

**New Hampshire Liquor Commission**

50 Storrs Street, P.O. Box 503
Concord, N.H. 03302-0503
(603) 271-1705

Joseph W. Mollica
Chairman

Michael R. Milligan
Commissioner

August 9, 2016

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

Retroactive

REQUESTED ACTION

Authorize the New Hampshire State Liquor Commission to enter into a **retroactive** interagency lease agreement with the NH Department of Transportation in the amount of \$25,160.00 annually for the period commencing July 1, 2016 through June 30, 2017. This lease is for space at the NHDOT 11 Stickney Avenue Facility, Concord, NH, to house the Liquor Commission Maintenance Section. (100% Liquor Funds)

Funding is available in account #02-77-77-771512-10300000, LIQUOR COMMISSION – MARKETING AND MERCHANDISING – STORE OPERATIONS, contingent upon the availability and continued appropriation of funds, with the authority to adjust encumbrances in each of the State's Fiscal Years through the Budget Office, if needed and justified.

Class #	Class Description	FY 2017
022-500248	Rents-Leases Other than State	\$ 25,160.00
	Total:	<u>\$ 25,160.00</u>

EXPLANATION

The Commission maintains its Maintenance Section at the Stickney Avenue facility. This facility has served the Maintenance Section and the Commission well. It is centrally located so that our maintenance team can serve all our stores in a timely manner.

The paperwork for this lease was misplaced and is the reason for this retroactive request.

Funding for this request is 100% Liquor Funds.

Respectfully Submitted,
New Hampshire State Liquor Commission

Joseph W. Mollica, Chairman

**Concord, NH
NHDOT 11 Stickney Avenue Facility
-INTER-AGENCY AGREEMENT-**

**State of New Hampshire
Department of Transportation**

AND

**New Hampshire State
Liquor Commission**

THIS AGREEMENT, made between the State of New Hampshire, Department of Transportation, hereinafter called the "NHDOT", and **The New Hampshire State Liquor Commission** hereinafter called the "NHSLC"

WHEREAS, the NHDOT is the owner of the hereinafter described property, which is not immediately required by the NHDOT in connection with construction of a proposed highway project which abuts or may affect the property, and has been requested by the NHSLC to occupy a portion of the property on an "as is" basis.

WHEREAS, the NHDOT is willing to comply with said request, provided that the NHSLC, as a condition to the occupancy of said premises, joins in the execution of this Inter-Agency Agreement for the purpose of accepting each and every condition herein set forth during the occupancy of said premises by the NHSLC.

NOW, THEREFORE, THIS INTER-AGENCY AGREEMENT WITNESSETH THAT:

1. DEMISE OF THE PREMISES

1.01 For and in consideration of the payment and the mutual covenants hereinafter stated, and the acceptance by the NHSLC of each and every term and condition herein set forth, the NHDOT hereby grants the right of use and occupancy to the NHSLC the premises located at:

11 Stickney Avenue, Concord, New Hampshire: The premises consists of approximately 3,000 square feet of Section E located in the center portion of the Main Building, and approximately 1,000 square feet of Section F of the Main Building, as outlined on Attachment "A" incorporated herein. The NHSLC shall further have the right to use in common; with others entitled thereto, hallways, and stairways necessary for access to the premises and certain designated lavatories appurtenant to the premises.

2. TERM

2.01 The term of this Agreement shall begin on the 1st day of July 2016 and shall end on the 30th day of June 2017, unless terminated sooner in accordance with the provision of this Agreement.

2.02 The NHSLC and the NHDOT are both agencies of the State of New Hampshire. Any Dispute between the agencies as to the terms or operation of this Agreement shall be submitted to the Administrator of Administrative Services Bureau of Planning and Management for resolution, whose decision shall be final. This Agreement does not abrogate any of the rights and immunities of the State as to third parties.

3. PAYMENT

3.01 The NHSLC shall pay the NHDOT an annual payment of \$25,160.00 for fiscal year 2016, payable in advance in equal monthly installments of \$2,096.66. This reflects a rate of \$6.29 per square foot for utility and operational costs for the space located in Section E of the Main Building, and \$6.29 per square foot for utility and operational costs for the space located in Section F of the Main Building.

3.02 The NHSLC shall notify the NHDOT no less than three (3) months prior to the expiration of the term of NHSLC's interest to extend the Agreement for an additional 12 months, The NHDOT shall notify NHSLC within 30 days of receipt of the NHSLC's notice, whether the NHDOT agrees to the request extension.

4. QUIET ENJOYMENT

4.01 The NHDOT covenants and agrees that so long as the NHSLC is not in default of any of the covenants and agreements of this Agreement, the NHSLC's quiet and peaceful enjoyment of the Premises shall not be disturbed or interfered with by the NHDOT or any person claiming by or through the NHDOT.

5. USE OF PREMISES

5.01 The NHSLC shall use the premises only for the purpose of operating its Concord based carpentry unit, which includes office space, storage space, and a workshop. Storing vehicles and equipment; or any other intended use must be requested in writing. The NHDOT shall review the request and approval will be given in writing. Said approval shall not be unreasonably denied.

Neither the premises nor any part thereof shall be used at any time during the term of this Agreement by the NHSLC for the purpose of carrying on any other business, profession or trade of any kind without the prior written approval of the NHDOT. The NHSLC shall comply with all laws, ordinances, rules and order of appropriate governmental authorities affecting the safety, cleanliness, occupancy, operation, and preservation of the demised premises during the term of this Agreement. The NHSLC shall acquire all NHDOT required documentation, local approvals, and permits prior to the beginning of the Agreement term.

No dogs, cats other animals or pets of any kind shall be allowed on the premises, without the prior written approval of the Landlord. **Service Animals accompanied by an owner or trainer shall be allowed on the premises.** The NHSLC shall not use the premises in any manner that will disturb a neighbor's peaceful enjoyment of other property.

5.02 No employee, visitor or invitee of The NHSLC may park any motorized vehicle on the lawn area or any other area, which is not designated specifically for parking

6. COMPLIANCE WITH LAWS

6.01 The NHSLC acknowledges that no trade or occupations shall be conducted in the occupied premises or use made thereof which will be unlawful, improper, noisy, or offensive or contrary to any law or municipal By-law or Ordinance in force in the city of Concord.

7. MAINTENANCE OF PREMISES

7.01 The NHSLC acknowledges that the premises are in good order and repair at the beginning of the Agreement term, unless otherwise indicated by attached written statement. The NHSLC shall at their own expense maintain the premises in a clean, sanitary and safe manner

7.02 The NHSLC shall be responsible for any damage caused during this Agreement. The NHSLC shall return the premises to the NHDOT in as good order condition and repair as when received, ordinary wear and tear accepted. The NHDOT shall not incur any maintenance or repair costs as a result of this Agreement.

7.03 The NHDOT shall be responsible for exterior maintenance including snow removal.

8. DAMAGE TO PREMISES

8.01 If the premises are damaged so as to render them unrentable, then either party shall have the right to terminate this Agreement as of the date on which the damage occurs, through written notice to the other party, to be delivered within ten (10) days after the occurrence of such damage. However, should the damage or destruction occur as a result of any act or omission on the part of the NHSLC or its invitees, then only the NHDOT shall have the right to terminate this Agreement. Should the right to terminate be exercised, the payment for the current month shall be prorated between the parties as of the date the damage occurred.

9. ALTERATIONS AND IMPROVEMENTS

9.01 The NHSLC shall make no alterations to the building on the premises or construct any building or make other improvements on the premises without the prior written consent of the NHDOT. All alterations to include painting, papering changes, or improvements, constructed, or placed on the premises by the NHSLC, with the exception of fixtures removable without damage to the premises and movable personal property, shall, unless otherwise provided by written agreement between the NHDOT and the NHSLC, be the property of the NHDOT and remain on the demised premises at the expiration or sooner termination this Agreement. The NHSLC shall make no alterations to the structure without the prior written consent of the NHDOT.

10. ENTRY AND INSPECTION

10.01 The NHDOT retains the right to enter the premises in the case of an emergency, or to make necessary repair, alterations, improvements, or to supply necessary or agreed services, or to exhibit the premises to prospective purchasers or the NHSLC, workmen, contractors, or others, or when the NHSLC has abandoned or surrendered the premises, or whenever necessary to determine the condition of the premises. Whenever practical the NHDOT shall provide the NHSLC with 24 hours notice prior to entry. The NHDOT or its agent shall inspect the premises a minimum of one (1) time in each calendar year. Any indication of Agreement violations shall be grounds for immediate eviction action.

11. ASSIGNMENT AND SUBLETTING

11.01 The NHSLC shall not assign this Agreement, or sublet or grant any concession or license to use the premises or any part thereof.

12. UTILITIES

12.01 The NHDOT shall furnish to the premises, at it's own expense: water and sewer, natural gas, and electric. The NHSLC shall be responsible for furnishing all other utilities necessary for operating their Carpentry Unit.

13. DANGEROUS MATERIALS

13.01 The NHSLC shall not keep or have on the premises any article or thing of a dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the premises or that might be considered hazardous or extra hazardous unless the items are stored in an approved fireproof storage unit and DOT is informed regarding the location and contents of this storage unit.

14. HOLDOVER BY LESSEE

14.01 No holdover by the NHSLC will be permitted. The NHDOT and the NHSLC must execute a new Agreement upon expiration of an existing Agreement in order for the NHSLC to remain in possession of the premises.

15. DEFAULT

15.01 The NHDOT shall be the sole judge of what shall constitute a violation of the provisions of the Agreement, or the failure of the NHSLC to otherwise abide by any of the covenants herein contained, and may order a discontinuance of the practices, or the performance of any of the work related to such default by giving the NHSLC ten (10) days notice in writing. Failure of the NHSLC to comply with the notice shall automatically give the NHDOT the right to terminate this Agreement, evict the NHSLC and take full and complete possession of the premises.

16. TERMINATION OF LEASE FOR CAUSE

16.01 In the event that the NHSLC shall default in the payment of any installment or other sum herein specified and such default shall continue for ten (10) days after written notice, thereof, or if the NHSLC shall default in the observance or performance of any other of the NHSLC covenants, agreements, or obligations hereunder and such default shall not be corrected within ten (10) days of written notice by the NHDOT to the NHSLC specifying such default and requiring it to be remedied then, and in such an event, the NHDOT may serve a written notice of termination of this Agreement upon the NHSLC and this Agreement and the Term hereunder shall terminate and upon such termination the NHDOT may immediately or at any time thereafter, without demand or notice enter into or upon the Premises and repossess the same.

17. TERMINATION FOR CONVENIENCE

17.01 The NHDOT may terminate the Agreement at any time by giving one hundred twenty (120) days notice thereof in writing, and may take full and complete possession of the premises hereby occupied, at the end of said one hundred twenty (120) day period with no further liability of any nature whatsoever to the NHSLC for so doing. Should the NHDOT terminate this Agreement by giving the one hundred twenty (120) day notice during any period for which a full month's rent has already been paid, the NHDOT will reimburse the NHSLC for the pro-rata proportion of the remaining number of days for which payment has been paid in advance but during which the NHSLC no longer occupy the premises.

18.02 The NHSLC may terminate this Agreement at any time by giving at least thirty (30) days notice in writing, specifying in said notice the day (and the time of day) on which possession of the premises will be surrendered. The NHSLC shall not vacate or leave the premises unattended on the day of surrender until the NHDOT's representative shall have sufficient time to check the premises prior to taking formal possession thereof. In the event that the NHSLC shall terminate this Agreement in accordance with the above provisions, payment shall cease at the end of the said thirty (30) day period, or at the end of the day on which possession shall be surrendered, whichever shall last occur.

19. SURRENDER OF THE PREMISES

19.01 In the event that the Term or any extension thereof shall have expired or terminated, the NHSLC shall peacefully quit and surrender to NHDOT the Premises together with all improvements, alterations, or additions made by the NHSLC which cannot be removed without damaging the Premises. The NHSLC shall remove all personal property and shall repair any damage caused by such removal. The NHSLC's obligations to observe or perform the covenants contained herein shall survive the expiration or termination of this Agreement.

20. DISCRIMINATION PROHIBITED

20.01 The NHSLC hereby covenants and agrees that no person on the grounds of race, color, national origin, sex or sexual orientation, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination of the use of the premises and that in the construction of any improvements on, over or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sex, or sexual orientation, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and that the NHSLC shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

20.02 The NHSLC for themselves, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event that facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provisions of similar services or benefits, the Department of Safety shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination of Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended.

20.03 That in the event of breach of any of the above nondiscrimination covenants, the NHDOT shall have the right to terminate the Agreement and to re-enter and repossess said land and facilities thereon, and hold the same as if said Agreement had never been issued.

21. MISCELLANEOUS

21.01 Occupancy. The NHSLC shall notify the NHDOT if the Premises will be unoccupied for more than fourteen (14) consecutive days.

21.02 Locks and Keys. The NHSLC shall be permitted to re-key the existing locks; keys shall be provided to the DOT within ten (10) business days of the change.

21.03 Landlord's Agents. All rights and obligations of The NHDOT under this Agreement may be performed or exercised by such agents as the NHDOT may select.

21.04 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 registered or certified mail, postdate prepaid, in a United States Post Office.

21.05 Extent of Instrument, Choice of Laws, Amendment, etc. This Agreement, which may be executed in a number of counterparts, each of which shall have been deemed an original, but which shall constitute one and the same instrument, is to be construed according to the Laws of the State of New Hampshire, is to take effect as a sealed instrument, is binding upon, inures to the benefit of, and shall be enforceable by the parties hereto and their respective successors and assigns, and may be canceled, modified, or amended only by a written instrument executed and approved by the NHDOT and The NHSLC.

21.06 No Waiver of Breach. No assent, by either party, whether express or implied, to a breach of covenant, condition or obligation by the other party, shall act as a waiver of a right of action for damages as a result of such breach, or shall be construed as a waiver of any subsequent breach of the covenant, condition or obligation.

21.07 Unenforceable Terms. If any terms of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any application of such term shall not be affected thereby.

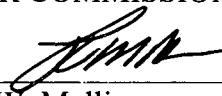
21.08 Entire Agreement. This Agreement embodied the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

THE STATE OF NEW HAMPSHIRE
Department of Transportation

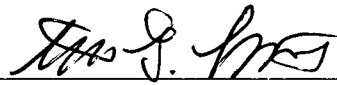
Date: 6/27/16 By: 
Charles R. Schmidt P.E.
Administrator, Bureau of Right-of-Way

THE NEWHAMPSHIRE STATE
LIQUOR COMMISSION

Date: 6/14/16 By: 
Joseph W. Mollica
Chairman

Date: 6/14/16 By: 
Michael R. Milligan
Deputy Commissioner

As to form and execution:

Date: 6/30/16 By: 
Assistant Attorney General

Attachment A is part of this Agreement.