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State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
25 Capitol Street – Room 120
Concord, New Hampshire 03301

LINDA M. HODGDON
Commissioner
(603) 271-3201

JOSEPH B. BOUCHARD
Assistant Commissioner
(603) 271-3204

November 29, 2012

His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Administrative Services (the Lessor), to enter into a thirty-five year inter-agency lease for the sum of one dollar ($1.00) with the Department of Employment Security, 32 South Main Street, Concord, NH (the "Lessee") for the approximate 77,000 square foot "Tobey Building" and certain areas of the surrounding grounds located on the New Hampshire Hospital Campus at 48 South Fruit Street, Concord, NH. The effective date of the agreement shall commence upon Governor and Executive Council approval; the thirty-five year (35) occupancy term shall commence upon completion of renovations and receipt of "certificate of occupancy" which is targeted as September 30, 2013.

Funds ($1.00) shall be deposited into General Fund account # 01-14-14-00000014-402067

EXPLANATION

The Department of Administrative Services wishes to enter into the enclosed thirty-five (35) year inter-agency lease agreement with the Department of Employment Security, under its terms Employment Security will, at their sole expense, renovate, maintain and operate the "Tobey Building" and certain areas of the surrounding grounds to provide a consolidated client service and business office facility; the building and grounds will however remain an "Administrative Services" asset reverting to their control upon expiration of the term. Upon completion of renovations the approximate 77,000 square foot, four story building will provide efficient office and client support space which is fully updated to current codes, will feature energy efficiency improvements throughout, and provision of architecturally barrier-free access. It is anticipated the renovated building will replace three current Employment Security facilities: 32 South Main Street, Concord, NH (business office), 10 West Street, Concord, NH (client service office) and 300 Hanover Street Manchester NH (client service and business office).

The legislature approved $22,500,000 in the FY 12/13 capital budget for this project. The Bureau of Public works has overseen recent completion of $747,729 of demolition and abatement work in the building, while provision of building renovations and a new 183 space

surface and deck parking area is estimated to cost an additional $20,100,000 with renovations targeted to commence January 2013.

The Office of the Attorney General has reviewed and approved the agreement; and in accordance with NH RSA 17-M:2(b) "Long Range Capitol Planning and Utilization Committee" also reviewed and approved it during their November 27, 2012 meeting as shown in the attached letter. Favorable consideration of this item is requested.

Respectfully submitted,

Linda M. Hodgdon
Commissioner

STATE OF NEW HAMPSHIRE

DEPARTMENT OF ADMINISTRATIVE SERVICES

TOBEY BUILDING AND GROUNDS INTERAGENCY LEASE

This agreement (the Agreement) is made this 3RD day of OCTOBER 2012 by and between the State of New Hampshire, Department of Administrative Services (DAS), 25 Capitol Street, New Hampshire 03301, and the State of New Hampshire, Department of Employment Security (NHES), 32 South Main Street, Concord, New Hampshire 03301.

INTRODUCTION: subject to the terms of the Agreement herein DAS hereby grants NHES the right to use, renovate, and occupy the building known as the "Tobey" building located at 48 South Fruit Street, Concord NH, inclusive of the right to use and develop certain areas of the surrounding grounds, which together shall be referred to as the "Premises". The terms, demise and provisions of this Agreement shall be as defined in the following and in the attachments hereto.

1. TERM:
   a. EFFECTIVE and Termination Dates, Approval Contingency: The effective date of this agreement shall commence upon receipt of approval by the Governor and Executive Council of the State of NH. The termination date of the Agreement shall be thirty five (35) years after the date NHES receives a "certificate of occupancy" for the renovated Tobey building, (which is anticipated as September 30, 2013); termination of this agreement shall be thirty five (35) years thereafter or on September 30, 2048, whichever date is later (the "Term").
      i. Contingency: It is hereby understood and agreed by the parties hereto that this agreement and the commencement of the Term, and any extension of thereof, is conditioned upon its' approval by the Governor and Executive Council of the State of NH. It is further understood and agreed by the parties hereto that commencement of the initial Term is subject to additional parties having authority, including the Long Range Capital Planning and Utilization Committee on behalf of DAS. This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings. In the event that said approvals are denied, then this Agreement shall thereupon immediately terminate, and all obligations hereunder of the parties hereto shall cease.

   b. Expiration of Term: The Premises shall be an asset subject to control and operation by DAS upon expiration of the term

   c. NHES Option for Continued Occupancy upon expiration of term: DAS shall offer NHES the option to continue occupancy of the Premises after the expiration of the Term; the Parties shall negotiate the terms and conditions for such occupancy in good faith and accord.

Initials: _____
Date: 10/3/12

2. DEMISE: The Demise of Premises shall be defined as follows:
   a. Tobey Building: (the "Premises") The parties agree NHES will be allowed the exclusive use of the Tobey Building, which is comprised of approximately 77,000 gross square feet of space located on four floors, lower level through third, and shall be further defined to include use and responsibility for all space within ten (10) feet of the building's exterior walls, basement foundation and roof. See "Exhibit A-1 through Exhibit A-4 Floor plans" for depiction of existing layouts (prior to construction) of the four floors.
      i. In addition to the foregoing, NHES shall also be responsible for provision and maintenance of:
         1. Electrical service from the main entrance pole into the building
         2. Natural gas service to the building shut off
         3. Water and Sewer services extending from the building out to the intersection at the main connections.
         4. Drainage Inlets and Catch Basins at the new parking lot and parking swale areas.

   b. Tobey Grounds: (the "Grounds") The parties agree NHES will be allowed the right to use and develop certain areas of the grounds adjacent to the Tobey building; the extent of these grounds shall be as shown in the site layout attached herein as "Exhibit A-5 Tobey Grounds". The right to develop this area shall include but not be limited to provision of parking lots or parking deck structures, sidewalks, driveways, landscaping, lighting, drainage, sewer structures, and as further defined in paragraph "7 Improvements to the Premises" herein.

   c. Parking Areas:
      i. NHES shall have the right to exclusive use of all parking spaces in the new parking deck structure – which they shall provide at their sole expense – which shall be located in the area between the existing Tobey building front parking lot and Tobey Road, and extending towards "Industrial Drive" and the "Archives Building".
      ii. NHES shall have the right to exclusive use of all parking spaces located in the front (facade facing South Fruit Street) existing parking lot of the Tobey Building.
      iii. NHES shall have the right to shared use of up to fifty (50) parking spaces located behind the "Walker Building"; no parking spaces will be reserved or designated, use will be in common with others. Access to Walker parking area would be made with the addition of a stairway to the Tobey tunnel entrance along the hillside.
      iv. NHES shall have the right to use only the three to four existing parking spaces located directly adjacent and behind the Tobey building at it's North East "back" corner, all other parking spaces located in the back (façade facing Brown building) parking lot shall remain allocated to the Department of Health and Human Services for their use in providing visitor parking.

Initials: _____
Date: 10/8/12

d. Shared Use of "Governor Hugh Gallen Office Park": (the "Office Park") The Licensee shall have the right to use in common with others entitled thereto the public roadways, walkways, grounds and shared-use parking areas which are a part of the Office Park to which the Premises are a part.

3. USE OF PREMISES: Subject to the provisions herein DAS grants NHES the right to use the Premises during the Term for the purpose of conducting NHES business and client services and the provision of office, storage and support space. The renovation, use and occupation of the Premises shall be at the sole expense of NHES, they shall be responsible to provide, maintain and repair all building systems, including but not limited to the roof, heating and ventilation systems, plumbing systems, electrical systems, water and sewer systems and drainage systems.

   a. Sublease: NHES shall have the right to sublease or grant use of the Premises to both State of New Hampshire agencies and United States Federal agencies without prior written notice to or consent by DAS. In the event NHES wishes to sublease or grant use of the Premises to entities or persons other than such agencies the proposed action shall be subject to receipt of prior written consent from DAS, who shall not unreasonably deny such requests.

4. RENT: NHES shall pay DAS the sum of one dollar ($1.00) upon inception of the Term; this sum shall be the total rental payment due for the Term.

5. GROUNDS MAINTENANCE FEE: In addition to rent, upon occupancy by NHES of the Tobey building NHES shall reimburse DAS for the direct cost of providing services and materials associated with seasonal landscaping, mowing, and winter snow and ice plowing and removal services to the "Tobey Grounds". The extent of the "Grounds" shall be as defined in this part, and as illustrated in Exhibit A-5 "Tobey Grounds" layout herein. The extent of services to be provided by DAS, and their method of budgeting and invoicing shall be as defined in this part.

   a. Budget and Invoicing: DAS shall provide NHES with a (per State of New Hampshire fiscal year) budget providing the estimated annual cost of Grounds Maintenance Services no later than mid-May of every evenly numbered year, for such years correspond to the inception of each State fiscal biennium.

   b. The budget provided to NHES will be developed by using the "Average Year" methodology:

      Snow Removal/Snow Plowing – there are an average of 20 plowable storms per year, each storm will require approximately five (5) hours of plowing with a truck and plow and four (4) hours of snow handling with the loader. Generally two (2) tons of sand/salt mix will be used for a storm. For non-storm icing events there are an average of twenty-five (25) applications of sand/salt mix during the winter months. General grounds up keep and mowing will include approximately 220 man-hours of work per year as well as thirty (30) cubic yards of bark mulch.

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Date: 12/3/12

Based on this methodology, the actual budget will follow the State's Biennium budget process and be prepared for the two-year term. Payment shall be billed monthly in equal monthly installments, fixed for two one-year terms.

c. DAS shall bill NHES for Grounds services by dividing the total estimated annual cost of such services into twelve equal invoices; invoices shall be sent monthly to NHES who shall remit payments to DAS within thirty (30) days of receipt

d. In the event NHES reviews the DAS proposed biennium budget and finds it unacceptable, they may elect to provide "Grounds Services" with their own forces and/or contractors during the biennium. Notice to DAS of such decision must be provided by June 1st of the biennium. DAS shall provide NHES a proposed budget for Grounds Service at the inception of the subsequent biennium, offering NHES the option to either continue provision of services themselves, or elect to have DAS provide such services.

e. Scope of DAS Grounds Services:

   i. DAS shall provide the following winter services: snow plowing, provision of sand and salt, and limited snow removal for all parking lots, parking structures, road ways and campus sidewalks. DAS shall also provide seasonal sweeping of the sand/salt build up in the spring.
   ii. DAS shall provide the following spring, summer and fall services: lawn mowing, mulching, pruning, leaf collection and removal, and general landscape maintenance services.
   iii. Site Security: DAS shall include the Tobey Building and Grounds in the overall campus security plan.
   iv. Excluded Services - NHES to provide: NHES shall be responsible for maintaining all sidewalks leading from the campus sidewalks into the Tobey building; they shall also maintain all entrances and stairs. This responsibility shall include but not be limited to snow removal (shoveling), provision of sand and salt, and seasonal sweeping.

6. CONDITION OF PREMISES: NHES has inspected and knows the condition of the Premises and accepts them in "as is" condition without any representation or obligations on the part of DAS to make any alterations, repairs or improvements.

7. IMPROVEMENTS TO THE PREMISES: The parties expressly agree NHES shall have the right to improve, alter, expand, repair and renovate the Premises and designated grounds including the right to provide additional parking areas, parking structures, access roads and walkways.
   a. NHES shall be responsible, at their sole expense, for the provision, performance, management and completion of all such work (the Work").
   b. Any and all required engineering fees, permits, testing or certificates shall be the sole responsibility of NHES at their sole expense.

Initials: _____

Date: 10/3/12

c. DAS shall require advance review and approval of NHES drawings and specifications depicting all proposed interior & exterior building renovations and all proposed site work, this review shall be provided when the drawings and specifications are at 30% and 100% completion phases. DAS reserves the right to require any revisions necessary for obtaining their final approval.
d. NHES right to provide improvements and alterations to the grounds shall include but not be limited to the following:
    i. Tobey Road: NHES shall have the right to temporarily close Tobey Road, and/or to permanently relocate a portion of it contingent upon advance review and approval by DAS; any proposed temporary closure and/or relocation must continuously provide adequate access to the Walker Building, Walker Road, and the Archives Building.
    ii. NHES shall have the right to provide a new sidewalk connecting "Tobey Road" to South Fruit Street for the purpose of creating a new pedestrian path of travel from a proposed new bus stop to the Tobey Building. If such a sidewalk is provided it shall include appropriate lighting, width of approximately 60" wide, and appropriate surfacing materials.
    iii. Ballpark Fencing: Contingent upon DAS prior approval, NHES shall have the right to partially relocate and reduce the fenced ballpark area located in front of the Tobey building thereby accommodating moving a portion of Tobey road and/or providing space for provision of new parallel or diagonal parking along the road. The revised ballpark area shall be provided with full fencing and gated entrances that conform to DAS requirements.
    iv. Stairway access from Walker parking lot to Tobey Tunnel access along the hillside.

8. MAINTENANCE AND REPAIR: NHES agrees to provide and maintain the Premises in good repair and in accordance with all applicable regulations, ordinance or codes; they shall protect, repair and maintain the Premises in good order and condition at their sole expense and without costs or expense to DAS. NHES shall exercise due diligence in protecting the Premises against damage or destruction by fire, vandalism, theft or other causes.
    a. <u>Scope of NHES Maintenance Services to the Premises:</u> the following services shall be provided by NHES with due diligence with no oversight by DAS required or provided, however DAS reserves the right to inspect and require performance to industry standards for quality.
        i. Janitorial, recycling and waste disposal services
        ii. Winter Maintenance of building, including removal of snow and ice from all roofs and entrances, service areas, and sidewalks leading into the building.
        iii. Facility Maintenance and Repair
        iv. Parking lot Maintenance and Repair: including sealing and maintaining parking lot, providing and maintaining lot strips and signs, and providing and maintaining sewers and drains

Initials: JM
Date: 10/3/17

v. Major Capital Improvements: such as renovation, major modifications, expansions/additions

vi. Emergency Response

vii. Provision of Utilities & Energy Management

viii. Furniture, Fixtures and Equipment

ix. Building Security

x. Pest Control

xi. NHES may provide new landscaping elements during renovation of building and site, DAS shall thereafter maintain the landscaping.

xii. Environmental Compliance and Pollution Prevention

9. UTILITIES: NHES shall be solely responsible for providing all utilities to the Premises, including but not limited to water and sewer, electrical services, heating and air conditioning, data and telephone services. NHES shall be responsible for establishing, maintaining and making direct payment to the providers of all utility services to the Premises throughout the Term. NHES shall coordinate in advance with DAS any provision and installation of microwave transmitters and/or such other alternative back-up communication/transmission systems, such coordination will be for the sole purpose of assuring any frequencies created by any microwave transmitters and/or such other alternative back-up communication/transmission systems do not conflict or interfere with any existing frequencies on the Campus.

10. FIXTURES AND FURNITURE: NHES shall be responsible for provision of all furniture, fixtures and equipment necessary to provide services for the Premises including, at the option of NHES, the provision of a back-up generator. All furniture and fixtures, including without limitation, the back-up generator so provided shall remain the property of NHES at the end of the Term.

11. REPAIR OR LOSS OF PROPERTY: NHES shall, at their own expense, promptly repair or replace to the satisfaction of DAS, any and all property damaged or destroyed by NHES or its guests or visitors incident to its exercise of the privileges granted in this Agreement. Alternatively, if required by DAS, NHES shall pay to restore the Premises to it's original or latent condition.

12. CONFORMANCE WITH LAWS AND RULES: NHES shall at all times during the existence of this Agreement, promptly observe and comply with the provisions of all applicable federal, state and local laws, rules, regulations, and standards, and in particular those provisions concerning the protection and enhancement of environmental quality, pollution control and abatement, safe drinking water, life safety systems, Americans with Disabilities Act, Energy Code conformance, and solid and hazardous waste. Should NHES discover any violations, they shall immediately undertake remedy and also report the matter to DAS. NHES shall, at their own expense, be responsible for any costs incurred as a result of their violation of the aforementioned federal, state and local laws, rules and regulations and standards.

Initials: _____

Date: 12/3/12

13. RIGHT OF INSPECTION: DAS, its officers, agents, employees, and contractors shall have the right to inspect the Premises; however they shall endeavor to provide NHES with at least forty eight (48) hours notice prior to such inspection. NHES shall cooperate with and facilitate any inspection of the Premises required by DAS, providing them with access to all areas. Notwithstanding the foregoing, DAS shall cooperate with NHES in observing either State or Federal confidentiality and/or security regulations which may restrict access to certain areas.

14. LIABILITY:
    a. DAS shall not be responsible for damage to property or injuries to persons which may arise from or be attributed, or incident to the exercise of the privileges granted under this Agreement, including the condition or state of repair of the Premises and its use, renovation and occupancy by NHES, or from damage to their property, or damage to the property, or injuries to the persons of NHES or any officers, employees, servants, agents, contractors, or others who may be at the Premises at their invitation or the invitation of any one of them arising from governmental activities at the Premises.

    b. NHES agrees to assume all risk of loss or damage to the property and injury or death to persons by reason of the exercise of the privileges granted herein, and will settle and pay any claims arising out of the renovation, use and occupancy of the Premises.

15. SURRENDER OF PREMISES: In the event that the Term, or any renewal or amendment thereof, shall have expired or terminated, NHES shall peacefully quit and deliver up the Premises to DAS in good order and broom clean condition, reasonable wear, tear, and obsolescence excepted, and shall surrender all Improvements, alterations or additions made by NHES which cannot be removed without causing damage to the Premises except without limitation any back-up generator purchased by NHES. NHES shall remove all of its furnishings and personal property, if they fail or neglect to remove such items, then at the option of DAS, such property shall either become property of the DAS without compensation therefore, or then it shall be removed with the cost of removal and storage billed to NHES.

16. NHES and DAS 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 both the Director of the Division of Plant and Property Management and Assistant to the Commissioner of NHES for resolution by consensus. If they are unable to reach consensus within thirty (30) days then the issue shall be submitted to the Commissioner of DAS and the Commissioner of NHES for joint resolution, whose collaborative decision shall be final. This AGREEMENT does not abrogate any of the rights and immunities of the State as to third parties.

Initials: _____

Date: 10/3/17

17. No notice, order, direction, determination, requirement consent and/or approval under this Agreement shall be of any effect unless it is in writing. All notices to be given pursuant to this Agreement shall be addressed, if to DAS:

    State of New Hampshire
    Department of Administrative Services
    25 Capitol Street, Rm 106
    Concord, NH 03301
    Attn: Michael Connor, Director, Division of Plant & Property Mgt.

    and if to the NHES:

    State of New Hampshire
    Department of Employment Security
    32 South Main Street,
    Concord, NH 03301
    Attn: Deputy Commissioner

18. 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 construed according to the laws of New Hampshire, 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 parties hereto.

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

Initials: _____

Date: 11/3/12

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

LESSOR: The State of New Hampshire, Department of Administrative Services

Authorized by: _____
Linda M. Hodgdon, Commissioner

LESSEE: The State of New Hampshire, Department of Employment Security

Authorized by: _____
Signature

Print _____
Name & Title

Approval by New Hampshire Attorney General as to form, substance and execution:

By _____, Assistant Attorney General, on OCT 22, 2012

Approval by the New Hampshire Governor and Executive Council:

By: _____, on _____

Initials: _____
Date: 11/3/12

Exhibit A-1
Tobey Building Lower Level

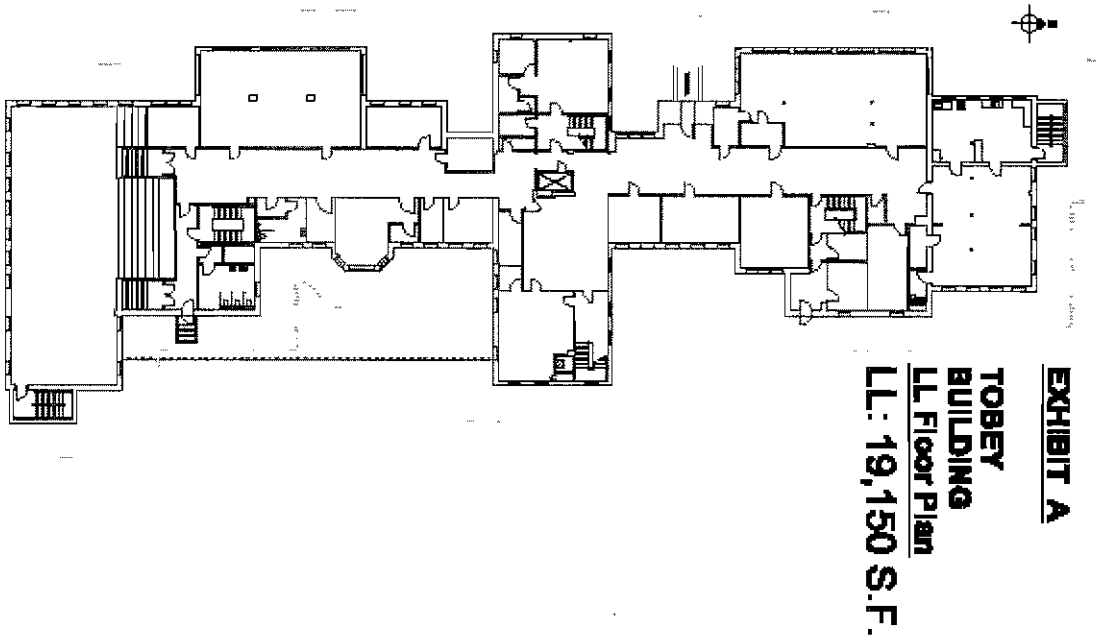

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Exhibit A-2
Tobey Building 1st Floor

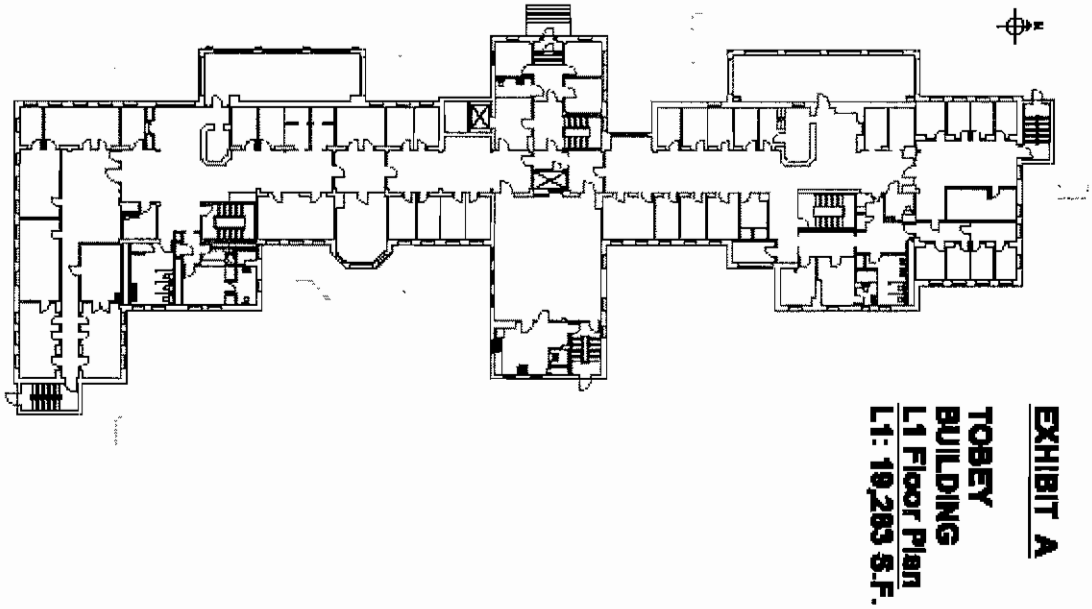

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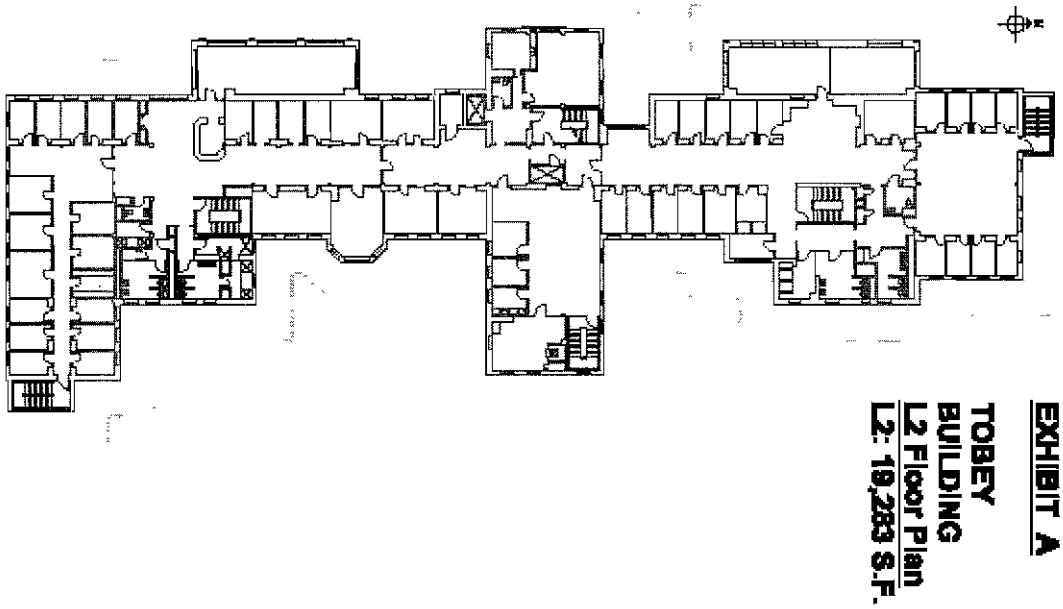
Exhibit A-3
Tobey Building 2nd Floor



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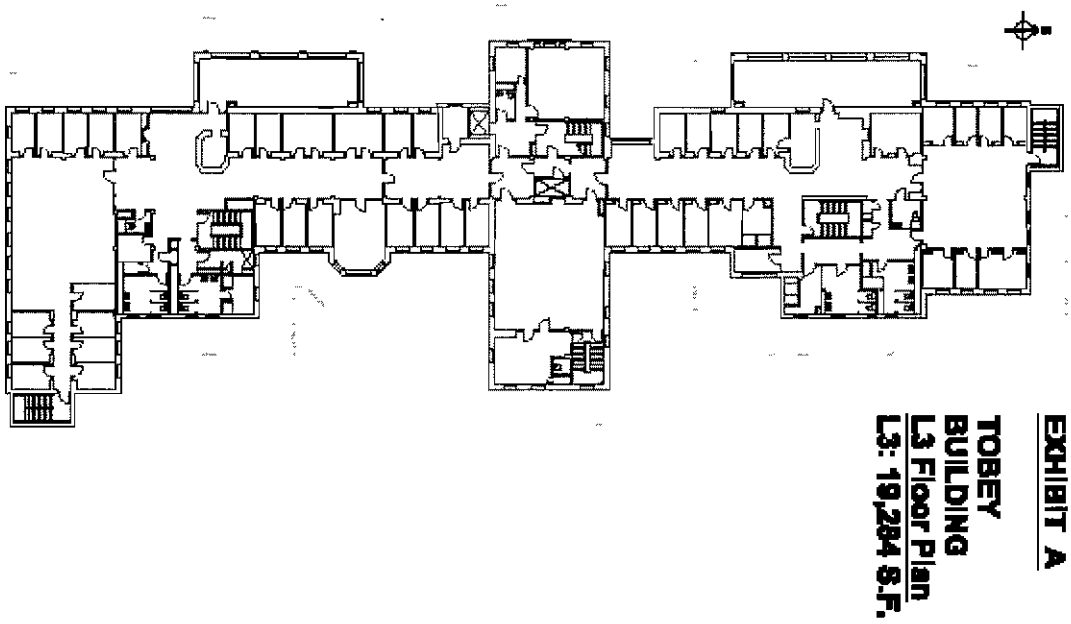
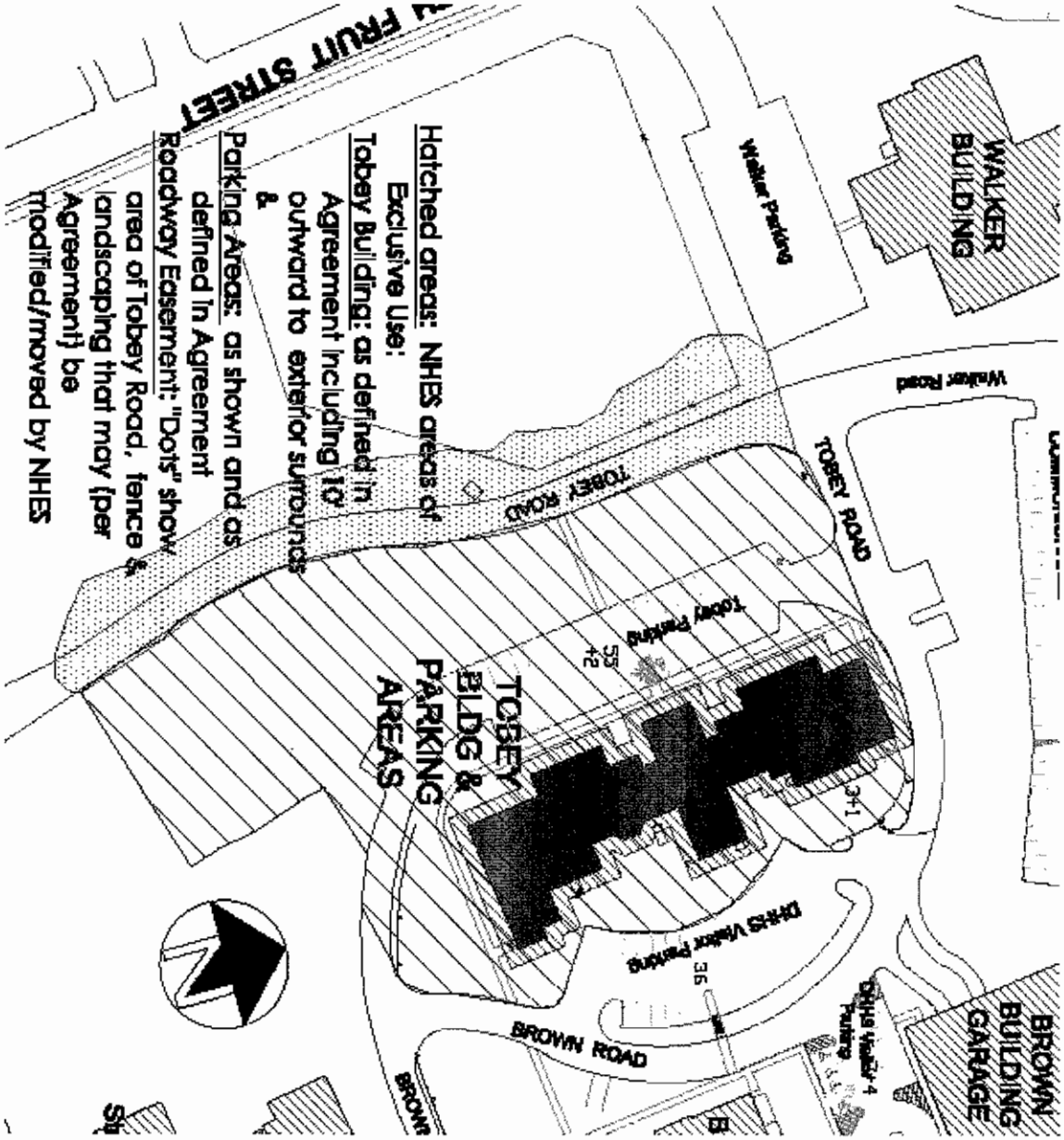
Date: 10/3/12

Exhibit A-4
Tobey Building 3rd Floor



Initials: _____
Date: 10/3/12

Exhibit A-5
Tobey Building **GROUNDS site layout**



Initials: _____
Date: 10/3/12

JEFFRY A. PATTISON
Legislative Budget Assistant
(603) 271-3161

MICHAEL W. KANE, MPA
Deputy Legislative Budget Assistant
(603) 271-3161

LRCP 12-055

State of New Hampshire

OFFICE OF LEGISLATIVE BUDGET ASSISTANT
State House, Room 102
Concord, New Hampshire 03301

RICHARD J. MAHONEY, CPA
Director, Audit Division
(603) 271-2785

November 28, 2012

Linda M. Hodgdon, Commissioner
Department of Administrative Services
25 Capitol Street, Room 120
Concord, New Hampshire 03301

Dear Commissioner Hodgdon,

The Long Range Capital Planning and Utilization Committee, pursuant to the provisions of RSA 17-M:2(b), on November 27, 2012, approved the request of the Department of Administrative Services, to enter into a thirty-five (35) year inter-agency lease for the sum of one dollar ($1.00) to the Department of Employment Security, 32 South Main Street, Concord, NH, for the approximate 77,000 square foot "Tobey Building" and certain areas of the surrounding grounds located on the New Hampshire Hospital Campus at 48 South Fruit Street, Concord, NH, with the thirty-five year (35) occupancy term commencing upon completion of renovations and receipt of "certificate of occupancy" targeted for September 30, 2013, subject to the conditions as specified in the request dated October 16, 2012.

Sincerely,

Jeffry A. Pattison
Legislative Budget Assistant

JAP/pe
Attachment

LRCP 12-055

State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
25 Capitol Street – Room 120
Concord, New Hampshire 03301

LINDA M. HODGDON
Commissioner
(603) 271-3201

JOSEPH B. BOUCHARD
Assistant Commissioner
(603) 271-3204

October 16, 2012

The Honorable, John Graham, Chairman
Long Range Capital Planning and Utilization Committee
L.O.B. – Room 201
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to NH RSA 17-M:2(b), the Department of Administrative Services, (the "Lessor"), requests approval of the attached thirty-five year inter-agency lease for the sum of one dollar ($1.00) to the Department of Employment Security, 32 South Main Street, Concord, NH (the "Lessee") for the approximate 77,000 square foot "Tobey Building" and certain areas of the surrounding grounds located on the New Hampshire Hospital Campus at 48 South Fruit Street, Concord, NH. The effective date of the agreement shall commence upon Governor and Executive Council approval; the thirty-five year (35) occupancy term shall commence upon completion of renovations and receipt of "certificate of occupancy" which is targeted as September 30, 2013.

EXPLANATION

The Department of Administrative Services wishes to enter into the enclosed thirty-five (35) year inter-agency lease agreement with the Department of Employment Security, under its terms Employment Security will, at their sole expense, renovate, maintain and operate the "Tobey Building" and certain areas of the surrounding grounds to provide a consolidated client service and business office facility; the building and grounds will however remain an "Administrative Services" asset reverting to their control upon expiration of the term. Upon completion of renovations the approximate 77,000 square foot, four story building will provide efficient office and client support space which is fully updated to current codes, will feature energy efficiency improvements throughout, and provision of architecturally barrier-free access. It is anticipated the renovated building will replace three current Employment Security facilities: 32 South Main Street, Concord, NH (business office), 10 West Street, Concord, NH (client service office) and 300 Hanover Street Manchester NH (client service and business office).

The legislature approved $22,500,000 in the FY 12/13 capitol budget for this project. The Bureau of Public works has overseen recent completion of $747,729.00 of demolition and abatement work in the building, while provision of building renovations and a new 183 space surface and deck parking area is estimated to cost an additional $20,100,000.00 with renovations targeted to commence January 2013.

The Office of the Attorney General has reviewed and approved this inter-agency lease agreement; your favorable consideration is requested.

Respectfully submitted,

Linda M. Hodgdon

Linda M. Hodgdon
Commissioner

STATE OF NH
DEPT OF JUSTICE
12 OCT 19 AM 9:17