



New Hampshire Liquor Commission

Joseph W. Mollica
Chairman

50 Storrs Street, P.O. Box 503
Concord, N.H. 03302-0503
(603) 230-7026

Michael R. Milligan
Commissioner

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DEC 13 PM 12:54

June 4, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the New Hampshire State Liquor Commission to enter into a sole source contract with the New Hampshire Fisher Cats, 1 Line Drive, Manchester, New Hampshire 03101 (Vendor #168155) in the amount not to exceed \$45,000 for a sponsorship agreement effective from the date of Governor and Executive Council approval through April 30, 2016. 100% Federal Funds.

Funding is available in the account as follows with the authority to adjust encumbrances in each of the State Fiscal Years through the Budget Office if needed and justified:

#02-77-77-770512-1727 LIQUOR COMMISSION, ENFORCEMENT, UNDERAGE DRINKING INITIATIVE:

Class #	Class Description	FY 2014	FY 2015	FY 2016	Total
020-500244	Promotional	\$15,000.00	\$15,000.00	\$15,000.00	\$45,000.00

EXPLANATION

The intent of this sole source agreement is to expand the reach of our public awareness programs and initiatives by participating as a sponsor in the New Hampshire Fisher Cats 2013-16 seasons. Sponsorship will allow the Division to promote its public awareness campaign and other public service messages through in-stadium promotions, promotional giveaways, and advertising.

The program objectives will include increasing public awareness of laws prohibiting the selling, giving or providing of alcoholic beverages to minors by adults, parents and alcohol licensees. To promote the social and legal consequences of underage drinking and or driving in New Hampshire thru media coverage of the Bureau's participation in the New Hampshire Fisher Cats Season and draw attention to the public awareness campaign.

The Liquor Commission has contracts with the Fisher Cats, the Manchester Monarchs and the University of New Hampshire Wildcats to bring the Buyers Beware message to those who attend the sporting events where alcohol is sold.

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In the event that Federal Funds are no longer available, Liquor Funds will not be requested to support this program.

This agreement has been approved by the Attorney General's Office as to substance and form. Your favorable action on this request would be appreciated.

Respectfully Submitted
New Hampshire State Liquor Commission



Joseph W. Mollica, Chairman



Michael R. Milligan, Commissioner

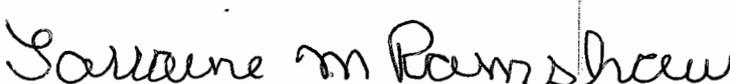
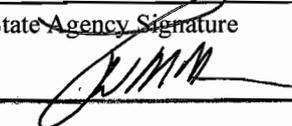
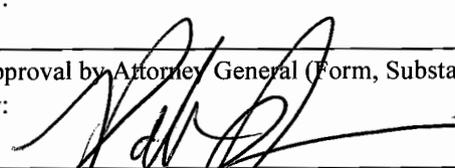
Subject: Sponsorship Agreement with "Fisher Cats" Buyer Beware Public Information Campaign

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATIONS.

1.1 State Agency Name New Hampshire State Liquor Commission		1.2 State Agency Address P.O. Box 503, 50 Storrs St., Concord, NH 03302-0503	
1.3 Contractor Name New Hampshire Fisher Cats		1.4 Contractor Address 1 Line Drive, Manchester, NH 03101	
1.5 Contractor Phone Number 603-641-2005	1.6 Account Number 02-77-77-771512-1727-020-500244	1.7 Completion Date April 30, 2016	1.8 Price Limitation \$ 45,000.00
1.9 Contracting Officer for State Agency Scott Dunn, Deputy Chief		1.10 State Agency Telephone Number 603-271-8529	
1.11 Contractor Signature 		1.12 Name & Title of Contractor Signatory Richard J Brennan	
1.13 Acknowledgment: State of _____, County of _____ On, _____, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace (Seal) 		<div style="border: 2px solid black; padding: 5px; width: fit-content; margin: auto;"> <p>LORRAINE M RAMSHAW Notary Public, New Hampshire My Commission Expires Feb 20, 2018</p> </div>	
1.13.2 Name and Title of Notary Public or Justice of the Peace Lorraine M Ramshaw		CSR/Notary	
1.14 State Agency Signature  		1.15 Name/Title of State Agency Signatory Joseph W. Mollica, Chairman Michael R. Milligan, Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by Attorney General (Form, Substance, and Execution) By:  On: 5/9/13			
1.18 Approval by Governor and Council By: _____ On: _____			

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

3. EFFECTIVE DATE/ COMPLETION OF SERVICES.

3.1. Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement, ("Effective Date")

3.2. If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

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

5.2. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

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

5.4. Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payment authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

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

6.1. In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

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

6.3. If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplement by the regulations of the United State Department of Labor (41 C.F.R. Part 60), and with any rules, regulation and guidelines as the State New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

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

7.2. Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other persons, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3. The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials

MB

Date 4-23-13

8. EVENT OF DEFAULT/REMEDIES.

8.1. Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1. failure to perform the Services satisfactorily or on schedule;

8.1.2. failure to submit any report required hereunder; and/or

8.1.3. failure to perform any other covenant, term or condition of this Agreement.

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

8.2.1. give the contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice, and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

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

8.2.3. set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Defaults; and/or

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

9. DATA/ACCESS/CONFIDENTIALITY/PRESEVATION.

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

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

9.3. Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the

Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE.

In the performance of this Agreement the Contractor is in all respects and independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

The contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

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

14.1.1. Comprehensive general liability insurance against all claims of bodily injury, death or property damage in amounts of not less than \$250,00 per claim and \$2,000,000 per occurrence; and

14.1.2. fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2. The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance and issued by insurers licensed in the State of New Hampshire.

Contractor Initials

Date

MB
4-23-15

14.3. The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under the Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modified of the policy.

15. WORKER'S COMPENSATION.

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

15.2. To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH No failure by the State to enforce any provisions herof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

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

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment,

waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

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

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

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

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials mo
Date 4-23-13

EXHIBIT A – PART ONE
REQUIREMENTS

1. SCOPE OF SERVICES:

The State of New Hampshire Liquor Commission (“NHLC”) proposes to enter into an agreement with The New Hampshire Fisher Cats (“Contractor”) for a sponsorship agreement to provide marketing and promotional right from the New Hampshire Fisher Cats for a Public Information Campaign.

THIS CONTRACT CONSISTS OF FURNISHING ALL MATERIALS, EQUIPMENT, LABOR AND TRANSPORTATION NECESSARY TO PROVIDE THE SERVICES DESCRIBED HEREIN.

2. PROJECT DELIVERABLES:

The NHLC’s deliverables for the future engagements shall consist of the following:

2.1. In-Stadium Promotion:

- a. Presenting Sponsor – The NHSLC Enforcement Bureau will be the presenting sponsor of Sunday Kid’s Days at the ballpark each season. NHSLC Sunday Kid’s Days include one lucky child who would be the PA Announcer during one inning of each Sunday home day game, following each Sunday home day game all kid’s in attendance are invited to run the bases. Each child will receive an NHSLC certificate displaying Fungo and InvestiGator along with a message (TBD) from the NHSLC as they cross home plate.
- b. Videoboard Feature – One (1) Pre-Game :15-Second Videoboard spot (71 games) throughout the season. A member of the Bureau of Enforcement and a Fisher Cats player video recording of the Buyer Beware message will run each game on the Videoboard.
- c. Signage – The NHSLC Enforcement Bureau’s “Buyers Beware” signage will be displayed at each concession stand throughout the ballpark.
- d. Mascot Appearances – The NHSLC Enforcement Bureau mascot “The InvestiGator” will make appearances at three (3) mutually agreed upon NH Fisher Cats home games throughout the season.
- e. Displays – The NHSLC Enforcement Bureau Gator car and/or the DUI MCU will be displayed at mutually agreed times during the season. Due to added construction, displays will only take place if there is sufficient room for the vehicles to be displayed.

2.2. Giveaway Day:

- a. The NHSLC Enforcement Bureau will receive a promotional give away day each season to be mutually agreed upon. The 2013 season will be a mini-bat promotional giveaway day at the ballpark on July 28, 2013 with the mini-bat displaying the NHSLC and NH Fisher Cats logos and will be given away to the first one thousand (1,000) children entering the ballpark.

EXHIBIT A – PART ONE
REQUIREMENTS

2.3. Media:

- a. Two (2):30-Second Radio Commercials per game at 142 games throughout the season.
- b. One (1) In-Game Public Address Reader by the Play-By-Play announcers at 142 games throughout the season.
- c. One (1) Half-Page Ad in the NH Fisher Cats Game Day Program.

2.4. Tickets:

- a. One hundred (100) game day tickets to a mutually agreed upon game in April or May.

2.5. The Contractor shall meet with the Enforcement Representative to coordinate and receive approval before any promotional advertising is performed.

3. GENERAL SERVICES:

- 3.1. Caution to Contractors: The services called for by this solicitation are critical to the needs of the New Hampshire State Liquor Commission. All contractual requirements will be strictly enforced. The Contractor will be held fully responsible for proper performance of contract requirements. The Liquor Commission expects a high standard of professionalism in performance of this contract.
- 3.2. The Contractor shall bear all losses resulting to him or to the Owner on account of the amount or character of the work, or because of the nature of the area in or on which the work being done is different from what was estimated or expected, or account of the weather, elements or other causes.
- 3.3. The Contractor shall complete the entire work to the satisfaction of the NHLC and in accordance with the specifications herein mentioned, at the price herein agreed upon.
- 3.4. Unsatisfactory response to any or all of the listed services or requirements will be a basis for immediate termination of the contract. The Liquor Commission reserves the right to terminate this contract at any given time with a 30 day written notice.
- 3.5. The Contractor or their work staff shall not represent themselves as employees or agents of the State.
- 3.6. The Contractor shall be responsible in the event of theft or destruction of State property or personal property of State employees by its work staff.
- 3.7. The Contractor shall secure and pay for all permits, inspections and licenses necessary for the execution of his work.

4. PROBLEM RESOLUTION:

- 4.1. The Contractor must have a single contact person, available during normal working hours, for the resolution of problems. The contact person must be someone with authority to get more difficult problems resolved.

EXHIBIT A – PART ONE

REQUIREMENTS

- 4.2. The Liquor Commission designates the CFO, George Tsiopras, as Contract Administrator who will work with the Vendor to resolve problems that cannot be resolved by the end-users.
- 4.3. If at any time during this contract, there is a failure to perform service, deliver goods or perform any other term and condition of this agreement, the Contract Administrator will give written notice to the Vendor.

5. CONTRACT PERIOD & FUNDING

5.1. Contract Period:

The term of the contract shall become effective upon Governor and Executive Council Approval through April 30, 2016. At or prior to the completion of the such term, if the vendor notifies the Liquor Commission by an instrument in writing and both parties here to agree, then this contract may be extended for up to two-years upon written approval of the Liquor Commission and Attorney General's Office.

The contract is contingent upon appropriate funding for each year. The vendor will be notified prior to each season regarding the availability of funds. In the event that funding becomes unavailable contract will become null and void.

EXHIBIT B
BUDGET AND METHOD OF PAYMENT

BILLABLE CHARGES BREAKDOWN:

2013-2014 Season:	\$15,000.00
2014-2015 Season:	\$15,000.00
2015-2016 Season:	<u>\$15,000.00</u>

TOTAL CONTRACT: = **\$45,000.00**

**This is a fixed price contract and in no event shall the total payments exceed; \$45,000.00 for the contract period.

EXHIBIT C
SPECIAL PROVISIONS

Section 14.1.1 is deleted and replaced with the following: “comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence general liability and \$5,000,000 per occurrence excess liability;”



AA Affiliate of the Toronto Blue Jays

CERTIFICATE OF AUTHORITY

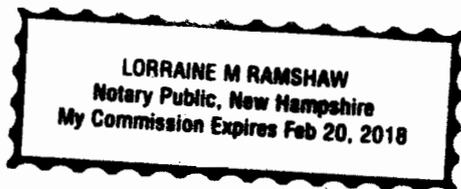
I, Karl Stone, Corporate Controller for NH Triple Play, LLC (d/b/a New Hampshire Fisher Cats) certify that Richard J. Brenner is the President of NH Triple Play LLC (d/b/a New Hampshire Fisher Cats). As President, Mr. Brenner is duly authorized to sign contracts on behalf of NH Triple Play, LLC. (d/b/a New Hampshire Fisher Cats) and holds the authority to contractually bind NH Triple Play, LLC. (d/b/a New Hampshire Fisher Cats). Mr. Brenner had this authority on the date of April 23, 2013 when he executed the contract by and between the State of New Hampshire, State Liquor Commission and the New Hampshire Fisher Cats.

Karl Stone
Corporate Controller

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this 23rd day of April 2013, the above-named, Karl Stone, personally appeared before me and made oath that the foregoing statements are true and correct to the best of his knowledge and belief.

Notary Public/Justice of the Peace
My Commission expires: 2/20/18



State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that NEW HAMPSHIRE FISHER CATS is a New Hampshire trade name registered on January 14, 2004 and that NH Triple Play, LLC presently own(s) this trade name. I further certify that it is in good standing as far as this office is concerned, having paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 18th day of March, A.D. 2013

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

William M. Gardner
Secretary of State

