



New Hampshire  
Employment  
Security

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"We're working to keep New Hampshire working"

ADMINISTRATIVE OFFICE

45 SOUTH FRUIT STREET  
CONCORD, NH 03301-4857



GEORGE N. COPADIS, COMMISSIONER

RICHARD J. LAVERS, DEPUTY COMMISSIONER

March 23, 2016

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

REQUESTED ACTION

To authorize New Hampshire Employment Security (NHES) to enter into a contract agreement with Tandy Stephens Inc., Concord, NH, to operate an on-site food service concession at the Tobey Building, 45 South Fruit Street, Concord, NH location effective through April 5, 2017, with the option to renew year to year for a period of up to three (3) additional years, subject to Governor and Council approval.

EXPLANATION

NHES is requesting approval of the attached contract agreement for on-site food services at the Concord, NH Tobey Building location, serving employees and visitors, and offering a range of products for breakfast and lunch.

In connection with this agreement, the concessionaire agrees to pay NHES the following commissions:

Food:	7% of gross sales
Catering:	12% of gross sales
Hosting (off-site):	7% of gross sales

Commissions will be utilized by NHES to defray long term expenses associated with food service concession.

A competitive bid process was undertaken for on-site food concession services at the NHES office located at 45 South Fruit Street, Concord, NH. NHES simultaneously posted the "Request For Proposal" (RFP) to two (2) state websites, distributed RFPs to a total of twenty-eight (28) potential vendors and placed advertisements in two (2) statewide newspapers. Only one (1) vendor submitted a proposal for on-site food concession services. A review of the submitted proposal resulted in the selection of the only respondent for this service.

The Attorney General's office has reviewed and approved this agreement as to form, substance and execution.

Respectfully submitted,

George N. Copadis  
Commissioner

GNC/jdr  
Attachments

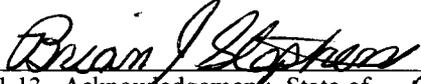
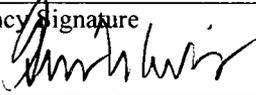
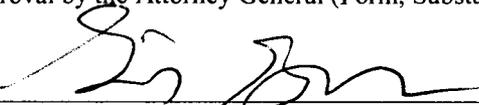
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name New Hampshire Employment Security		1.2 State Agency Address 45 South Fruit Street, Concord, NH 03301	
1.3 Contractor Name Tandy Stephens, Inc.		1.4 Contractor Address 1 Eagle Square, Concord, NH 03301	
1.5 Contractor Phone Number 603-856-7614	1.6 Account Number	1.7 Completion Date April 5, 2017	1.8 Price Limitation N/A
1.9 Contracting Officer for State Agency Jill D. Revels, Business Administrator		1.10 State Agency Telephone Number 603-229-4449	
1.11 Contractor Signature  		1.12 Name and Title of Contractor Signatory  Brian J. Stephens CFO	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Newmach</u> On <u>March 16<sup>th</sup> 2016</u> , 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] 			
1.13.2 Name and Title of Notary or Justice of the Peace		<div style="border: 1px solid black; padding: 5px; text-align: center;">                     Patricia Ann Pike                      Notary Public, State of New Hampshire                      My Commission Expires Feb. 11, 2020                 </div>	
1.14 State Agency Signature  		1.15 Name and Title of State Agency Signatory  George N. Copadis, Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)  By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable)  By:  On: <u>3/21/16</u>			
1.18 Approval by the Governor and Executive Council (if applicable)  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, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("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 payments 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. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. 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 supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of 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 person, 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.

#### **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 Default; 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/PRESERVATION.**

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 an 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 notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and 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 \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form 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.

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 this 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 thirty (30) 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 provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' 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 hereof 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 unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

**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.

**EXHIBIT A**

**SCOPE OF SERVICES**

1. Under the terms of this Agreement, Tandy-Stephens, Inc., (the "Vendor"), will provide on-site food services at the Tobey Building, 45 South Fruit Street, Concord, NH, serving NHES employees and visitors, and offering a range of products for breakfast and lunch, including but not limited to, hot and cold beverages, hot and cold sandwiches, soups, salads, hot entrees and desserts, as more specifically described in the "Food Concession Proposal" submitted by Tandy's on January 29, 2016, which proposal is hereby incorporated by reference. Commission structure and pricing are set forth in Exhibit B. Additional responsibilities are set forth in Exhibit C, Special Provisions.
2. NHES will furnish certain space, equipment and accessories to the Vendor at the commencement of this Agreement. See Exhibit C, Addendum#1. All space, equipment, and accessories will be surrendered and returned to NHES in good condition and in working order upon termination of this Agreement.
3. The Vendor will operate the food service facility during the following times at a minimum: 7:30 a.m. to 2:00 p.m., Monday through Friday, throughout the year, excluding State holidays.
4. The Vendor shall supervise the operation of the food service facility with oversight by NHES to ensure compliance with all contract provisions. The Vendor will cooperate fully with NHES and its duly authorized representatives in the performance of this contract.

**EXHIBIT B**

**COMMISSION STRUCTURE/PRICING**

1. **Food:** Commission rate for cafeteria/delivery: 7% of gross sales  
(Delivery surcharge not included)
2. **Catering:** Commission rate for catering: 12% of gross sales
3. **Hosting:** Commission rate for meeting hosting at Tandy's Top Shelf: 7%  
(Does not include sales of alcohol and is subject to a \$250 food purchase minimum from the catering menu.)
4. **Accounting:** Accounting methods and payments will be governed by Para. 17 of the "Additional Terms and Conditions" set forth at Exhibit C.

**EXHIBIT C**

**SPECIAL PROVISIONS**

1. **TERM OF CONTRACT:**

The term of this Agreement shall be for one (1) year, beginning from the date it is approved by Governor and Council. The Agreement may be extended from year to year upon mutual agreement of NHES and the Vendor for a period of up to three (3) additional years, subject to approval by Governor and Council.

2. **CANCELLATION BY EITHER PARTY:**

This Agreement shall be subject to cancellation by either the Vendor or NHES, regardless of the grounds thereof, by giving ninety (90) days advance written notice of cancellation to the other Party.

3. **TERMINATION BY COMMISSIONER:**

This Agreement shall be subject to termination by NHES in the event of the failure of the Vendor to perform, keep or observe any of the conditions of the contract and the failure of the Vendor to correct the default(s) within the time specified, as further provided in Section 8 of the P-37 Contract Form.

4. **ASSIGNMENT OR SUB-CONTRACT:**

This Agreement and any of the rights and privileges provided for herein shall not be transferred or assigned by the Vendor without first having obtained the prior written consent of NHES which shall be granted or rejected at the sole discretion of NHES.

5. **EQUIPMENT AND LOCATION:**

NHES will provide for the Vendor's use the food service facility and existing kitchen equipment located in the Tobey Building for the purpose of providing the services herein specified. The equipment in question is further described in Exhibit #1.

6. **CASUALTY ADJUSTMENT:**

In the event the premises or any part thereof shall be destroyed by fire or unavoidable casualty so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, the affected portion of the Vendor's operation shall be suspended or abated until and if said premises have been placed in proper condition for use of the Vendor by NHES. The decision on whether and how to replace or repair the food service facility in the event of loss or casualty shall be at the sole discretion of NHES.

7. **CONDITIONS AND SURRENDER OF PROPERTY:**

The building space, equipment and all parts thereof which are the property of the State of New Hampshire shall remain the property of the State, and upon termination of the contract by lapse of time or otherwise, the Vendor shall surrender possession of all said premises and all parts thereof to the State in as good condition as said premises were in when initial inspection occurred prior to being occupied by the Vendor under the terms of this Agreement, ordinary wear and tear excepted.

8. **RIGHT TO INSPECT:**

The Vendor shall allow the Commissioner, or such person(s) as may be designated by the Commissioner, access to the premises at all reasonable hours for the purpose of examining and inspecting said premises, determining compliance with contract requirements and/or making necessary building repairs.

9. **UTILITIES:**

NHES shall furnish heat, electricity, and water within the limits of the present facility and shall bill the Vendor for such costs on a pro rata square footage basis where utility metering is not available. In such cases where separate utility metering is available, then the Vendor shall be responsible for reimbursement to NHES of the full amount of the cost of such services as utilized by Vendor in order to support the operation of the cafeteria. The installation and operation of expanded or additional services shall be at the expense of the Vendor and shall be subject to the prior written consent of NHES at the sole discretion of NHES. In the event any interruption should occur in such services, the State shall not be responsible, but shall make every effort in working with the service provider to restore service as soon as possible. Telephone and internet service shall be the responsibility of the Vendor but shall be subject to prior review and approval by NHES, such approval not to be unreasonably withheld, in order to ensure such service does not interfere with or compromise the integrity of any services utilized by NHES.

10. **JANITORIAL SERVICES/PEST CONTROL:**

The Vendor shall be responsible for daily cleaning of food service areas. Vendor shall provide certified pest control in the food service facility area as needed.

11. **SCOPE OF JANITORIAL SERVICES:**

The Vendor shall provide cleaning for walls, floors, windows, and light fixtures in its designated areas. The Vendor shall also be responsible for routine cleaning and upkeep of dining room tables and chairs. The Vendor shall clean all ventilation equipment and duct work over cooking areas as often as necessary, and in no case less than three (3) times per year. NHES reserves the right to conduct additional inspections of ventilation equipment and duct work as deemed necessary, with inspection costs to be reimbursed by

the Vendor. The Vendor shall also be responsible for maintaining high standards of sanitation in accordance with the rules and regulations promulgated by this Department and the Department of Health and Human Services.

In the event that the Vendor fails to satisfactorily perform the janitorial services as outlined in this contract, after seven (7) days' notice to remedy the situation, NHES reserves the right to furnish personnel and materials to carry out the necessary services and the Vendor shall be billed for the actual cost to NHES.

Further, the term "routine cleaning" shall imply all of the provisions associated with good housekeeping, including the furnishing of materials and supplies that may be necessary to perform this service. The Vendor will also ensure that the rubbish rooms, cleaning rooms, and other storage spaces made available are maintained in a neat and orderly fashion.

Regular inspections may be conducted by the NHES Property Manager to ensure that the Vendor is providing satisfactory janitorial services.

12. **EQUIPMENT MAINTENANCE:**

Responsibility for maintaining kitchen equipment shall be that of the Vendor. All equipment furnished to the Vendor by NHES must be returned to NHES at the end of the Contract term in the same condition, ordinary wear and tear excepted. Equipment that wears out during the contract period may be replaced by NHES in its sole discretion. If NHES replaces equipment, it will retain control as to the replacement equipment's make and model.

The Vendor shall provide any additional equipment it deems necessary at its own expense. All changes in foodservice layout and/or equipment additions proposed by the Vendor are subject to the prior written approval of the State and NHES. The Vendor shall be responsible for all costs associated with necessary electrical, plumbing and ventilation installations for such changes in foodservice layout and/or equipment additions in accordance with existing State and Federal codes.

13. **BUILDING AND PLANT:**

Routine repairs to NHES buildings and plant shall be responsibility of the State. Plumbing and electrical modifications for the Vendor's convenience shall be its responsibility and any modification of existing systems is subject to the State's approval.

14. **ITEMS TO BE SOLD/ALCOHOLIC BEVERAGES PROHIBITED:**

All items sold through the foodservice concession shall be approved by the State. No alcohol of any kind may be stored, served or consumed on NHES premises.

15. **FOOD QUALITY:**

Food served shall be nutritious, wholesome, palatable, and of good quality. Questions on quality will be referred to NHES, whose judgment in all cases shall be final.

16. **PRICES:**

The rates and prices charged for all items sold shall be consistent with prices shown in the Vendor's RFP response and shall be subject to prior approval of NHES. Proposed price increases shall be presented to NHES for approval, which shall not be unreasonably denied. In the event the State objects to any price increases proposed by the Vendor and the parties are unable to reach an agreement as to the price, a minimum average annual increase of two and one half percent (2.5 %) shall be allowed. In approving prices, primary consideration shall be given to the prices charged for similar merchandise furnished or sold around the Tobey Building under similar conditions, with due regard being given to such other factors as may be deemed significant. Food prices shall be legibly posted on bulletin boards furnished by the Vendor at each location.

17. **ACCOUNTING METHODS AND PAYMENTS:**

a. **Sales Records**

All sales shall be rung up through a point of sale system provided by the Vendor that tracks each day's sales. The beginning and ending cumulative dollar readings shall be used to reconcile daily sales.

b. **Daily Sales Reports**

A daily sales report shall be prepared listing the beginning and ending dollar amount. Any corrections for errors in recording sales during the day shall be accounted for in the Shift Report. The Vendor's forms for daily reporting must be approved in writing by NHES.

c. **Payment to State**

Vendor shall provide NHES with a statement of Gross Receipts for each weekly period, ending each Sunday, within eight (8) days after the conclusion of each weekly period. Within twenty (20) days following the end of each accounting period, Vendor shall provide the State with a statement of Gross Receipts for such accounting period, together with payment of commissions due to NHES with respect to such period. Each statement of Gross Receipts shall allocate commissions and Gross Receipts in accordance with the different categories as set forth herein.

d. Accounting Records

The Vendor shall maintain such permanent books of account and records, including inventories, as may be sufficient to show specifically the items of total dollar receipts and expense, receipts and disbursements, and such other information as shall correctly reflect the financial condition and results of operations. The Vendor may use Quickbooks or another software application for this purpose.

The required books and records shall be available at all times for inspection by the NHES Business Manager, and such other parties as may be authorized under State law to examine books and records of any State department.

e. Audits

NHES shall have authority to audit the Vendor's books and records in order to ensure compliance with the Contract.

f. Accounting Reports

The Vendor shall submit annually to the Commissioner of NHES the following accounting reports for its operations at Tobey: profit/loss statements and financial statements.

18. SIGNS:

All signs and advertising matter must be in good taste and acceptable to the State and NHES, whose decision regarding the same will be final.

19. PERSONNEL:

Vendor shall at all times maintain a staff of employees deemed adequate by the State for efficient operation of food services and for cleaning of food preparation, serving, and dining areas. All employees of the Vendor shall wear name badges and be clad in neat and clean clothing satisfactory to the State. The Vendor shall employ only competent and satisfactory workers and will take all necessary steps to ensure that appropriate workplace appearance and demeanor are maintained. The Vendor shall have a competent and responsible supervisor in attendance at all times.

All employees whom the Vendor intends to have work in the Tobey building must satisfactorily pass a criminal background check as further described in Paragraph 29 herein.

20. **HOURS OF OPERATION:**

Dates and hours of operation will be a matter of decision between the Vendor and the State. The minimum hours of foodservice operation under this agreement shall be daily between 7:30 a.m. and 2:00 p.m., excluding State holidays.

21. **SPECIAL FUNCTIONS:**

From time to time, NHES may have a requirement for special functions. Arrangements for such special functions shall be authorized by NHES by direct arrangements with the Vendor's manager of the facility.

22. **STATUTES, ORDINANCES, AND REGULATIONS:**

The Vendor shall comply with the statutes and regulations of the Federal and State governments, and with the ordinances, by-laws and regulations of the county and municipal governments. The Vendor shall also comply with the regulations of New Hampshire Employment Security.

The Vendor shall procure all necessary licenses and permits required in connection with the operation described herein and display them if so required.

23. **PROVISION OF PROPERTY TAX:**

This Agreement does not constitute a lease of property to the Vendor by NHES. Rather, NHES is granting a license to use the Tobey Building cafeteria kitchen to facilitate the provision of services under the terms of this Agreement. Nevertheless, the Vendor agrees to indemnify, defend and hold the State of New Hampshire, including NHES, harmless with the respect of any taxes levied against the premises subject to this contract as a consequence of the application of RSA 72:23, I.

The Vendor agrees to pay, in addition to other payments hereunder, all properly assessed real and personal property taxes against the premises subject to this permit in accordance with the provisions of RSA 72:23, I.

Failure of the Vendor to pay the duly assessed personal and real property taxes when due shall be cause to terminate this contract by the State. The Vendor shall, in addition, reimburse the State for any taxes paid by the State pursuant to RSA 72:23, I as a result of Vendor's failure to pay said taxes.

24. **FINAL AUTHORITY:**

In order to guarantee the high quality of services and merchandise provided to the public any questions relating to policies, prices, quality, cleanliness and services must be settled

to the satisfaction of the State. In making his decisions, the Commissioner will be aided by members of his staff, officials of the Department of Administrative Services, the Division of Food and Sanitation, and officials of the Office of the Attorney General, State of New Hampshire.

25. **PERFORMANCE/INDEMNITY:**

The Vendor agrees to perform and faithfully observe and comply with all the conditions, regulations and provisions prescribed herein, and further to indemnify, save and keep harmless the State of New Hampshire, its officers, directors, agents, and employees, of and from all manner of liability, claims, liens, judgments, costs, damages, and expenses of whatsoever kind, which may in any way be suffered by the State or by its said officers, agents, and employees by reason of or in consequence of the operation of the concession herein provided for, in consequence of the privileges granted, as aforesaid, or for or on account of any act or thing done under the authority, or supposed authority, of such grant.

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

26. **RELATION TO STATE:**

It is the intent of the parties hereto that the Vendor shall be legally considered as an independent contractor and that neither it nor its employees shall, under any circumstances, be considered servants or agents of NHES or the State of New Hampshire, and that the State shall at no time be legally responsible for any negligence on the part of said Vendor, its servants, or agents resulting in either personal or property damage to any individual, firm or corporation.

27. **INSURANCE:**

It is agreed that during the performance of this Contract, the Vendor, at its sole cost and expense, and for the mutual benefit of the Vendor and State, shall carry and maintain the following types and amounts of insurance, as specified in Part 14 of the P-37 Contract Form, and as specified below.

- a. Workers Compensation Insurance covering the employees of the Vendor from any loss, injury or damage as required by the NH workers' compensation law.
- b. Comprehensive General Liability Insurance for and against all claims for bodily injury or death of persons, or damage to property occurring on (or which may be claimed to have occurred on) in, or about the premises Vendor is operating in and responsible for.

- c. Fire Legal Liability Coverage Insurance while buildings are occupied by Vendor insuring the concession premises and equipment thereon against loss or damage by fire or damage by other risks now or hereafter embraced by "Extended Coverage" so called, in amounts sufficient to protect the State's interest in the premises and the equipment thereon and in no amount less than the full appraised value of the property.
- d. Insurance terms. All insurance provided for in this agreement shall be effectuated through standard form valid and enforceable policies issued by insurers of recognized responsibility qualified to do business in New Hampshire.

On the date of execution of this Agreement and thereafter not less than fifteen (15) days prior to the expiration dates of policies previously effectuated pursuant to this section, originals or copies of all renewed insurance certificates shall be delivered by Vendor to the State. All policies of insurance provided for herein shall name the State and Vendor as parties insured, as their respective interests may appear. Each such policy shall contain a provision that no act or omission of Vendor shall affect or limit the obligation on the insurance company to pay the amount of any loss sustained, and shall contain an agreement by the insurer that such policy shall not be canceled or modified without at least ten (10) days prior written notice to the State.

28. **COMMISSIONS:**

The Vendor hereby agrees to pay NHES a percentage of gross receipts for the operation at the Tobey Building as reflected in **EXHIBIT B**. Gross Receipts shall mean all receipts received by the Vendor from the Concession services and catering services prior to any deduction for tax or expense.

29. **CONFIDENTIALITY AND CRIMINAL RECORDS**

The Vendor and personnel scheduled to enter NH Employment Security facilities must submit a signed STATEMENT OF CONFIDENTIALITY OF RECORDS FORM (DES 1762) and a CRIMINAL RECORDS FORM (DES 21350) provided by NH Employment Security, if applicable, prior to entrance into a facility. There is a \$25.00 fee for each criminal record check, which must be paid by the Vendor.

30. **DEBARMENT, SUSPENSION, PRIMARY COVERED TRANSACTIONS**

Vendor hereby certifies that Tandy-Stephens, Inc. and its officers and directors, to the best of their knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency. Vendor will inform NHES of any relevant changes in status in keeping with this Section.

31. **AMERICANS WITH DISABILITIES ACT**

The Vendor agrees to comply with all Federal, State and local ADA laws, rules and regulations.

32. **NON-DISCRIMINATION**

Vendor shall not discriminate against any person(s) in furnishing or refusing to furnish to such person(s) the use of the food service facility, including all services, privileges, accommodations and activities provided thereby.

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

During the term of this contract, the Vendor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, sexual orientation, disability, national origin, marital status or veteran status, and will take appropriate steps to prevent such discrimination.

33. **MISCELLANEOUS**

Vendor agrees to treat all of its workers providing services at the cafeteria facility located at the Tobey Building as employees and not as independent contractors and to provide and pay all appropriate and necessary workers' compensation coverage for said employees and pay the resulting unemployment compensation contributions on those wages paid to said employees.

Vendor further agrees to comply with any and all local, state and federal requirements, including without limitation, compliance with all applicable taxation and licensing requirements of the state.

**EXHIBIT C**  
**ADDENDUM #1**

**List of Equipment**

<b>Convection Oven</b>	<b>Ice Machine</b>
<b>Fryolator</b>	<b>Refrigerators</b>
<b>Counter Top Griddle</b>	<b>Freezer</b>
<b>Counter Top Fryer</b>	<b>Dish Washer</b>
<b>Grill</b>	<b>Shelving</b>
<b>Two Burner Hot Plate</b>	<b>Utility Cart</b>
<b>Sandwich Prep. Unit</b>	<b>Coffee Brewer</b>
<b>Mobile Work Table</b>	<b>Slicer</b>

Note: Vending Equipment Not included in Contract – 1 snack machine, 1 glass front beverage machine

# 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 Tandy Stephens Inc. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on January 6, 2010. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 17<sup>th</sup> day of March, A.D. 2016

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

**Certificate of Authority # 1**

(Corporation or LLC - Non-specific, open-ended)

**Corporate Resolution**

I, William Donk, hereby certify that I am duly elected Clerk/Secretary of Tandy Stephens Inc. I hereby certify the following is a true copy of a vote taken at a meeting of the Board of Directors/shareholders, duly called and held on 3/12, 2016 at which a quorum of the Directors/shareholders were present and voting.

**VOTED:** That Brian Stephens (CFO) (may list more than one person) is duly authorized to enter into contracts or agreements on behalf of Tandy Stephens Inc with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any documents which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

DATED: 3/14/16

ATTEST: [Signature] Secretary  
(Name & Title)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/16/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Clark - Mortenson Insurance P.O. Box 606 Keene NH 03431	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 603-352-2121 E-MAIL ADDRESS: csr24@clark-mortenson.com FAX (A/C, No): 603-357-8491
	<b>INSURER(S) AFFORDING COVERAGE</b>
<b>INSURED</b> Tandys Top Shelf, dba Tandy Stephens Inc 1 Eagle Square Concord NH 03301	<b>INSURER A:</b> Houston Specialty Insurance Company
	<b>INSURER B:</b>
	<b>INSURER C:</b>
	<b>INSURER D:</b>
	<b>INSURER E:</b>
	<b>INSURER F:</b>

**COVERAGES**                      **CERTIFICATE NUMBER:** 955234048                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> 5,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		HOSPK1002451	11/21/2015	11/21/2016	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
							MED EXP (Any one person)	\$0
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COM'OP AGG	\$2,000,000
								\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED                      RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: 45 South Fruit Street, Concord, NH

**CERTIFICATE HOLDER**                      **CANCELLATION**

New Hampshire Employment Security 45 South Fruit Street Concord NH 03301	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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Travelers Service Center  
1365 Garden of the Gods Rd. Suite 110  
Colorado Springs, CO 80907-3419

THE PHOENIX INSURANCE COMPANY

APRIL 6, 2015

BRIAN STEPHENS & GREG TANDY  
DBA: TANDY'S TOP SHELF  
1 EAGLE SQUARE  
CONCORD NH 03301

Thank you for continuing your business with Travelers.

CENNAIRUS LLC, in conjunction with Travelers, is pleased to forward your renewal coverage contract for the following policy:

Coverage  
WORKERS COMP

Policy Form  
UB

Policy Number  
6146X374



The Travelers Service Center is positioned to assist you. Please take a few minutes to review the coverages, and call us with any changes or questions that you may have at the following number:

Phone: (866) 890-9965

**Travelers Service Center is open Monday – Friday, 8:00 a.m. – 8:00 PM EST**

If you experience a loss and/or need to report a claim, please contact the *Travelers Claim Line* directly at **1-800-238-6225**. Claim representatives are available 24 hours a day, 7 days a week.

Travelers is providing the peace of mind and stability that over half a million American business owners rely on every day. We are glad to be providing you with the thorough protection and superior service that your business deserves.

If you have other policies with Travelers, the policy paper may be mailed to you under separate cover.

Sincerely,

Travelers Service Center



POLICYHOLDER COPY

00263

**TRAVELERS**  
COMMERCIAL LINES - I  
707 WEST MAIN AVENUE  
SUITE 300  
SPOKANE WA 99201

ISSUE DATE: 04-06-15  
SAI: 5673H1153  
EFFECTIVE DATE: 05-19-15  
POLICY NUMBER: (INUB-6146X37-4-15)  
NAMED INSURED: BRIAN STEPHENS & GREG TANDY  
DBA: TANDY'S TOP SHELF  
INSURED ADDRESS: 1 EAGLE SQUARE

CONCORD NH 03301

ENCLOSED ARE THE POSTING NOTICES ASSOCIATED WITH YOUR WORKERS COMPENSATION POLICY (INUB-6146X37-4-15) EFFECTIVE 05-19-2015. THE POLICY WILL BE SENT TO YOU SEPARATELY.

SBM

BRIAN STEPHENS & GREG TANDY  
DBA: TANDY'S TOP SHELF  
1 EAGLE SQUARE  
CONCORD NH 03301