

MLC

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New Hampshire Liquor Commission

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Joseph W. Mollica
 Chairman

Nicole Brassard Jordan
 Deputy Commissioner

Christopher T. Sununu
 Governor

June 14, 2022

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

REQUESTED ACTION

Authorize the New Hampshire Liquor Commission (“NHLC”) to retroactively pay the New Hampshire Department of Transportation (“DOT”) \$230,644.16, which is 33% of the amount that Granite State Hospitality, LLC, the developer-operator of the Hooksett Welcome Centers, spent on common-area maintenance between late 2016 and the present. Effective upon Governor and Council Approval. Funding: 100% Liquor Funds.

Funding is available in the SFY 2022 operating budget as follow:

12-77-77-771512-10300000, LIQUOR COMMISSION, MARKETING AND MERCHANDISING, STORE OPERATIONS:

Class & Account	Class Description	SFY22
103-500736	CONTRACTS FOR OP SERVICES	\$230,644.16

EXPLANATION

The requested payment is retroactive due to the complex history of the issue, which is summarized below.

On June 7, 2010, the NHLC conveyed the Hooksett Welcome Center real estate to the DOT in order to facilitate redevelopment of the properties. Prior to that date, the NHLC was the sole owner of the Hooksett I-93 north and southbound sites. On June 28, 2011, prior to the redevelopment of the Welcome Centers, the NHLC and the DOT entered into a memorandum of agreement (the “2011 MOA”). The 2011 MOA required the DOT to perform common site maintenance, and it required the NHLC, which still operated retail stores on the sites, to reimburse the DOT 40% of the actual cost of this maintenance. The NHLC and the DOT entered into the 2011 MOA in furtherance of the future

commercialization of the sites by a yet-to-be-identified developer-operator.

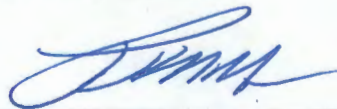
Following an RFP process in 2012-13, members of the DOT, the NHLC, the Department of Resources and Economic Development, and the Department of Administrative Services selected Granite State Hospitality, LLC ("Granite State") as the Welcome Centers' developer-operator. Following this selection, the State entered into the 35-year ground-lease contract (the "2013 Lease") with Granite State, which was approved by Governor and Executive Council on June 19, 2013. Per the Lease, Granite State would build the new Welcome Centers, pay rent to the DOT's Bureau of Turnpikes, and be solely responsible for maintaining the Welcome Centers. The NHLC's maintenance obligations were expressly limited to maintaining the interiors of the two Liquor and Wine Outlets located on the sites.

On or about November 18, 2016, after the construction and opening of the Welcome Centers, the DOT sought direct payment from the NHLC for 40% of Granite State's actual common-site maintenance costs. In response, the NHLC asserted that the 2011 MOA's 40% contribution requirement was inapplicable in light of the 2013 Lease, and that the 2011 MOA did not contemplate the NHLC making 35 years of continuous payments to the DOT based upon a future developer-operator's expenses. The DOT contended that the 2011 MOA's contribution requirement remained applicable, because Granite State's absorption of maintenance costs reduced the lease price paid to the DOT. As a result, the DOT sent the NHLC quarterly invoices seeking the NHLC pay it 40% of Granite State Hospitality's common-site maintenance expenses.

The NHLC and the DOT presented their positions to the New Hampshire Department of Justice. After a series of discussions, on March 23, 2022, the DOJ issued a final determination that the NHLC shall pay the DOT a portion of Granite State's maintenance costs, but that portion would be 33% as opposed to the 40% contained in the 2011 MOA.

The NHLC submits this request for Governor and Executive Council approval to make retroactive payment of 33% of Granite State Hospitality's common-area maintenance costs from late 2016 to present to the DOT.

Respectfully submitted,



Joseph W. Mollica
Chairman, Liquor Commission