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STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION
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January 25, 2013

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

*100% Vending Machine
REVENUE*

Requested Action

Authorize the Department of Education (DOE) to enter into an agreement with the New Hampshire Department of Resources and Economic Development (DRED). This agreement authorizes the Department of Education's Office of Services for Blind and Visually Impaired to provide vending machine services at New Hampshire I-93 Northbound and Southbound Hooksett Turnpike System Welcome Centers effective upon Governor and Council approval. The term of this contract shall be for three (3) years from the Effective Date. The DOE shall submit one flat-fee monthly commission in the total amount of \$732 (seven hundred and thirty-two dollars) to DRED, Bureau of Travel and Tourism on or before the 10th day of each month. Account number 06-56-56-565510-65200000 (100% Other) will be used to pay the monthly fee to the Department of Resources and Economic Development. The Department of Resources and Economic Development will deposit this fee into account number 03-35-35-352010 (100% Travel & Tourism Revolving Funds) Vending Machine Income.

Explanation

In April of 2004, upon legal challenge by the NH Committee of Licensed Blind Vendors and the United States Department of Education, the United States First Circuit Court of Appeals ruled that provisions of NH RSA 230:30-a 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.

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council

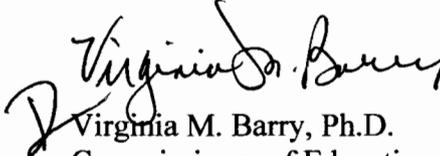
January 25, 2013

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Attached is a copy of the agreement. This agreement has been approved by the Attorney General as to form and execution.

Your approval of this Resolution is respectfully requested.

Respectfully submitted,



Virginia M. Barry, Ph.D.
Commissioner of Education

S:/dcta/bvr/vrco/common/Hooksett 2013

**AGREEMENT
FOR THE PROVISION OF VENDING SERVICES
AT THE NORTHBOUND AND SOUTHBOUND HOOKSETT
TURNPIKE SYSTEM WELCOME CENTERS**

This Agreement is made by and between the State of New Hampshire, Department of Education, Services for Blind and Visually Impaired (the "State Licensing Agency" or "SLA") and the New Hampshire Department of Resources and Economic Development (DRED).

WHEREAS, DRED desires to make coin and currency operated food and beverage vending machines available at the Hooksett Welcome Center located on a State highway in accordance with the Surface Transportation Assistance Act (23 U.S.C. § 101, et seq.); and

WHEREAS, the SLA desires to provide such vending machine services to DRED through its 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 Agreement and all obligations of the parties hereunder, shall become effective 30 calendar days after the date the Governor and Council of the State of New Hampshire approve this Agreement ("the Effective Date"). The term of this contract shall be for three (3) years from the Effective Date unless earlier terminated as provided herein.

2. Location of Vending Facility. As further provided herein, the SLA shall provide, operate, maintain, supply, service, and otherwise care for coin and currency

operated food and beverage vending machines located at the New Hampshire I-93 Northbound and Southbound Hooksett Turnpike System Welcome Centers.

3. Selection of Licensed Operators. In accordance with the selection procedure for licensed operators under RSA 186-B:9-15 and the implementing state rules (Ed 1019), the SLA will select a licensed program operator or operators (“Licensed Operator”) to manage the Vending Facility and enter into Operating Agreements with each Licensed Operator in accordance with Ed 1019.

a. Subcontractors. If the SLA determines that it is not feasible for a Licensed Operator to operate the Vending Facility at the Welcome Center, the SLA shall notify DRED. After notice, the 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. The SLA shall insure that any such contract with a commercial vending operation will meet the insurance requirements set forth herein, including the requirement that DRED be an additional named insured, in addition to meeting all of the provisions of this Agreement.

4. Commission Payments. The SLA shall submit one flat-fee monthly commission (a “Commission”) in the total amount of \$732 (seven hundred and thirty-two dollars) to DRED, Bureau of Visitor Services on or before the 10th day of each month commencing the month after the first month of operation.

5. Taxes. The Licensed Operators shall be liable for taxes assessed or owing with respect to operation of the vending machines at the Vending Facility and all income

derived therefrom. The Licensed Operators are not employees of DRED, and DRED 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. The SLA shall have the right to check the meter readings on any machine at any time.

7. Utilities. The 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, the 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, DRED hereby grants the SLA, and the Licensed Operators acting by and through the SLA pursuant to this Agreement, the exclusive right to sell food, beverages, and candy in the automatic vending machines at the Welcome Centers.

9. Hours of Operation of Vending Facilities by SLA. At a minimum the SLA shall keep the Vending Facilities open during the times when the Welcome Centers are open, as DRED may determine from time to time. The SLA may keep the Vending Facilities open up to 24 hours a day at the discretion of the 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 Welcome Centers are as follows, however, DRED reserves the right to change the hours at its sole discretion:

Hooksett I-93 Northbound & Southbound
Sunday-Saturday 24 hours per day

10. Merchandise. The SLA shall submit to DRED as part of this Agreement, 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 or his designee, and such approval or rejection shall be granted or rejected within ten (10) working days of the receipt of the request. Such approval shall not be unreasonably withheld.

11. Vending Machines. The SLA will install new or like new equipment at the Vending Facilities. The SLA shall install a minimum of twenty-six (26) machines, divided between the North and South bound locations consisting of:

12 cold beverage machines;

10 snack/candy machines;

2 ice cream machines, and

2 hot beverage machines

a. Additional cold beverage, hot beverage, and/or snack/candy machines may be added in order to compensate for seasonal volume changes, with DRED approval;

b. All vending machines will be equipped with MARS VN 2600 MDB Series or comparable Dollar Bill Acceptors.

12. Signage. The SLA, at their expense, will prominently and continuously display one (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 location operator whose contact information is displayed in this vending facility or 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 Facility.

a. The DRED’s Responsibilities. DOT has executed an Amended Memorandum of Agreement (MOA) with the New Hampshire Liquor Commission (NHLC) dated June 28, 2011 outlining maintenance responsibilities for the Welcome Centers. All site maintenance responsibilities will stay in accordance with the MOA. 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, outside of the MOA shall be the responsibility of DRED. The responsibility for care of grass, trees, shrubs, and other plantings at the Welcome Centers shall remain according to the MOA. DRED shall be responsible for the removal of the trash, to be placed for DRED pick up, in a predetermined location at each facility, by the SLA operator. The SLA shall immediately notify DRED of any problems requiring maintenance or repair by contacting the Bureau Administrator or his designee.

b. The SLA's Responsibilities. The SLA will be responsible for the cleanliness of the interior and exterior of the Vending Facilities. The SLA shall continually keep the facility in a neat, clean, and sanitary condition. The housekeeping duties of the 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. The 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. The 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 standards of the operation desired at each Vending Facility. If conditions do not meet the criteria herein, DRED may issue a corrective action notice to the SLA by contacting the Administrator of Services for Blind and Visually Impaired. If the corrective action is not addressed within five business days of the Administrator of Services for Blind and Visually Impaired being made aware of the condition,

DRED may hire a contractor to clean all areas identified in the written corrective action notice. The SLA shall reimburse DRED for the cost of hiring a contractor to furnish this service.

c. Reduction or Cessation of Operation. DRED may, in its sole discretion, require the SLA to temporarily reduce or cease operation at the Vending Facilities when DRED determines that it is necessary to perform construction, modification, or repairs to the Vending Facilities or for other highway-related purposes. DRED shall provide as much notice as reasonably practicable under the circumstances to the SLA by contacting the Administrator of Services for Blind and Visually Impaired. DRED will provide 30 calendar days' notice if vending machines need to be removed from the Welcome Centers to accommodate construction. If at any time a Vending Facility is closed for more than 10 (ten) days of any given month, the SLA's Commission for the following month will be reduced by a pro rata amount. The SLA shall not be entitled to claim damages as a result of any reduction or cessation of its operation under this provision. If DRED closes the Vending Facility for 30 calendar days or more, the parties shall renegotiate the amount of the Commission and shall amend the Contract accordingly.

14. Event of Default; Remedies. Either party's failure to perform any covenant or condition of this Agreement 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 Agreement 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 Resources
and Economic Development
Bureau of Visitor Services
172 Pembroke Rd
Concord, NH 03302

OR

Department of Education
Office of Services for Blind and Visually Impaired
21 South Fruit St, Suite 20
Concord, NH 03301

15. Termination.

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

16. Effect of Termination.

a. SLA. If the SLA terminates this Agreement for any reason, either in its entirety or in part, DRED may consider such termination to be both a good faith determination that the SLA is not willing to establish a vending facility, as provided in RSA 186-B:13, I(b), and a written waiver of the SLA in accordance with 23 U.S.C. § 111(b), thereby allowing DRED to enter into an agreement for provision of vending services with another party without having to offer the contract, or give priority, to the SLA. Any agreement entered into between DRED and another party is necessarily limited to the specific Vending Facilities and time period identified in this Agreement which the SLA subsequently determined not to maintain and operate. SLA's waiver to its priority to operate any such Vending Facilities is limited to this Agreement,

and the priority afforded to the SLA is reestablished at the end of the time period identified in this Agreement.

b. **DRED.** If DRED terminates this Agreement for any reason other than material breach by the SLA, either in its entirety or in part, DRED may not consider such termination to be a waiver of the SLA's right to a priority to operate the Vending Facility in this Agreement. Accordingly, DRED 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 Agreement, the SLA shall remove the vending machines and their contents and any other materials or equipment from the Vending Facility within thirty (30) calendar days from the expiration or termination of this Agreement. If the SLA does not remove the equipment and materials within 30 days, DRED may remove the equipment and materials and place them in a storage facility. DRED will notify the SLA in writing that such action has occurred. The SLA shall reimburse DRED for any costs of such removal and storage.

18. Waiver. The SLA waives any and all claims against DRED for compensation for any and all loss of patronage or products resulting from failure of electrical service, refrigerator, freezer, or other mechanical apparatus, or failure of DRED to remove snow, sand, or ice on the roads or at the Vending Facility, or for any loss sustained resulting from fire, water, wind, civil commotion, or because of labor difficulty; or for any repairs performed by the SLA; or due to temporary closings. No failure by DRED 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 DRED to enforce each and every provision hereof upon any further or other default on the part of the 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 Agreement shall not be deemed to be a waiver of the sovereign immunity of or by either party.

20. Insurance. During the term of this Agreement, the SLA shall require its Licensed Operators to carry the following minimum liability insurance coverage at no direct cost to DRED, with DRED 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 workers compensation insurance in accordance with the requirement of the laws of the State of New Hampshire.

d. In conjunction with the above, the SLA shall furnish to DRED certificates for such insurance to DRED Bureau of Visitor Services upon the 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 DRED. Failure of the SLA to maintain continuous coverage, as specified, shall be cause for immediate termination of this Agreement.

21. Assignment. The SLA shall not assign or otherwise transfer any interest in this Agreement without the prior written consent of DRED.

22. Entire Agreement. This Agreement, including all exhibits and schedules attached hereto, represents the entire understanding between the parties, and no other oral or written agreements or representations with respect to the subject of this Agreement, unless incorporated herein, shall be binding upon the parties. No provision of this Agreement 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 Agreement if needed to comply with any changes to applicable laws and regulations. The parties may mutually agree to amend this Agreement for any reason. All amendments shall be in writing, executed by both parties, and appended to this Agreement.

24. No Third Party Beneficiaries. This Agreement is for the benefit of the SLA and DRED and shall not inure to the benefit of any other party.

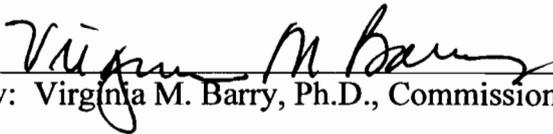
25. Non-Appropriation. Notwithstanding anything herein to the contrary, all obligations of both parties are contingent upon the availability and continued appropriation

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 Agreement on the dates set forth below.

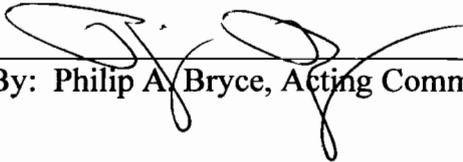
THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

Date: 11/30/13


By: Virginia M. Barry, Ph.D., Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT RESOURCES AND
ECONOMIC DEVELOPMENT

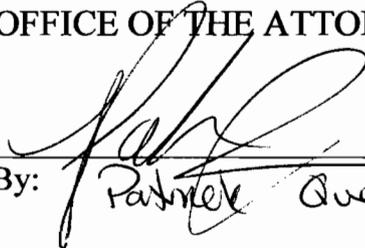
Date: 11/26/12


By: Philip A. Bryce, Acting Commissioner

APPROVED BY:

THE STATE OF NEW HAMPSHIRE
OFFICE OF THE ATTORNEY GENERAL

Date: 2/6/13


By: Patricia Queenan, Attorney

APPROVED BY:

THE GOVERNOR AND COUNCIL

Date: _____

By: _____