



**New Hampshire  
Employment  
Security**

[www.nhes.nh.gov](http://www.nhes.nh.gov)

*"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

June 19, 2014

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council

State House  
Concord, NH 03301

**REQUESTED ACTION**

Pursuant to RSA 4:40, the New Hampshire Department of Employment Security (NHES) requests approval and consent of the Governor and Council to sell the NHES property located at 32-34 South Main Street, Concord, NH to the City of Concord for \$1,575,000 plus an assessed administrative fee of \$1,100.

NHES employees once housed in this building were relocated to the newly renovated Tobey Building located in the Hugh Gallen State Office Park at 45 South Fruit Street, Concord, NH in April and May of this year.

**EXPLANATION**

The City of Concord exercised their right to purchase the property pursuant to RSA 4:40 in a letter to then Governor John Lynch dated October 2, 2012. The City of Concord and NHES have since been negotiating the terms of this transaction keeping in mind that NHES could not sell the property until relocating employees into the Tobey Building. NHES feels the purchase price is a fair and accurate reflection of current market value based upon: (1) the City of Concord being responsible for demolishing the existing building; (2) the offer is consistent with offers submitted to the City of Concord by private developers to purchase and develop the property following a request for proposals issued by the City of Concord; (3) the value of an immediate purchase of the property by the City of Concord rather than NHES waiting and holding the property for several years while a purchaser/developer conducts due diligence; and (4) the ability of NHES to take the proceeds from this sale and apply it immediately to the cost of renovating the Tobey Building. According to an appraisal of the property dated July 21, 2011 the property appraised for \$1,750,000.

NHES received authorization of the Governor and Council to sell the property on October 17, 2012 as agenda item 30A (copy attached). Further, NHES received the recommendation of the Council on Resources and Economic Development and then the approval from the Long Range Capital Planning and Utilization Committee on September 18, 2012 to sell the property (approval letters attached) as part of our Capital Budget project.

Respectfully submitted,

George N. Copadis  
Commissioner

Attachments  
GNC/jdr

## PURCHASE AND SALES AGREEMENT

This **PURCHASE AND SALES AGREEMENT** ("Agreement") is made as of the 11th day of June, 2014 by and between the State of New Hampshire, Department of Employment Security having a principal place of business at 32 South Main Street, Concord, New Hampshire 03301 (referred to as the "Department" or the "Seller") and the City of Concord, a New Hampshire municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire 03301 (referred to as "the City" or "the Buyer") (referred to individually as a "Party" and collectively as the "Parties").

### RECITALS

This Agreement relates to the sale of real estate located at #32-34 South Main Street and 33 South State Street, Concord, New Hampshire (the "Premises"), City Assessing Department Parcel Map 34 Block 3 Lot 3 and Map 34 Block 3 Lot 2.

This Agreement is entered into upon the basis of the following facts and intentions of the Parties:

- I. The Seller owns certain real estate located at 32-34 South Main Street and 33 South State Street, Concord, New Hampshire consisting of 0.75 +/- acres of land (combined), a 23,700SF +/- office building, and 75 space parking lot, as further described herein;
- II. The Seller is divesting the Premises due to the consolidation and relocation of certain Department Offices to the so-called Tobey Building at the Governor Hugh Gallen Office Park, 45 South Fruit Street, Concord, New Hampshire.
- III. The State anticipates relocating all operations from 32-34 South Main Street to the Tobey Building in the spring of 2014.
- IV. The City of Concord is afforded the ability to acquire the Premises in accordance with RSA 4:40, I.
- V. The City, subject to the contingencies set forth within this Agreement, desires to acquire the Premises from the Seller for the purposes of future redevelopment in order to promote tax base expansion and job creation.
- VI. All Parties signatory to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

**1. DESCRIPTION OF PREMISES AND REAL ESTATE TRANSACTION:**

- 1.1. **General:** Pending the results of the City's due diligence and the other conditions in this Agreement, the Seller intends to sell to the City, and the City intends to acquire from the Seller, the Premises, consisting of two lots of record totaling approximately 0.75+/- acres of land, featuring a single building 23,700SF +/-, as shown on the attached plan titled "Exhibit 1".
- 1.2. **Purchase Price:** The City shall acquire the Premises for the sum of ONE MILLION FIVE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$1,575,000) cash at Closing.
- 1.3. **Deposit:** No deposit shall be required for this transaction.
- 1.4. **Payment of Purchase Price:** The Purchase Price shall be paid in full by the Buyer by certified check, bank check or Federal wire transfer to the Seller at Closing and conveyance of the Premises to the Buyer.
- 1.5. **Access to Premises:** The Seller hereby grants permission to the Buyer, its employees, representatives, consultants, and agents authorization to enter the Premises for the purpose of completing due diligence and for all other purposes necessary to carry out the terms of this Agreement. All times and dates for such access shall require the prior approval by the Seller such approval not to be unreasonably withheld.

The Buyer and the Seller shall coordinate all access to the Premises by third parties working on behalf of the Buyer as part of the Buyer's due diligence.

Unless otherwise arranged, the Parties hereby agree that all due diligence activities requiring access to the Premises, such as, but not limited to environmental due diligence and/or anything requiring inspection of building materials, shall not occur until such time as the State has vacated the Premises.

The Buyer shall indemnify, defend, and hold harmless the Seller from and against any and all claims, actions, damages or losses arising out the Buyer's activities pursuant to this paragraph during its inspection and subsequent tasks related thereto which are caused solely by the Buyer's negligence. The Buyer shall require any and all contractors who are retained for the purpose of completing due diligence or for any other purpose necessary to carry out the terms of this Agreement, and who will need to access the Premises, to obtain a certificate of insurance in the amount of \$2 million aggregate, \$1 million per occurrence naming the Seller as an additional insured. The Buyer shall also require any such

contractors to execute the City's standard indemnification form naming both the City and the Seller as indemnified parties. The standard indemnification form shall be as follows, unless written approval of a requested change is granted by both the Buyer and Seller:

"The contractor agrees to indemnify, defend and save harmless the City and State of New Hampshire Department of Employment Security, their officials, officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by the contractor in the performance of this contract. In any case, the foregoing provisions concerning indemnification shall not be construed to indemnify the City or State of New Hampshire Department of Employment Security for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City, State of New Hampshire Department of Employment Security, or their employees. This indemnification shall survive the expiration or early termination of this contract."

- 1.6. **Closing:** In recognition of the State's schedule to vacate the Premises and relocate to the Tobey Building, flexibility for the exact date of closing is required. Therefore, the Parties agree that a Closing shall occur no sooner than July 1, 2014 and no later than September 19, 2014, unless otherwise mutually agreed by the Parties.

The Parties expressly agree that the Closing date is contingent upon the State vacating the Premises by May 31, 2014 in order to allow the City sufficient time to undertake environmental due diligence, including laboratory turnaround time for the analysis soil, water, and hazardous building materials samples taken in conjunction with said due diligence. In the event the State is delayed in vacating the Premises, the Parties shall work to mutually extend the Closing date to allow the City sufficient time to complete its due diligence activities but in no event shall such extension be longer than the time period the City would have otherwise had to complete due diligence had the Seller not experienced delays in vacating the Premises, unless otherwise mutually agreed by the Parties.

The Parties agree that a Closing shall not occur until all of the Buyer's Contingencies, as set forth in Article 2, have been achieved or satisfied.

- 1.7. **Title and Deed Restrictions:** In addition to the terms and conditions set forth within this Agreement, the conveyance of the Premises by the Seller to the Buyer shall be of good and marketable title thereto by Warranty Deed and insurable for the benefit of the City by a title insurer licensed in the State of New Hampshire and acceptable to the Buyer pursuant to an ALTA standard form title insurance policy in an amount equal to the Purchase Price, insuring that the Buyer holds marketable fee simple title to the Premises subject to:
  - a) Easements, liens restrictions and/or encumbrances of record or any other matters of record in existence at the time of the Closing accepted and approved by the City; and
  - b) Provisions of building and zoning laws in effect at the time of the Closing.
- 1.8. **Seller's Affidavits and Certificates:** If requested to do so by the Buyer, the Seller, at the Closing, shall deliver such affidavits (in customary form) as may be required by the Buyer or Buyer's title insurance company with respect to: (1) parties in possession of the Premises, (2) rights of third parties and title claims in or to the Premises, and (3) mechanic's and materialmen's liens affecting the Premises.
- 1.9. **Deed Preparation; Recording Fees:** The Seller shall convey the Premises by Warranty Deed. The Seller shall prepare all deeds (including easement deeds, if any) at its expense. The Seller will deliver the draft deeds to the Buyer no later than 30 days after the execution of this Agreement as possible. The Buyer shall review the deeds within ten (10) business days of receipt from the Seller and provide comments to the Seller. The Seller shall address the comments and respond in a timely manner and revise the Warranty Deed or Easement Deeds no later than five (5) business days prior to the Closing.
- 1.10. **Transfer Taxes and Recording Fees:** In accordance with New Hampshire State Law RSA 78-B:2, both the Seller and Buyer are exempt from the Real Estate Transfer Tax.
- 1.11. **Discharge of Liens:** The Seller shall, at its expense, pay or discharge all liens, mechanics liens, encumbrances, and attachments, if any, which may exist on the Premises through the date of Closing or filed after recording of the deed transferring the Premises to the City due to an action by the Seller prior to recording of the transfer deed. To enable the Seller to make conveyance as herein provided, the Seller may, at the time of delivery of the deed, use the Purchase Price or any portion thereof to

clear the title or any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed. The Seller shall also be entitled to use the proceeds to pay off any mortgagee, pursuant to standard customary practices for real estate transactions and conveyances, and receive therefrom a discharge(s) to be recorded in the ordinary course of business.

- 1.12. **Prorating of Property Taxes and Utility Costs:** At the time of recording of the Deed, the Seller shall be required to pay all property taxes and utilities (as applicable) for the Premises through the date of Closing.
- 1.13. **Delivery of Premises, Removal of Tenants, Property to be Retained by Seller:** The Seller shall deliver possession of the Premises to the Buyer in substantially the same condition as the date of execution of this Agreement free and clear of all tenants and third parties, and personal property belonging to the Seller or tenants. Further, the Parties agree that the emergency generator located on the Premises shall not be considered a fixture to be conveyed with the Premises but rather shall be removed by the Seller prior to the date of the closing. The Seller shall assume all responsibility and costs associated therewith, if any.
- 1.14. **Title Insurance:** If applicable, the Seller shall execute all customary documents required by the Buyer's Title Insurance Company.
- 1.15. **Real Estate Broker's Fees & Commissions:** Each Party hereby affirms that no real estate broker or realtor represents either Party in this transaction. The Parties agree that the acting Party shall be responsible for any broker's commission or compensation related to this transaction due to action by that Party.
- 1.16. **Environmental Contamination, Due Diligence, and Indemnification:**

- 1.16.1. **Environmental Reports Commissioned by the Seller:**  
The Seller shall provide the Buyer with copies of any and all environmental studies, assessments, or reports which it has commissioned for the Premises, or may otherwise have in its possession.

The Parties also acknowledge that the Seller has provided the Buyer with a copy of environmental site assessments and other related reports and data previously completed by the Seller for the Premises:

- a. Environmental Site Assessment New Hampshire  
Department of Employment Security 32 South Main

Street, Concord NH prepared by Aires Engineering  
April 1990.

The Buyer acknowledges and agrees that it may not rely upon the representations, certifications, and statements contained therein without the express written consent of the parties which authored such reports or generated said data. Further, the Buyer acknowledges that the provision of such materials by the Seller does not constitute any representation or warranty by the Seller related to environmental conditions or potential presence of hazardous materials at the Premises.

- 1.16.2. **Due Diligence:** The Buyer shall have the right to conduct such studies and investigations it deems necessary with respect to the environmental condition of the Premises and any environmental contamination or hazardous material related thereto. Said studies and investigations shall be completed prior to date of Closing.

The Seller shall provide the Buyer (or its agents, employees, consultants, contractors, and representatives) reasonable access to the Premises after the Seller has vacated the Premises for the purpose of carrying out any environmental investigations or other due diligence required by the Buyer. In order to complete such examinations or investigations, the Buyer may undertake soil borings, test pits, or installation of groundwater monitoring wells. The Buyer may also perform a "hazardous building materials" survey of the Premises to identify lead paint, asbestos, PCB, or mercury containing materials. The Buyer shall perform these tasks at its own risk and at its own expense. The Buyer accepts full responsibility for the use of the Premises during its inspections and due diligence.

The Buyer hereby discloses that it may undertake said due diligence through grant or technical assistance programs provided by the U.S. Environmental Protection Agency. The Seller shall execute all documents required by the Buyer and the USEPA related to completion of said due diligence, including a right of entry form as required by the US EPA.

- 1.16.3. **Results of Environmental Due Diligence:** If based upon examination of data and reports provided by the Seller or upon the results of the Buyer's own environmental tests, examinations, investigations, or studies, the Buyer

determines that the Premises are not acceptable because of the presence of environmental contamination, hazardous materials, or other buried materials at the Premises, and the estimated cost to the Buyer to abate, remediate, remove, monitor, or otherwise manage said hazardous materials / substances in-situ is greater than \$37,500 as determined by the Buyer's Environmental Consultants, the Buyer shall have the following options, as follows:

- 1.16.3.1. Negotiate with the Seller in order to reduce the purchase price of the Premises as appropriate to reflect the environmental condition of the property; or,
- 1.16.3.2. Terminate this Agreement in which case this Agreement shall be null and void, and of no further force or effect; or,
- 1.16.3.3. Accept the Premises in its "as is condition" and proceed to Closing, subject to other contingencies as set forth within this Agreement.

1.16.4. **Completion of Transaction and Environmental Conditions:** If the Buyer proceeds to Closing either relying upon environmental due diligence, tests, studies, or investigations completed by the Buyer or previously by the Seller, the Buyer shall accept full responsibility for the Premises in its "as is" environmental condition with respect to the potential presence of hazardous waste or other buried materials regardless whether such waste or other materials were identified by said due diligence, tests, studies, or investigations.

1.17. **Seller's Disclosures:** The Seller makes no warranties or representations regarding environmental contamination or sub-surface conditions at the Premises.

1.18. **Casualty and Condemnation:** In the event that the Premises, prior to Closing, are damaged by fire, flood, collapse, or other casualty, the Buyer at any time after the occurrence of such damage or casualty may elect to terminate this Agreement by written notice, in which event all other obligations of the Parties hereunder shall cease and this Agreement shall thereupon be void and of no further force or effect. In the event of casualty, the Buyer and the Seller agree to hold each other harmless from

any claim for any costs, damages, liabilities, or financial losses it may incur.

1.19. **Relocation**: The Seller hereby waives any and all relocation assistance which it might be eligible for under RSA 162-K:6 and 162-K:15 due to City's use of the Sears Block Tax Increment Financing District to acquire the Premises.

1.20. **Provisions of RSA 4:40**: The Parties hereby agree to the following provisions concerning divestment of surplus State owned real estate:

1.20.1. In addition to the purchase price discussed herein the Buyer shall also pay to the Seller at the time of closing an administrative fee in the amount of One Thousand One Hundred Dollars (\$1,100.00) pursuant to RSA 4:40.

1.21. **Property Retained by the Seller**: The Seller shall retain the Kohler 350120/208 volt emergency electric generator located at the Premises. The Seller shall have the unit disconnected and removed from the Premises at its sole expense prior to the Closing. The Seller shall also have any repairs to the electric panels and wiring completed after removal of the unit so as electricity can be safely used at the Premises. Further, damage to any other portion of the property from removal of the generator shall be repaired to the Buyer's satisfaction.

2. **BUYER'S CONTINGENCIES**: The City's obligation to Close on acquisition of the Premises shall be subject to the following contingencies, the failure to satisfy any one of which shall give the City any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the City shall have no further obligation to the Seller.

2.1. **Title**: Upon execution of this Agreement by the Parties, the Buyer shall perform a title examination of the Premises, and must be reasonably satisfied that title to the Premises is good, marketable and insurable. In the event that the title to the Premises is not good, marketable and insurable, the Seller shall be provided a reasonable period of time, no less than thirty (30) days, within which to resolve such title defects. In the event that such defects cannot be resolved to the Buyer's reasonable satisfaction, the Buyer, at its sole option, may proceed with any of the following options:

2.1.1. Afford the Seller any additional amount of time which the Buyer solely deems reasonable to cure said Title defects; or,

2.1.2. Terminate this Agreement following which this Agreement shall be null and void, and of no further force or effect; or,

- 2.1.3. The Parties may renegotiate the Purchase Price to appropriately account for the condition of the Premises' Title and then proceed to Closing.
- 2.2. **Environmental Due Diligence:** This Agreement is specifically contingent upon the City completing environmental due diligence with results acceptable to the City in its sole discretion, in accordance with Section 1.16 of this Agreement. In the event that such due diligence yields results which indicate the Premises contains hazardous materials which would cost \$37,500 or more to remove, abate, remediate, or monitor on site, the Buyer shall have the ability to pursue any of the options set forth within Section 1.16.3.
- 2.3. **Enrollment of Premises in NH Brownfields Program:** This Agreement is specifically contingent upon the City successfully enrolling the Premises in the New Hampshire Brownfields Program (a.k.a. "Covenant Not to Sue Program") as administered by the NH Department of Environmental Services. This cannot be accomplished until the City has completed its environmental due diligence in accordance with this Agreement. Because the City plans to file its application as a "prospective purchaser" of the Premises, the Seller shall execute any documents necessary to enroll the Premises into this program. The City shall complete the application process at its sole expense.
- 2.4. **Amendment of Sears Block Tax Increment Finance ("SBTIF") District and Funding Appropriation by City Council:** This Agreement is specifically contingent upon the City Council conducting public hearings and obtain the necessary votes for the purpose of:
- 2.4.1. Amending and re-adopting the Sears Block Tax Increment Finance District Development Program and Finance Plan in accordance with RSA 162-K in order to provide funding to support acquisition of the Premises and related expenses thereto;
- 2.4.2. Appropriation of funds from the SBTIF District by the City Council to finance purchase of the Premises and all related due diligence.

In the event the City Council does not conduct the necessary public hearings or obtain the votes required, the Seller may elect to terminate this Agreement following which this Agreement shall be null and void, and of no further force or effect.

### 3. **REPRESENTATIONS AND WARRANTIES**

3.1. **Representations and Warranties of the Buyer.** The City hereby represents and warrants that:

3.1.1. The execution and delivery of this Agreement and the performance of the City's obligations hereunder have been duly authorized by such municipal action as necessary, and this Agreement constitutes the legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms subject only to the conditions set out in this Agreement.

3.1.2. Subject to the conditions set out in this Agreement, neither the execution or delivery by the City of this Agreement, the performance by the City of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the City of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the City, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default there under.

3.1.3. Except as set forth in this Agreement, no approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the City, except such as have been duly obtained or made or disclosed in this Agreement.

3.1.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the City of its obligations hereunder or the performance by the City of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

3.2. **Representations and Warranties of the Seller.** The Seller hereby represents and warrants to the best of its knowledge and belief that:

3.2.1. The Seller has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all

necessary action has been taken to authorize the execution, delivery and performance by it of this Agreement subject to the Seller seeking and obtaining final approval by Governor Hassan and the Executive Council pursuant to RSA 4:40. This Agreement will, upon execution and delivery thereof by the Seller and upon approval by Governor Hassan and the Executive Council, constitute valid, legal and binding obligations of the Seller enforceable against the Seller in accordance with the respective terms thereof.

- 3.2.2. Neither the execution or delivery by the Seller of this Agreement, the performance by the Seller of their obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Seller of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Seller, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Seller are a party or by which the Seller or any of its properties or assets are bound, or constitutes a default there under.
- 3.2.3. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Seller, except such as have been duly obtained or made.
- 3.2.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Seller, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Seller of their obligations hereunder or the performance by the Seller of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Seller in connection with the transactions contemplated hereby.

#### **4. GENERAL PROVISIONS**

- 4.1. **Cooperation**: The Buyer and the Seller agree to cooperate with each other in order to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further documents as may reasonably be requested by the Seller, the Buyer, or their representatives, agents, and consultants.

- 4.2. **Entire Agreement; Amendments.** This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.
- 4.3. **Binding Effect; Successors and Assignors.** The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees.
- 4.4. **Headings.** The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit or expand the express provisions of this Agreement.
- 4.5. **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 4.6. **Governing Law.** This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.
- 4.7. **Enforceability.** Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
- 4.8. **Consent to Jurisdiction and Venue.** The Buyer and Seller submits to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court. Both Parties hereby waive their right to a jury trial.
- 4.9. **Independent Parties.** The Buyer and Seller are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.

- 4.10. **Survival of Agreement.** The agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement.
- 4.11. **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 4.12. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government, other than the Parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 4.13. **Preservation of Rights.** Nothing herein or in any Related Agreement shall limit or be construed to limit in any way rights or remedies the City may have for the collection of real property taxes under law, unless expressly set forth herein.
- 4.14. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this Agreement
- 4.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.
- 4.16. **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any City or other governmental Board, Committee, Commission, or Department, or excuse the parties from the requirement to apply for and receive all necessary permits and approvals from all applicable City or other governmental Boards, Committees, Commissions, or Departments, including but not limited to the requirement that the agreement be approved by Governor Hassan and the Executive Council pursuant to RSA 4:40 prior to the Seller being required and/or authorized to convey the property to the City.

- 4.17. **Warranties and Representations:** The Buyer and Seller each acknowledge that they have not been influenced to enter into this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.
- 4.18. **Saving Clause:** In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any Court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not effected thereby shall remain in full force and effect.

#### **LIST OF EXHIBITS**

Exhibit 1      Tax Map of 32-34 South Main Street and Surrounding Properties  
(undated)

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Executed as a sealed instrument this 11<sup>th</sup> day of June 2014, 2014.

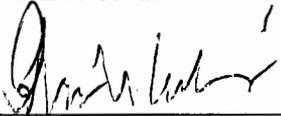
**BUYER**

**CITY OF CONCORD**

By:  Date: 6-11-14  
Thomas J. Aspell, Jr., City Manager  
Duly Authorized

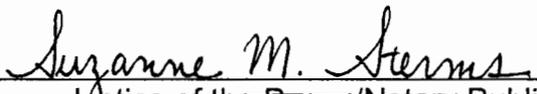
**SELLER**

**STATE OF NEW HAMPSHIRE**

By:  Date: 6/19/14  
Printed: George N Lapadula  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

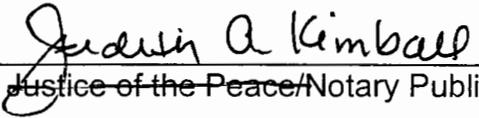
In Concord, on the 11th day of June, 2014, before me, personally appeared **THOMAS J. ASPELL, JR.**, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

  
~~Justice of the Peace~~/Notary Public

SUZANNE M. STEVENS, Notary Public  
My Commission Expires February 22, 2017

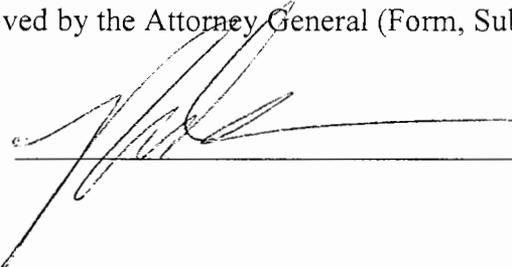
STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

In Concord, NH, on the 19<sup>th</sup> day of June, 2014, before me, personally appeared George N. Copadis, Commissioner of the New Hampshire Department of Employment Security, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

  
Justice of the Peace/Notary Public

JUDITH A. KIMBALL  
Notary Public - State of New Hampshire  
My Commission Expires September 14, 2016

Approved by the Attorney General (Form, Substance and Execution)

By:  \_\_\_\_\_ Dated: 4/10/14 \_\_\_\_\_

Approved by the Governor and Executive Council

By: \_\_\_\_\_ Dated: \_\_\_\_\_



New Hampshire  
Employment  
Security

www.nhes.nh.gov

"We're working to keep New Hampshire working"

ADMINISTRATIVE OFFICE

32 SOUTH MAIN STREET  
CONCORD, NH 03301-4857



GEORGE N. COPADIS, COMMISSIONER

October 9, 2012

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

#30A  
10/17/12

Requested Action

Pursuant to RSA 4:40, the New Hampshire Department of Employment Security (NHES) requests approval and consent of the Governor and Council to sell the NHES properties located at:

1. 32-34 South Main Street, Concord, NH for current market value, assess an administrative fee of \$1,100, and allow negotiations within the Committee's current policy guidelines. According to an appraisal of the property dated July 21, 2011 the property appraised for \$1,750,000.
2. 10 West Street, Concord, NH for current market value, assess an administrative fee of \$1,100, and allow negotiations within the Committee's current policy guidelines. According to an appraisal of the property dated July 21, 2011 the property appraised for \$1,700,000.
3. 298 Hanover Street, Manchester, NH for current market value, assess an administrative fee of \$1,100, and allow negotiations within the Committee's current policy guidelines. According to an appraisal of the property dated May 27, 2011 the property appraised for \$700,000.
4. 300 Hanover Street, Manchester, NH for current market value, assess an administrative fee of \$1,100, and allow negotiations within the Committee's current policy guidelines. According to an appraisal of the property dated May 27, 2011 the property appraised for \$1,500,000.

NHES employees currently housed in these buildings will be relocated to the renovated Tobey Building located in the Hugh Gallen State Office Park at 45 Fruit Street, Concord, NH. The Manchester Local Office, currently located at 300 Hanover Street, will be relocated to another facility in Manchester which has yet to be identified.

Explanation

NHES received the recommendation of the Council on Resources and Economic Development and then the approval from the Long Range Capital Planning and Utilization Committee on September 18, 2012 to sell the properties listed above (approval letters attached) as part of our Capital Budget project.

Respectfully submitted,

George N. Copadis  
Commissioner

Attachments  
GNC/jdr

# New Hampshire Council on Resources and Development

Office of Energy and Planning  
4 Chenell Drive, Concord, NH 03301  
Voice: 603-271-2155 | Fax: 603-271-2615



TDD Access: Relay NH  
1-800-735-2964

## MEMORANDUM

**TO:** Tara Reardon, Commissioner  
NH Department of Employment Security

**FROM:** Tracey Boisvert <sup>TSB</sup>  
NH Office of Energy and Planning

**DATE:** November 18, 2011

**SUBJECT:** Surplus Land Review, Concord, SLR 11-010

Effective November 10, 2011, the Council on Resources and Development (CORD) took action on the following issue brought by the NH Department of Employment Security:

**Request to sell property located at 32-34 South Main Street, Concord, consisting of two parcels of land totaling 0.74 +/- acres and a 22,780 square foot building.**

CORD members voted to recommend approval of SLR 11-010.

cc: John Carpenter, NH Department of Employment Security  
Joanne O. Morin, Director, NH Office of Energy and Planning  
Representative John Graham, Chair, Long Range Capital Planning and Utilization Comm.



LRCP 12-042

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

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

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

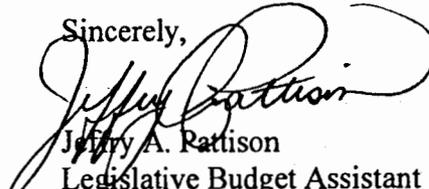
September 19, 2012

George N. Copadis, Interim Commissioner  
Department of Employment Security  
32 South Main Street  
Concord, New Hampshire 03301-4857

Dear Interim Commissioner Copadis,

The Long Range Capital Planning and Utilization Committee, pursuant to the provisions of RSA 4:40, on September 18, 2012, **amended** and approved the request from the Department of Employment Security, to sell the NHES properties located at: 32-24 South Main Street and 10 West Street, Concord, and 298 Hanover Street and 300 Hanover Street, Manchester, for the current market value, allowing negotiations within the Committee's current policy guidelines, and assess an \$1,100 Administrative Fee per property, subject to the conditions as specified in the request dated September 18, 2012, and that **the right of first refusal be treated in the customary manner.**

Sincerely,

  
Jeffrey A. Pattison  
Legislative Budget Assistant

JAP/pe  
Attachment

**RECEIVED**  
SEP 20 2012  
Comptroller



## NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

State of New Hampshire, Department of Cultural Resources  
19 Pillsbury Street, Concord, NH 03301-3570  
TDD Access: Relay NH 1-800-735-2964  
[www.nh.gov/nhdhr](http://www.nh.gov/nhdhr)

603-271-3483  
603-271-3558  
FAX 603-271-3433  
[preservation@dcr.nh.gov](mailto:preservation@dcr.nh.gov)

May 30, 2012

Richard Lavers, Counsel  
New Hampshire Employment Security  
32 South Main St.  
Concord, NH 03301-4857

Re: 32-34 South Main Street, Concord, NH; RPR #3239  
CORD Review CONCORD – SLR 11-010

Dear Mr. Lavers:

The New Hampshire Division of Historical Resources (DHR) has been consulting with New Hampshire Employment Security under New Hampshire RSA 227-C:9, Directive for Cooperation in the Protection of Historic Resources, on the disposition of 32-34 South Main Street in Concord, NH. Per requirements under this statute, Van McLeod, Department of Cultural Resources' Commissioner has determined that it is not in the best interest of the State to either condition the sale or transfer of the property upon covenants, deed restrictions, or other contractual arrangements or to reserve the property from sale or transfer. Instead, our agencies have worked together to develop a scope of work that will successfully document the important historical and architectural associations of this mid-20<sup>th</sup> century building. This will be achieved through the development of a framework historic context on Mid-Twentieth Century Modern architecture in New Hampshire, as well as a workshop or open house to present the information to the public. As has been noted in previous correspondence, this option allows for the most flexible outcome for future development at the site while capturing important historic information for the benefit of the public.

We understand that New Hampshire Employment Security is in the process of contracting with a qualified Architectural Historian to complete the study. We look forward to providing any materials that would assist in the development of the context (i.e. published articles and periodicals of the time, forms for previously inventoried properties, etc.). In order to promote the workshop/open-house we will place an announcement in our e-newsletter.

This letter serves to confirm that New Hampshire Employment Security has continued to meet expectations for a successful conclusion of review under RSA 227-C:9. It is anticipated that your contractor will be approved within the next two months and the project completed by December 31, 2012. With the completion of this contract, there will be no additional studies required or encumbrances on the property at 32-24 South Main Street, Concord under RSA 227-C:9.

Thank you for your willingness to work through state requirements for the protection of historic resources in New Hampshire.

Sincerely,

Nadine Peterson  
Preservation Planner



**RECEIVED**

SEP 20 2012



# CITY OF CONCORD

## NEW HAMPSHIRE

City Hall - 41 Green Street - Concord, NH 03301 - tel. (603) 225-8570 - fax (603) 225-8558

October 2, 2012

**RECEIVED**  
OCT 04 2012  
Commissioner's Office

The Honorable Governor John Lynch  
Office of the Governor  
State House  
107 North Main Street  
Concord, NH 03301

**RE: City's Right of First Refusal RSA 4:40  
Surplus NH Employment Security Property; SLR 11-010  
32-34 South Main Street, Concord**

Honorable Governor Lynch:

I am writing concerning the Employment Security property located at 32-34 South Main Street, Concord. As you know, given this property's prominent location in the Concord's "South Main Street Redevelopment Area", the City has a very strong interest in the future of this important site. The City previously articulated this interest in our letter dated October 24, 2011, which was sent to the NH Office of State Planning.

On September 18, 2012, the State's Long Range Planning Committee authorized the divestment of 32-34 South Main Street. As part of its action, the Committee stipulated that Concord should advise the State on whether the City intends to exercise its right of first refusal to acquire the property, per RSA 4:40, no later than thirty days from the date of the committee's action.

Per the Long Range Planning Committee's action, I am sending this letter to confirm that the City plans to exercise its rights to acquire this property per RSA 4:40.

The City has been provided a copy of a real estate appraisal prepared by Capital Appraisal Associates dated September 16, 2011. This appraisal determined the "fair market value" of the property is \$1.75 million. The City has also been advised that this is the State's asking price for the property. It is important to note that the appraisal did not take into account potential environmental contamination at the property or potential title issues which could impact value once such due diligence is completed.

As outlined in the City's letter dated October 24, 2011, the City plans to issue a Request for Proposals ("RFP") in order to identify and select a private developer with which the City plans to enter into a "public / private partnership" to redevelop the property. This "RFP" is nearly complete and, subject to State review and approval, the City anticipates it will be released in November.

Because the City will partner with a private developer on redevelopment of this property, the City respectfully requests that a closing date for transfer of the property not be set until the following tasks are accomplished:

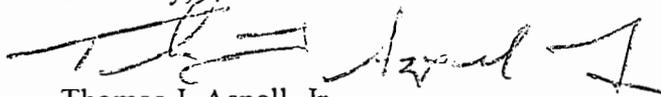
- 1) The City completes its RFP process;
- 2) The City enters into a "public private partnership" agreement with the developer of its choice; and,
- 3) The City's selected developer completes its due diligence (including completion of the customary development permitting process) and secures financing for its project.

As you know, the City has taken a very aggressive role in the redevelopment of South Main Street in recent years. Since 2005, the City has entered into four public / private partnerships which leveraged the development of 312,800 SF of new private development between Pleasant Street Extension and Theatre Street, as well as a 177,000 SF / 516 space municipal parking garage. The City's participation in these partnerships includes a variety of incentives, such as: zoning amendments, long-term discounted parking deals for tenants for these projects, local tax credits (RSA 79-E), Community Development Block Grants, use of City revolving loan programs for gap financing, waivers of municipal impact fees, as well as construction of a new 516 space municipal parking deck, pocket parks, and infrastructure improvements.

The City firmly anticipates that a public / private partnership employing similar incentives as to those noted above will be required to encourage redevelopment of 32-34 South Main Street in such a way that will further Concord's economic development and land use goals for Downtown. Because of City's role in such partnerships, allowing the City to take the lead on finding the buyer for the property through a RFP process is appropriate. Without the City's involvement, we are concerned about the viability of redeveloping this important property in a way that will maximize its highest and best use.

In summary, thank you for your consideration of this letter. The City and the State have enjoyed a unique and special relationship whereby we have been able to work together in order to further our mutual interests. Insuring that the Employment Security property ends up in the hands of a qualified developer who shares the City's vision for downtown redevelopment and understands the importance of making this property a catalyst for new economic development is in our mutual best interests. Together, the City and State can guarantee that this property will become a vibrant, signature development that expands our shared tax base and provides new employment opportunities for those in central New Hampshire. My staff is eager to continue working with the Employment Security and Administrative Services Departments on this important undertaking. Please contact me should you wish to discuss this matter.

Sincerely,



Thomas J. Aspell, Jr.  
City Manager

TJA/mrw

**RECEIVED**

OCT 04 2012

Commissioner's Office

CC:

Mayor James Bouley and City Council  
Daniel St. Hilaire, Executive Councilor, District 2  
George Copadis, Interim Commissioner, NH Employment Security  
Richard Lavers, NH Employment Security  
Linda M. Hodgdon, Commissioner, NH Administrative Services  
Michael Connor, NH Administrative Services  
Rep. John Graham, Chair, Long Range Planning Committee  
Sen. Sylvia Larsen, District 15  
Rep. June M Frazer  
Rep. Mary Stuart Gile  
Rep. Frances D. Potter  
Rep. Stephen J. Shurtleff  
Rep. Lynne F. Blankenbeker  
Rep. Candace C. W. Bouchard  
Rep. James R. MacKay  
Rep. Dick W. Patten  
Rep. Robert W. Williams  
Rep. Helen M. Deloge  
Rep. Chip L. Rice  
Rep. Mary Jane Wallner  
Rep. Rick H. Watrous  
C. Baia, Deputy City Manager – Development  
M. Walsh, City of Concord

**RECEIVED**  
OCT 04 2012  
Commissioner's Office