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# State of New Hampshire

DEPARTMENT OF SAFETY  
OFFICE OF THE COMMISSIONER  
33 HAZEN DR. CONCORD, NH 03305  
603/271-2791

JOHN J. BARTHELMES  
COMMISSIONER

August 11, 2016

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

*Retroactive*

### Requested Action

Authorize the Department of Safety (DOS), Division of State Police, to **retroactively** exercise a one-year, inter-agency rental agreement with the Department of Transportation (DOT) in the amount of \$50,320.00 to provide vehicle storage space located in the Stickney Avenue Facility (SAF), Concord, NH. This is a fixed amount for SFY 2017. The original agreement between DOT and DOS was approved by Governor and Council on February 7, 2007, Item #119, with the last renewal of said agreement approved by Governor and Council on June 24, 2015, Item #164. Effective upon Governor and Council approval from July 1, 2016 to June 30, 2017. Funding: 100% Federal Funds.

Funds are available in the following account in SFY 2017.

02-23-234010-40170000	Dept. of Safety – Div. of State Police – Federal Forfeiture Program	<u>SFY 2017</u>
049-500246	Transfer to Other State Agency - Rent of State Owned Property	\$50,320.00

Funds are to be deposited into the following account:

04-96-96-962015-30600000	Dept. of Transportation – Div. of Project Development – Stickney Avenue Facility
009-404003	Stickney Avenue Facility Rent

### Explanation

This request is **retroactive** due to the position of State Police procurement technician having remained vacant for several months; however, this position has now been filled. The Division of State Police currently utilizes this facility to provide adequate cover and security for two Crime scene vehicles, a large scale advanced response vehicle (EOD), total containment vessel (bomb trailer), mobile thermal destruction unit (burn trailer), bomb suits, ancillary equipment, and a spare EOD cruiser. The Stickney Avenue Facility provides DOS weather-tight, heated, and secure storage for all its various vehicles at a convenient and accessible location in Concord.

The DOT property on Stickney Avenue in Concord, commonly known as the Highway Garage, became vacant in July 2006 when the Bureau of Materials and Research relocated to its new facility on Hazen Drive. Because of the uncertainty associated with the future impacts on the property resulting from the final design of the Bow-Concord I-93 reconstruction project, DOT is reluctant to sell the property until the public hearing phase of the project is completed when the right-of-way impacts of the project will be more clearly defined. Because this phase is not anticipated to be complete for several more years, DOT desires to make the property available, after addressing DOT's needs, for use by other state agencies.

Respectfully submitted,

*J. Barthelmes*  
John J. Barthelmes, Commissioner  
Department of Safety

*Victoria F. Sheehan*  
Victoria F. Sheehan, Commissioner  
Department of Transportation

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

**STATE OF NEW HAMPSHIRE**  
**Department of Transportation**

**AND**

**STATE OF NEW HAMPSHIRE**  
**Department of Safety**

THIS AGREEMENT, made between the **State of New Hampshire, Department of Transportation**, hereinafter called the “**NHDOT**”, and **The State of New Hampshire Department of Safety** hereinafter called the “**NHDOS**”.

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 NHDOS 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 NHDOS, 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 NHDOS.

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 NHDOS of each and every term and condition herein set forth, the NHDOT hereby grants the right of use and occupancy to the NHDOS the premises located at:

**11 Stickney Avenue, Concord, New Hampshire:** The premise consists of approximately 8,000 square feet of section D located in the southwest portion of the Main Building, see “Attachment A” incorporated herein, for the floor plan of Section D. The NHDOS 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 1<sup>st</sup> day of July 2016 and shall end on the 30<sup>th</sup> day of June 2017, unless terminated sooner in accordance with the provision of this Agreement.

2.02 The NHDOS 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 the 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 NHDOS shall pay the NHDOT an annual payment of \$50,320.00 for FY 2016; this reflects a rate of \$6.29 per square foot.

3.02 The NHDOS shall notify the NHDOT no less than six (6) months prior to the expiration of the term of NHDOS's interest to extend the Agreement for an additional 12 months, The NHDOT shall notify NHDOS within 30 days of receipt of the NHDOS'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 NHDOS is not in default of any of the covenants and agreements of this Agreement, the NHDOS'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.

4.02 The NHDOS shall not use the premises in any manner that will disturb a neighbor's peaceful enjoyment of other property.

5. USE OF PREMISES

5.01 The NHDOS shall use the premises only for the purpose of storing vehicles and equipment; 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 NHDOS for the purpose of carrying on any other business, profession or trade of any kind without the prior written approval of the NHDOT. The NHDOS 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 NHDOS 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 and Law Enforcement Animals accompanied by an owner or trainer shall be allowed on the premises. The NHDOS shall be solely responsible for cleaning all waste on the premises created by any Service and Law Enforcement Animals.**

5.02 No employee, visitor or invitee of The NHDOS 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 NHDOS 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 NHDOS 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 NHDOS shall at his/her own expense maintain the premises in a clean, sanitary and safe manner

7.02 The NHDOS shall be responsible for any damage caused during this Agreement. The NHDOS 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 maintenance activities.

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 NHDOS 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 NHDOS 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, or improvements, constructed, or placed on the premises by the NHDOS, 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 NHDOS, be the property of the NHDOT and remain on the demised premises at the expiration or sooner termination this Agreement. The NHDOS 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 NHDOS, workmen, contractors, or others, or when the NHDOS has abandoned or surrendered the premises, or whenever necessary to determine the condition of the premises. Whenever practical the NHDOT shall provide the NHDOS 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 NHDOS 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 at its own expense, all existing utilities to the premises.

13. DANGEROUS MATERIALS

13.01 The NHDOS 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.

14. HOLDOVER BY LESSEE

14.01 No holdover by the NHDOS will be permitted. The NHDOT and NHDOS must execute a new Agreement upon expiration of the existing Agreement in order for the NHDOS 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 NHDOS 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 NHDOS ten (10) days notice in writing. Failure of the NHDOS to comply with the notice shall automatically give the NHDOT the right to terminate this Agreement, evict the NHDOS and take full and complete possession of the premises.

16. TERMINATION OF LEASE FOR CAUSE

16.01 In the event that the NHDOS 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 NHDOS shall default in the observance or performance of any other of the NHDOS covenants, agreements, or obligations hereunder and such default shall not be corrected within ten (10) days of written notice by the NHDOT to the NHDOS 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 NHDOS 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 NHDOS 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 NHDOS for the pro-rata proportion of the remaining number of days for which payment has been paid in advance but during which the NHDOS no longer occupy the premises.

17.02 The NHDOS 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 NHDOS 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 NHDOS 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.

## 18. SURRENDER OF THE PREMISES

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

## 19. DISCRIMINATION PROHIBITED

19.01 The NHDOS 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 NHDOS 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.

19.02 The NHDOS 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 NHDOS 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.

19.03 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.

20. MISCELLANEOUS

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

20.02 Locks and Keys. The NHDOS shall not change the locks or have additional keys made without the written consent of the NHDOT.

20.03 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.

20.04 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.

20.05 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 NHDOS.

20.06 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.

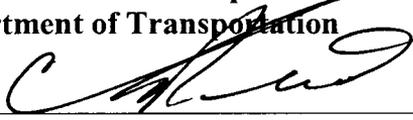
20.07 Unenforceable Terms. If any terms of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any application of such term shall not be affected thereby.

20.08 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.

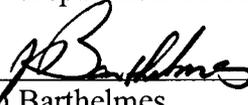
**The State of New Hampshire  
Department of Transportation**

Date: 8/24/16

By:   
Charles R Schmidt P.E.  
Administrator, Bureau of Right-of-Way

**THE STATE OF NEW HAMPSHIRE  
Department of Safety**

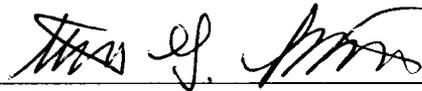
Date: 8/22/16

By:   
John Barthelmes  
Commissioner

**THE STATE OF NEW HAMPSHIRE  
Department of Justice**

As to form and execution:

Date: 8/24/16

By:   
Assistant Attorney General