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Frank Edelblut  
Commissioner

Christine Brennan  
Deputy Commissioner

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
101 Pleasant Street  
Concord, N.H. 03301  
TEL. (603) 271-3495  
FAX (603) 271-1953

December 23, 2019

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

**REQUESTED ACTION**

Authorize the Department of Education (DOE), Bureau of Vocational Rehabilitation (VR), Office of Services for Blind and Visually Impaired, the State Licensing Agency (SLA), to enter into a Memoranda of Understanding with the New Hampshire Department of Business and Economic Affairs (BEA), (VC 287201). This agreement renews the authorization for the Department of Education to provide vending services at the rest areas and welcome centers within the agreement, with the option to renew for one additional year, effective upon Governor and Council approval through June 30, 2024. 100% Other Funds.

Funds are available in the following account for Fiscal Years 2020 and 2021, and are anticipated to be available in Fiscal Years 2022, 2023, and 2024 upon the continued appropriation of funds in the future operating budget with the authority to adjust encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified.

06-56-56-565010-25480000-049-584922, Vending Stands-Set Aside

**EXPLANATION**

This request renews the agreement between the Department of Education and the Department of Business and Economic Affairs, previously managed by the Department of Resources and Economic Development and the Department of Transportation for the maintenance and repair of vending facilities within the agreement. In April of 2004, upon legal challenge by the New Hampshire Committee of Blind Vendors, the United States' first circuit Court of Appeals ruled that provisions of NH RSA 230:30 were preempted by provisions of the Surface Transportation Assistance Act which require that on Federal Aid Highways the State Licensing Agency (SLA) under the Federal Randolph-Sheppard program has a prior right to negotiate the provision of vending services.

His Excellency, Governor Christopher T. Sununu

and the Honorable Executive Council

Page 2 of 2

Attached is a copy of the current agreement between the DOE and BEA. This agreement has been approved by the Attorney General as to form and execution. Your approval of this resolution is respectfully requested.

The outcome VR and the SLA would like to achieve with this agreement is to have BEA provide for maintenance and repair of vending facilities in accordance with the Memoranda of Understanding so New Hampshire can continue to support the entrepreneurial efforts of blind vending operators within the state and ensures their independence and self-sufficiency.

Respectfully Submitted,



Frank Edelblut

Commissioner of Education

## Memorandum of Understanding

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### Vending Services at Safety Rest Areas/Welcome Information Centers

Between New Hampshire Department of Education  
And New Hampshire Department of Business and Economic Affairs

**Section #      Proposed changes**

- #1: 5 Year term with one-year renewal option
- #2: Commission 7.75% of Gross Revenue, all SRA/WIC locations. Third party verification of total gross income required.
- #11: Quantity of SRA/WIC vending machines dependent on available space and maximizing sales. Any changes to the number of machines must be approved by BEA prior to making any changes.
- #13a: Reference included regarding tracking of maintenance and projects through Asset Essentials-a Web-based maintenance and project request system.
- #13c: Eliminated the paragraph regarding reduction in commission based upon BEA's need to close a center or to curtail business operations. If we agree to a commission on a percentage basis, there's no need for a stipulated reduction. It's already built in.

**MEMORANDUM OF UNDERSTANDING  
FOR THE PROVISION OF VENDING SERVICES AT  
INTERSTATE HIGHWAY REST AREAS IN NEW HAMPSHIRE**

This Memorandum of Understanding is made by and between the State of New Hampshire, Department of Education, Office of Services for Blind and Visually Impaired (the "State Licensing Agency" or "SLA") and the State of New Hampshire, Department of Business and Economic Affairs ("BEA").

WHEREAS, BEA desires to have coin, currency and card operated food and beverage vending machines available at certain Safety Rest Areas/Welcome Information Centers(SRA/WICs) on the Interstate Highway System in New Hampshire, in accordance with the Surface Transportation Assistance Act (23 U.S.C. § 101, et seq.); and Transportation Equity Act of 21<sup>st</sup> Century TEA-21; and;

WHEREAS, SLA desires to provide such vending machine services to BEA through The Office of Services for Blind and Visually Impaired, Business Enterprise program (RSA 186-B; Ed 1019);

NOW, THEREFORE, based upon the mutual promises and covenants contained herein, and for other good and valuable consideration, the sufficiency of which the parties hereto acknowledge, the parties agree as follows:

1. **Effective Date and Term.** This Memorandum of Understanding and all obligations of the parties hereunder, shall become effective immediately upon approval by the Governor and Council of the State of New Hampshire ("the Effective Date"). This memorandum shall continue in full force for five (5) years with one (1) year renewal, so long as:

a) The Randolph-Sheppard Vending Facilities program is authorized under RSA 186-B:9 – 15, and 23 U.S.C. § 111 (b), Transportation Equity Act of the 21<sup>st</sup> Century (TEA-21)

b) Vending machine are placed in SRA/WICs, constructed or located on rights-of-way of the Interstate System in NH.

c) Such vending machines may only dispense such food, drink, and other articles as BEA determines are appropriate and desirable. Such vending machines may only be operated by the State. In permitting the placement of vending machines, **the State shall give priority to vending machines which are operated through the State Licensing Agency designated pursuant to section 2(a)(5) of the "Randolph-Sheppard Act" of June 20, 1936 (20 U.S.C. 107a(a)(5)).**

2. **Location of Vending Facilities.** As further provided herein, SLA shall provide, operate, maintain, supply, service, and otherwise care for coin, currency and card operated food and beverage vending machines in the vending machine structures (the "Vending Facilities") located on the following New Hampshire SRA/WICs:

- A. I-93 Northbound Canterbury;
- B. I-93 Northbound Hooksett;
- C. I-93 Southbound Hooksett;
- D. I-89 Southbound Lebanon;
- E. I-93 Northbound Salem;
- F. I-93 Southbound Sanbornton;
- G. I-95 Northbound Seabrook;
- H. I-89 Northbound Springfield;
- I. I-89 Southbound Sutton

3. **Selection of Licensed Operators.** In accordance with the selection procedure for licensed operators under RSA 186-B:9-16 and the implementing state rules (Ed 1019), SLA will select a licensed program operator or operators ("Licensed Operator") to manage the Vending Facilities and enter into Operating Agreements with each Licensed Operator in accordance with Ed 1019.

a. **Subcontractors.** If SLA determines that it is not feasible for a Licensed Operator to operate the Vending Facilities at one of the Rest Areas, SLA shall notify BEA. After notice, SLA may, through a competitive bid process, contract with a qualified subcontractor to operate the specific location until such time that a Licensed Operator becomes available. Hereinafter, the term "Licensed Operator" includes any such subcontractor. SLA shall insure that any such contract with a commercial vending operation will meet the insurance

requirements set forth herein, including the requirement that BEA be an additional named insured, in addition to meeting all of the provisions of this Memorandum of Understanding.

4. **Commission Payments.** SLA shall submit a monthly commission (a "Commission") in the amount of 7.75% (Seven and three quarter percent) of Total Gross Revenue from vending machine sales at the SRA/WICs listed in item #2 of this Memorandum of Understanding. SLA shall provide BEA with third party verification of Total Gross Revenue.

5. **Taxes.** The Licensed Operator shall be liable for taxes assessed or owing with respect to operation of the vending machines at the Vending Facilities and all income derived therefrom. The Licensed Operators are not employees of BEA, and BEA shall not have any liability for employment or other taxes associated with the Licensed Operators.

6. **Non-Resettable Meters.** All machines will have non-resettable vending meters to verify machine sales. SLA shall have the right to check the meter readings on any machine at any time. BEA shall have the right to make inquiries of the SLA or licensed operators relative to meter readings.

7. **Utilities.** SLA shall be responsible for and pay all costs directly to the appropriate utility companies for electrical power and water services incurred in the operation of the Vending Facilities. In addition, SLA shall be responsible to coordinate the installation of any additional electric and water service and hardware for the operation of the vending machines at its own expense.

8. **Exclusive Right to Sell.** For and in consideration of the Commission, and the mutual covenants herein, BEA hereby grants SLA, and the Licensed Operators acting by and through SLA pursuant to this Memorandum of Understanding, the exclusive right to sell food, beverages, and candy in the automatic vending machines at the Vending Facilities.

9. **Hours of Operation of Vending Facilities by SLA.** At a minimum SLA shall keep the Vending Facilities open during the times when the SRA/WICs are open, as BEA may determine from time to time. SLA may keep the Vending Facilities open up to 24 hours a day at the discretion of SLA and Licensed Operator in order to provide greater hours of service and income to the Licensed Operator. The current hours of operation of the SRA/WICs is as follows, BEA, however, reserves the right to change the hours at its sole discretion:

**Canterbury I-93 Northbound**

Daily: 8:00 AM to 8:00 PM

**Hooksett I-93 Northbound**

Sunday-Saturday 24 hours per day

**Hooksett I-93 Southbound**

Sunday-Saturday 24 hours per day

**Lebanon I-89 Southbound**

Daily: 8:00 AM to 8:00 PM

**Sanbornton I-93 Southbound**

Daily: 8:00 AM to 8:00 PM

**Salem I-93 Northbound**

Daily: 8:00 AM to 10:00 PM

**Seabrook I-95 Northbound**

Sunday-Saturday 24 hours per day

**Springfield I-89 Northbound**

Daily: 8:00 AM to 8:00 PM

**Sutton I-89 Northbound**

Daily: 8:00 AM to 8:00 PM

10. **Merchandise.** SLA shall submit to BEA as part of this Memorandum of Understanding, product lists, portions, and prices for all merchandise to be sold in the automatic vending machines. The prices for these products will not exceed the agreed upon price list. Any changes in number, type of products vended, or price shall require advanced written approval of the Business Administrator for the Bureau of Visitor Services or designee, and such approval or rejection shall be granted or rejected

within (10) working days of the receipt of the request. Such approval shall not be unreasonably withheld. See Appendix B for current list of product, portion and pricing.

11. **Vending Machines.** SLA will continue to maintain new or like new equipment at all Vending Facilities. SLA shall maintain an appropriate number of machines to fit the available space and to maximize sales. SLA shall request approval for any addition and/or removal of any vending machine prior to doing so. Such approval shall not be unreasonably withheld. The current number of vending machines is in appendix A.

12. **Signage.** Unless otherwise agreed to by both parties SLA will prominently and continuously display 1 sign at each Vending Facility stating:

*"This vending facility is the business place of a Licensed Operator of the New Hampshire Business Enterprise Program. For further information, complaints, suggestions, and refund requests, please contact The Office of Services for Blind and Visually Impaired at 21 So. Fruit St. Concord NH 03301 TEL: 603-271-3537"*

13. **Maintenance, Repair, and Cleanliness of Vending Facilities.**

*VC*  
*BE*  
a. **BEA's Responsibilities.** BEA shall be responsible for maintenance and repair of the Vending Facilities, including foundations, exterior and interior walls, roofs, plumbing, mechanical, electrical wiring, and light fixtures including light bulbs, heating, windows and doors, floors, ceilings and interior and exterior painting, when necessary. The NH Department of Transportation (NHDOT) is responsible for clearing snow from Welcome Information Center parking lots and ramps, while BEA is responsible for clearing snow from sidewalks and building entrances. In either case, BEA shall be the point of contact for any concerns regarding snow removal operations. BEA shall be the liaison between DOE and DOT. Additionally, BEA shall be responsible for care of grass, trees, shrubs, and other plantings at the Welcome Center.



order program, and provide SLA with semi-annual updates regarding the completion and cost of maintenance items and/or projects.

b. **SLA's Responsibilities.** SLA will be responsible for the cleanliness of the interior and exterior of the Vending Facilities. SLA shall continually keep the facility in a neat, clean, and sanitary condition. The housekeeping duties of SLA include, but are not limited to, sweeping, mopping, and periodic scrubbing of all floor surfaces, whether exposed or under counters or equipment, the handling and storage of food under sanitary conditions free from contamination, washing and cleaning of all wall surfaces, partitions, doors and equipment, the cleaning of all glass surfaces of windows on doors, the removal of dust from window sills, cabinet tops, and any other areas where such may accumulate, and all work necessary for the maintenance of the vending facilities in continuously clean and sanitary condition as required by all applicable health and safety standards, laws, and regulations. SLA shall keep the Vending Facility free at all times of paper, rubbish, cans and other refuse and shall make adequate provisions for the collection and disposal of papers and rubbish and for general good housekeeping at its own expense. SLA shall, at its own expense, provide an adequate number of refuse containers of a completely covered, closed type, each having a presentable appearance in keeping with the high standard of the operation desired at each Vending Facility. If conditions do not meet the criteria herein, BEA may issue a corrective action notice to SLA by contacting the Administrator of Services for Blind and Visually Impaired. If the corrective action is not addressed within 5 business days of the Administrator of Services for Blind and Visually Impaired being made aware of the condition, BEA may hire a contractor to clean all areas identified in the written corrective action notice. SLA shall reimburse BEA for the cost of hiring a contractor to furnish this service.

c. **Reduction or Cessation of Operation.** BEA may, in its sole discretion, require SLA to temporarily reduce or cease operation at any of the Vending Facilities when BEA

determines that it is necessary to perform construction, modification, or repairs to the Vending Facilities or for other highway-related purposes. BEA shall provide as much notice as reasonably practicable under the circumstances to SLA by contacting the Administrator of Services for Blind and Visually Impaired.

**14. Event of Default; Remedies.** Either party's failure to perform any covenant or condition of this Memorandum of Understanding shall constitute an Event of Default. Upon the occurrence of an Event of Default, the non-defaulting party shall provide written notice at the address set forth below specifying the Event of Default and requiring it to be remedied within ten (10) business days from the date of the notice. If the Event of Default is not timely remedied, the non-defaulting party may terminate this Memorandum of Understanding by written notice at the address set forth below. Unless otherwise set forth in the notice, such termination shall be effective two (2) days after giving notice. Upon termination, either party may pursue its remedies at law or in equity, or both.

Respective Default notifications must be addressed to:

Department of Business and Economic Affairs	OR	Department of Education Administrator
Bureau of Visitor Services		Office of Services for Blind and Visually Impaired
100 No. Main St., Suite 100		21 South Fruit St., Suite 20
Concord, NH 03301		Concord, NH 03301

**15. Termination.**

a. **Termination.** Either party may terminate this Memorandum of Understanding in its entirety for any reason upon 30 calendar days' written notice to the other party.

**16. Effect of Termination.**

a. **SLA.** If SLA terminates this Memorandum of Understanding for any reason, either in its entirety or in part, BEA may consider such termination to be both a good faith determination that SLA is not willing to establish a vending facility, as provided in RSA 186-

B:13, I(b), and a written waiver of SLA in accordance with 23 U.S.C. § 111(b), thereby allowing BEA to enter into a legal relationship agreement for provision of vending services with another party without having to offer the contract, or give priority, to SLA. Any agreement, contract of other form of relationship entered into between BEA and another party is necessarily limited to the specific Vending Facilities and time period identified in the written request for waiver of the SLA in accordance with 23 U.S.C. § 111(b) which SLA subsequently determined not to maintain and operate. SLA's waiver to its priority to operate any such Vending Facilities is limited to the terms specified in the written request for waiver submitted by SLA, and the priority afforded to SLA is reestablished at the end of the time period identified in the SLA's written request for waiver.

b. **BEA.** If BEA terminates this Memorandum of Understanding for any reason other than material breach by SLA, either in its entirety or in part, BEA may not consider such termination to be a waiver of SLA's right to a priority to operate any Vending Facility in this Memorandum of Understanding. Accordingly, BEA may not enter into any agreement for provision of vending services at such Vending-Facilities with any other party.

**17. Removal of Equipment Upon Termination or Expiration.** Upon expiration or termination of this Memorandum of Understanding, SLA shall remove the vending machines and their contents and any other materials or equipment from the Vending Facilities or individual Vending Facility, as applicable, within thirty (30) calendar days from the expiration or termination of this Memorandum of Understanding. If SLA does not remove the equipment and materials within 30 days, BEA may remove the equipment and materials and place them in a storage facility. BEA will notify SLA in writing that such action has occurred. SLA shall reimburse BEA for any costs of such removal and storage.

18. **Waiver.** SLA waives any and all claims for compensation against BEA for any and all loss of patronage or products resulting from failure of electrical service, refrigerator, freezer, or other mechanical apparatus, or failure of BEA to remove snow, sand, or ice on the roads or at the Vending Facilities, or for any loss sustained resulting from fire, water, wind, civil commotion, or because of labor difficulty; or for any repairs performed by SLA; or due to temporary closings. No failure by BEA to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express waiver of any event of default shall be deemed a waiver of any provisions hereof. No such failure or waiver shall be deemed a waiver of the right of BEA to enforce each and every provision hereof upon any further or other default on the part of SLA.

19. **Liability.** Neither party shall be responsible for the negligent acts or omissions of the officers, agents, employees, or subcontractors of the other party. This Memorandum of Understanding shall not be deemed to be a waiver of the sovereign immunity of or by either party.

20. **Insurance.** During the term of this Memorandum of Understanding, SLA shall require its Licensed Operators to carry the following minimum liability insurance coverage at no direct cost to BEA, with BEA being named as an additional insured party. Said coverage shall be provided by an insurance company or companies licensed to conduct business in the State of New Hampshire. Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages even if groundless.

a. Premises and product liability in the amount of two million dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of one or more persons in any one accident or occurrence, and

b. Insurance providing for a limit of not less than two million dollars (\$2,000,000) for all damages arising out of injury to or destruction of property in any one accident or occurrence.

c. With respect to all operations they perform and all those performed for them by commercial vending operations, the Licensed Operator shall carry worker's compensation insurance in accordance with the requirement of the laws of the State of New Hampshire.

d. In conjunction with the above, SLA shall furnish to BEA certificates for such insurance to BEA Bureau of Visitor Services upon SLA awarding locations to Licensed Operators and/or commercial vending operations.

e. Any change in coverage or cancellation of coverage shall require immediate notification to BEA. Failure of SLA to maintain continuous coverage, as specified, shall be cause for immediate termination of this Memorandum of Understanding.

**21. Assignment.** SLA shall not assign or otherwise transfer any interest in this Memorandum of Understanding without the prior written consent of BEA.

**22. Entire Memorandum of Understanding.** This Memorandum of Understanding, including all exhibits and schedules attached hereto, represents the entire understanding between the parties, and no other oral or written Memorandum of Understandings or representations with respect to the subject of this Memorandum of Understanding, unless incorporated herein, shall be binding upon the parties. No provision of this Memorandum of Understanding shall be amended, waived, or modified except by an instrument in writing signed by the parties hereto.

**23. Amendments.** The parties agree to amend this Memorandum of Understanding if needed to comply with any changes to applicable laws and regulations. The parties may mutually agree to amend this Memorandum of Understanding for any reason. All amendments shall be in writing, executed by both parties, and appended to this Memorandum of Understanding.

**24. No Third Party Beneficiaries.** This Memorandum of Understanding is for the benefit of SLA and BEA and shall not inure to the benefit of any other party.

**25. Non-Appropriation.** Notwithstanding anything herein to the contrary, all obligations of both parties are contingent upon the availability and continued appropriation of funds by the New

Hampshire Legislature. In no event shall either party be liable hereunder in excess of such available appropriated funds.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding on the day and year first written above.

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

Date: 11/1/19 12-20-19

  
By: Frank Edelblut, Commissioner

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF BUSINESS AND ECONOMIC  
AFFAIRS

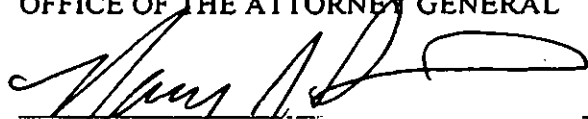
Date: 11/1/19 20 DEC 2019

  
By: Taylor Caswell, Commissioner

APPROVED BY:

THE STATE OF NEW HAMPSHIRE  
OFFICE OF THE ATTORNEY GENERAL

Date: 12/23/2019

  
By: Nancy Smith, Esq.

APPROVED BY:

THE GOVERNOR AND COUNCIL

Date: \_\_\_\_\_

By: \_\_\_\_\_

APPENDIX A

**REST AREA AND WELCOME CENTER VENDING EQUIPMENT**

Total machines as of 9/11/19: 56

**Canterbury I-93 Northbound**

2 Cold Beverage  
1 Hot Beverage  
2 Snack/Candy

**Lebanon I-89 Southbound**

2 Cold Beverages  
1 Hot Beverage  
2 Snack/Candy

**Sutton I-89 Northbound**

2 Cold Beverage  
1 Hot Beverage  
2 Snack/Candy

**Sanbornton I-93 Southbound**

2 Cold Beverages  
1 Hot Beverage  
2 Snack/Candy

**Springfield I-89 Northbound**

3 Cold Beverage  
1 Hot Beverage  
3 Snack/Candy

**Seabrook I-95 Northbound**

4 Cold Beverage  
2 Hot Beverage  
4 Snack/Candy

**Salem I-93 Northbound**

4 Cold Beverage  
4 Snack/Candy  
1 Hot Beverage

**Hooksett I-93 Northbound**

3 Cold Beverage  
2 Snack/Candy

**Hooksett I-93 Southbound**

3 Cold Beverage  
2 Snack/candy

APPENDIX B

**REST AREA AND WELCOME CENTER PRODUCT, PORTION AND \*PRICE LIST**  
as of 9/11/19

20 oz. bottle soda and water – 2.00  
Specialty bottled drinks such as Vitamin water, Powerade, juice, milk, Smart water – 2.75  
Energy Drinks – 3.00  
Bottled cold brew coffee – 3.50  
Hot Beverage - 12 oz. – 1.50  
Candy- 1.50  
Asst. snacks – 1.50  
Pastry – 2.00  
Chips 1 – 2 oz. – 1.00 – 2.00  
Tuna/chicken snack packs – 3.00

\*This is list of highest priced items; written proposal will be submitted if prices increase above this range. Pricing currently fluctuates at the different locations due to geographic area or competition in the area. They are either at the listed prices above or lower.