responsible for negligence on the part of other than its own employees. VLCT’s Property Casualty and Liability Fund (PACIF) insures the vast majority of cities and towns in the state. It is not at all clear that a third party would fall under PACIF insurance. Negligence on the part of the state or railroad or their employees would not be covered by PACIF.

The relevant sections include the following language:

- “The Utility agrees to defend, indemnify, and save harmless the State and the Railroad, and their authorized agents, from and against all claims, liability, demands, causes of action, cost, or expense arising directly or indirectly from the installation, maintenance, presence, or use of any authorized Facilities, irrespective of any negligence on the part of the part of the State and / or the Railroad, or their agents or employees.
- “The Utility must obtain and maintain a variety of types of insurance for workers compensation and general liability and property damage (limits shall not be less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations

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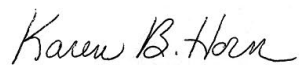
aggregate, and \$50,000 fire/legal liability). They all shall name the State, Railroad, and their officers and employees as additional insureds for liability. The section identifies minimum insurance limits, but no warranty is made that these are adequate to cover the interests of the Utility. Railroad Protective Liability Insurance (AAR-AASHTO Form) is also required, and must provide minimum limits of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 for the term of the policy and shall name the State, the Railroad, and the Utility as insured.

- “Utility self-insurance requires notification and approval by the State and the Railroad. Licensed insurance shall be required if the State and the Railroad cannot be satisfied with Utility self-insurance.”

Table 1 provides a list of MLAs with municipalities. Our understanding is that both the report and we would be provided copies of those agreements.

Thank you for the opportunity to comment.

Sincerely,



Karen B. Horn, Director
Public Policy and Advocacy