



THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

JFM

LEON S. KENISON  
COMMISSIONER

December 1, 1998

Ms. Kathleen O. Laffey  
Division Administrator  
Federal Highway Administration  
279 Pleasant Street  
Concord, N.H. 03301

Re: Acquisition of Inactive Railroad Corridor  
Berlin Branch ( Littleton to Whitefield )

Dear Kathy:

The Department has been approached by the New Hampshire & Vermont Railroad offering to sell their rail line property between Littleton and Groveton. The Department has negotiated a \$1.30 M. purchase price for this 36 mile section of railroad, including real estate, rail and other track materials.

The NH/VT RR has agreed to our request to transfer ownership of the property in two phases. Phase I would entail acquisition of approximately 12 miles of inactive corridor from Littleton to Whitefield for a pro-rated cost of \$450,000. The remainder of the corridor is currently active and acquisition of this section would be deferred until arrangements for continuation of rail service can be finalized. The Phase I segment would connect to the state-owned abandoned corridor running from Haverhill to Littleton which was purchased in 1996 with federal funds as part of the Haverhill Rte. 135 project.

In the last selection round of Transportation Enhancement projects, a "Statewide" project for acquisition of railroad corridors was approved. This project is programmed for FY 2000 with a total project budget of \$500,000. The Department proposes to purchase the Littleton to Whitefield corridor segment (Phase I) under this statewide project. Because the NH/VT RR and NHDOT are both anxious to transfer title on Phase I as soon as possible with a December, 1998 closing anticipated, the Department will purchase the corridor with State funds under the Advanced Construction provisions of TEA-21 and seek the 80% federal match in FY 2000. The necessary environmental reviews will of course be conducted.

Acquisition of the active rail line between Whitefield and Groveton will be with 100% State funding.

This proposal has been discussed with your staff and has received verbal conceptual approval. The intent of this letter is to document our proposal and to request any formal approval or comments as appropriate.

Sincerely,

Carol A. Murray  
Asst. Commissioner

CAM:JFM:d

cc: Robert W. Greer, Director of Project Development  
Kit Morgan, Bureau of Rail and Transit

## PURCHASE AND SALE AGREEMENT

AGREEMENT made as of this 14<sup>th</sup> day of December, 1998 by and between the New Hampshire and Vermont Railroad Company, a Florida corporation with a place of business at 416 Main Street, P.O. Box 1267, Trenton, Florida 32693 (the "Seller") and the State of New Hampshire by its Department of Transportation, with a place of business at the John O. Morton Building, One Hazen Drive, P.O. Box 485, Concord, New Hampshire 03302 (the "Buyer").

WHEREAS, the Seller has previously sold and the Buyer has previously purchased the "Woodsville to Littleton Line Segment" and the "Waumbec Junction (Jefferson) to Gorham Line Segment" comprising approximately (40) miles of the railroad right of way known as the "Berlin Branch"; and

WHEREAS, the Seller now desires to sell and the Buyer now desires to purchase approximately thirty-six (36) additional miles of railroad right of way a portion of which is known as the "Berlin Branch" and a portion which is known as the "Groveton Branch," as more particularly defined herein;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the Seller and the Buyer hereby agree as follows:

**1. Definition of the Property.** (a) The properties referred to herein (the "Properties") consists of a parcel or strip of railroad land of varying width, lying in Grafton and Coos, Counties, New Hampshire, comprising a portion of the railroad right of way known as the "Berlin Branch" and a portion of the railroad right of way known as the "Groveton Branch" conveyed by the Boston and Maine Corporation (the "B&M") to the Seller by Release Deed dated May 27, 1992 and recorded at the Grafton County Registry of Deeds at Book 1969, Page 943 and at the Coos County Registry of Deeds at Book 795, Page 407 (the "B&M Deed"), as more particularly described as:

(i) The line segment running from railroad milepost 113.0 in Littleton, New Hampshire (shown as railroad Valuation Station 995+66 on plans for federal Valuation Section 22, Map 19), thence to railroad milepost 125.0 in Whitefield, New Hampshire (shown as railroad Valuation Station 1629+30 on plans for federal Valuation Section 22, Map 31) (the "Littleton to Whitefield Line Segment"); and

(ii) The line segment running from railroad milepost 125.0 in Whitefield, New Hampshire (shown as railroad Valuation Station 1629+30 on plans for federal Valuation Section 22, Map 31), thence to railroad milepost 130.9 in Jefferson (Waumbec Junction), New Hampshire (shown as railroad Valuation Station 325+03.2 on plans for federal Valuation Section 24.2, Map 6 at the point of switch for the Maine Central Railroad connecting track), and thence to point in Groveton

(Northumberland), New Hampshire (shown as Valuation Station 2715+83 on plans for federal Valuation Section 22, Map 52 at the Whistle Post located South of the West Street crossing, such point being the point of intersection with the tracks of the St. Lawrence & Atlantic Railroad Company) (the "Whitefield to Groveton Line Segment").

(b) The Properties include any and all of the Seller's right, title and interest in the parcels located between such Valuation Stations and identified on the following plans: Valuation Section 24.2, Maps 1 through 6 and Valuation Section 22, Maps 19 through 52 (copies of which are on file with the Seller, the Buyer and the B&M); however, the sale of the Properties is subject to the exceptions and reservations contained in the B&M Deed. Prior to each closing, the parties shall more particularly identify and itemize such parcels in an exhibit to be signed at each closing.

(c) The Properties shall also include any and all rail, ties or other track materials comprising such line segment, all of which shall be left in place.

(d) Notwithstanding the foregoing, all loose rail, OTM, vehicles, furnishings and similar property located on or along the Properties shall not be included in the sale and shall remain the property of the Seller, such materials and property to be identified in writing by the Seller at least ten (10) days prior to each respective closing.

**2. Purchase Price.** (a) The total purchase price to be paid by the Buyer to the Seller for the Properties is \$1,300,000, which shall be paid by State of New Hampshire Treasurer's checks at the closings as described below.

(b) In addition to the payment of the above described purchase price, the Buyer shall assume and be responsible for, and shall release the Seller from and against, any and all reimbursement, lien, payments or obligations or responsibilities of the Seller with respect to the LRI'A grants relating to the Properties that may result from this transaction or the Buyer's use of the Properties.

**3. Title and Deed.** (a) The Seller shall convey the Properties by Quitclaim Deeds (substantially in the form of the quitclaim deed delivered by the Seller to the Buyer on January 15, 1998), conveying good and clear record and marketable title, free and clear of all liens, encumbrances and tax delinquencies, subject only to the Permitted Encumbrances set forth in Exhibit A attached hereto; provided, however, that the Seller does not make, and will not make at the closings, any warranty or covenant of title or otherwise, except that the Seller, for itself and its successors and assigns, warrants and covenants that at the time of the delivery of the Quitclaim Deeds the respective portions of the Properties shall be free from all encumbrances made by the Seller and shall warrant and defend the same to the Buyer, its successors and assigns, forever against the lawful

claims and demands of all persons claiming by, through or under the Seller, but against none other.

(b) Subject to and without limiting the preceding paragraph 3(a), at each closing, the Seller shall assign to the Buyer, and the Buyer shall assume and accept from the Seller, any and all rights, agreements, covenants, maintenance and all other responsibilities and obligations of the Seller arising after the time of closing with respect to any and all overhead, at-grade and subsurface wires, pipes, pedestrian and vehicular crossings, drainage culverts, walls and other crossings, structures and facilities of any type, nature or description located, in whole or in part, within the Properties which appear of record or if unrecorded have been fully disclosed by the Buyer to the Seller. The Seller shall provide to the Buyer a complete set of valuation maps, bridge plans, deeds, leases or other agreements applicable to the Properties.

(c) The Seller may use the purchase price funds at the closings to satisfy any mortgage, lien or other financial encumbrance on the Properties and shall arrange for the issuance and recording of discharges or releases from these obligations prior to the closings.

4. **Closings.** The Seller shall convey the Properties to the Buyer at two closings, as follows:

(a) **Closing One.** The Seller shall convey the Littleton to Whitefield Line Segment to the Buyer for four hundred fifty thousand dollars (\$450,000) on or before December 31, 1998 at a time and location to be mutually agreed upon.

(b) **Closing Two.** The Seller shall convey the Whitefield to Grovton Line Segment to the Buyer for eight hundred fifty thousand dollars (\$850,000) on or before March 31, 1999 at a time and location to be mutually agreed upon.

5. **Responsibility for Taxes.** All real estate and railroad taxes and other applicable assessments, fees or charges with respect to the Properties shall be apportioned between the Seller and the Buyer as of the respective closing dates. Subject to Section (d), below, the Seller shall be responsible for and shall pay on or before the respective closing all such taxes assessed or assessable, and any applicable statutory interest thereon, for the period up to the closing date. The Buyer shall be responsible for and shall pay if, as and when due all taxes assessed or assessable against the Properties after the respective closing date.

6. **Revenue Stamps.** This transaction is exempt from the imposition of revenue stamps, other recording fees and the filing of declaration of consideration pursuant to NHRSA 78-B:2 and NHRSA 78-B:10,111.

7. **Conditions Precedent.** (a) **Change of Ownership.** In connection with the transactions contemplated herein, the parties anticipate that, following the respective closings, the Seller shall continue to serve as the common carrier on the Properties under a lease agreement with the Buyer. The parties' obligations under this Agreement are, therefore, subject to the U.S. Surface Transportation Board (the "STB") having approved the change in ownership of the Properties under the ICC Termination Act of 1995 (the "Act") or the STB having exempted such transaction from the provisions of the Act requiring STB approval. In the event that the parties are unable to agree upon such terms and conditions of such lease agreement on or before December 31, 1998, then this Agreement shall terminate and be of no further force or effect.

(b) **Approval by Governor, Executive Council and Legislature.** The Buyer has obtained any and all approvals from the New Hampshire General Court with respect to the appropriation of sufficient rail corridor acquisition or other funding to purchase the Properties and to use the Buyer's funds to acquire the Properties. The Buyer must obtain any and all approvals from the Governor and Executive Council to purchase the Properties and to use the Buyer's funds to acquire the Properties.

(c) **Waiver of Property Tax Penalties.** The Seller's obligations under this Agreement are subject to the New Hampshire Department of Revenue Administration ("NHDR") having waived any and all penalties or "doomage" with respect to the New Hampshire Railroad Tax for the tax years 1997 and 1998. In the event that NHDR refuses to so waive such penalties or doomage, the Seller may terminate this Agreement upon written notice to Buyer.

(d) **Removal of Railroad Ties.** The parties acknowledge and agree that certain railroad ties removed by the Seller in connection with the recent sale of the Littleton to Woodsville and Waumbec Junction (Jefferson) to Gorham Line Segments have been stored at locations in Jefferson and Gorham. With respect to the removal of such ties, the parties hereby agree as follows:

(i) The Seller shall be responsible for the removal and disposal of the remaining railroad ties presently piled at Jefferson. The Seller shall remove these ties no later than five (5) days prior to Closing One, such removal to be performed in compliance with all applicable laws.

(ii) The Seller shall be responsible for the removal and disposal of the remaining landscape quality ties which are presently piled at Gorham. The Seller shall remove these ties no later than June 1, 1999, such removal to be performed in compliance with all applicable laws.

(e) **Release of Escrowed Funds.** In connection with the signing of this Agreement, \$54,000 of the \$108,000 in funds escrowed in connection with the previous sales of the Woodsville to Littleton and Waumbec Junction (Jefferson) to Gorham Line Segments have been released to the Seller. The Seller shall first use these funds to cover the costs of the removal and disposal of railroad ties, as described in paragraph (d), above, including its own labor and equipment costs for such work. The balance of such escrowed funds, and all interest accrued thereon, shall be released to the Seller as provided in the January 15, 1998 Escrow Agreement covering such funds.

**8. Condition of the Properties; Restoration of Littleton Track.** (a) Except as set forth in this Agreement: (i) the Seller makes no representation or warranty, express or implied, as to the design or condition of the Properties, their merchantability or fitness for any particular purpose, or the quality of the materials or workmanship of the Properties; (ii) the Seller shall not be liable to the Buyer for any incidental or consequential damages (including strict liability in tort) with respect to the design, condition, quality, safety, merchantability or fitness for any particular purpose of the Properties; and (iii) at the respective closings, the Buyer shall take the Properties in "AS IS, WHERE IS" and "WITH ALL FAULTS" conditions, and subject to all limitations on the Seller's right, title and interest in and to the Properties.

(b) The parties acknowledge and agree that, in connection with salvage work under the previous sale of the Littleton to Woodsville Line Segment, the Seller removed the rail, ties and OTM from a portion of the Properties located south of the new Industrial Park Access Road in Littleton, New Hampshire. Without limitation of paragraph (a), above, the Seller shall have no responsibility to restore any rail, ties, OTM or other materials to the portion of the Properties located south of the new Industrial Park Access Road in Littleton, New Hampshire, and any such necessary restoration shall be the sole responsibility of the Buyer.

**9. Risk of Loss.** The risk of loss relative to any damage or loss to the Properties shall be on the Seller until the respective closing occurs. In the event that any portion of the Properties is destroyed, in whole or in part, prior to the closings, either the Buyer or the Seller may terminate this Agreement.

**10. Default.** If either party defaults in its performance of its obligations assumed by this Agreement, then the other party shall have available to it all rights provided under law or in equity.

**11. Assignment.** Neither party may assign its rights hereunder or delegate its obligations hereunder without the express prior written consent of the other party.

**12. Integration.** This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Properties, superseding all prior oral

and written communications, proposals, negotiations, representations, understandings, courses of dealing, agreements, contracts and the like between the parties in such respect.

13. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire applicable to contracts made, accepted and performed wholly with New Hampshire, without application of principles of conflict of laws. This Agreement may be enforced only in courts located within the State of New Hampshire, and the parties hereby agree that such courts shall have venue and exclusive subject matter and personal jurisdiction.

14. **Counterparts.** This Agreement shall be executed in any number of counterparts, each of which, when executed by both parties, shall be deemed an original, and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

NEW HAMPSHIRE AND VERMONT  
RAILROAD COMPANY, INC.

Judy Reiderman  
Witness

By: [Signature]  
Clyde S Forbes, President  
Duly Authorized

STATE OF NEW HAMPSHIRE by its  
DEPARTMENT OF TRANSPORTATION

[Signature]  
Witness

By: James F. Marshall  
Name: James F. Marshall  
Title: Director  
Duly Authorized

Approved as to form and execution this 23<sup>rd</sup> day of December, 1998 by:

[Signature]  
Anne Edwards  
Assistant Attorney General