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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

Lori A. Shblinette
Commissioner

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January 28, 2021

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Public Health Services, to enter into a memorandum of understanding with the New Hampshire Department of Agriculture, Markets and Food (VC#177876), Concord, NH in the amount of \$70,000 to obtain human and animal food products for testing for contamination or adulteration at the New Hampshire Public Health Laboratories, with the option to renew for up to one (1) additional year, effective upon Governor and Council approval through June 30, 2025. 100% Federal Funds.

Funds are available in the following account for State Fiscal Year 2021, and are anticipated to be available in State Fiscal Years 2022, 2023, 2024, and 2025, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

05-95-090-903010-8276-HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN, DIVISION OF PUBLIC HEALTH, BUREAU OF LABORATORY SERVICES, FDA FERN

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2021	020-500239	Contracts for Prog Svc	90069024	\$14,000
2022	020-500239	Contracts for Prog Svc	90069024	\$14,000
2023	020-500239	Contracts for Prog Svc	90069024	\$14,000
2024	020-500239	Contracts for Prog Svc	90069024	\$14,000
2025	020-500239	Contracts for Prog Svc	90069024	\$14,000
			Total	\$70,000

EXPLANATION

The purpose of this request is for the NH Department of Agriculture, Markets & Food to obtain approximately 200 samples per contract year of feed fed to fish from the New Hampshire's Fish and Game fish hatcheries and agricultural products and send the samples to the Department to test for contamination or adulteration. The objective is to prevent contaminant in food products purchased or obtained through sport fishing and hunting by consumers.

New Hampshire's Fish and Game fish hatcheries raise nearly a million trout each year. Fish raised at the various hatcheries are released into NH rivers for public recreation and consumption. Heavy metals enter and concentrate in fish largely through what they eat. The proposed project would provide an opportunity to test the feed contamination. With the collected data, Fish and Game will have more confidence in the quality and safety of the fish they are providing to fishing enthusiast and consumers.

The NH Department of Agriculture, Markets & Food Division of Regulatory Services administers several programs, including the state's animal feed program and agriculture products. A function of the state's animal feed and agricultural program is to conduct inspections and obtain samples for the purpose of detecting unsafe levels of substances. Products containing unsafe levels of substances or labeled in such a way as to be potentially unsafe should be kept from distribution. Such products may not only be harmful to the animals being fed, but may also pose a threat to the human food supply.

The NH Department of Agriculture, Markets & Food Division of Regulatory Services will provide three Agricultural Inspectors that have completed the Association of American Feed Control Officials Inspector Training, which provided inspectors with a comprehensive training of the regulatory, and enforcement functions, of which included sampling, of a feed inspection program. An effective program must reflect current concerns with the safety of animal products. The goal is to inspect livestock feed to ensure the producer receives a quality product to prevent contaminant problems in food products purchased by the consumer.

As referenced in the memorandum of understanding, Part 2 – Term, Section 2.2. Duration of the attached memorandum of understanding, the parties have the option to extend the agreement for up to one (1) additional year, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and Governor and Council approval.

Should the Governor and Council not authorize this request, feed and agricultural products containing unsafe levels of contaminants may be fed to fish raised in New Hampshire hatcheries or be in agricultural products which may directly impact products consumed by New Hampshire residents.

Area served: Statewide

Source of Funds: CFDA #93.103, FAIN # U19FD007070

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



FWL Lori A. Shabinette
Commissioner

MEMORANDUM OF UNDERSTANDING BETWEEN
THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES



AND

NEW HAMPSHIRE DEPARTMENT OF AGRICULTURE, MARKETS, AND FOOD

MOU-2021-DPHS-04-FOODP

1. GENERAL PROVISIONS

- 1.1. This Memorandum of Understanding (MOU) is between the New Hampshire Department of Health and Human Services (DHHS), 129 Pleasant Street, Concord, NH 03301 and the New Hampshire Department of Agriculture, Markets and Food (NHDAMF), 25 Capitol Street, Concord, New Hampshire 03301 (mutually referred to as the "Parties").
- 1.2. New Hampshire Fish and Game fish hatchery raises nearly a million trout each year. Fish raised at the various hatcheries are released into NH rivers for public recreation and consumption. Heavy metals and other contaminants enter and concentrate in fish largely through what they eat.
- 1.3. The NH Department of Agriculture, Markets and Food, Division of Regulatory Services administers the state's animal feed program and agricultural products. A function of this program is to assess and analyze levels of any contaminants in feed fed to fish raised at the state's fish hatcheries and other stock game, or agricultural samples. The NHDAMF conducts inspections and obtains feed and agricultural samples for the purpose of detecting unsafe levels of substances. Products containing unsafe levels of substances or labeled in such a way as to be potentially unsafe are kept from distribution. Such products may not only be harmful to the animals being fed but may also pose a threat to the human food supply.
- 1.4. The purpose of this MOU is to set forth the roles and responsibilities of the DHHS and the NHDAMF regarding testing of feed fed to fish and game animals, and other agricultural products, to prevent contaminant in food products purchased by consumers and used for sport.
- 1.5. In connection with the performance of this MOU, the DHHS and the NHDAMF shall comply with all applicable laws and regulations.

2. TERM

- 2.1. Effective date: This MOU is effective upon approval of the Governor and Executive Council.
- 2.2. Duration: The duration of this MOU is from the Effective Date through June 30, 2025. The parties may extend this MOU for up to one (1) year by mutual written agreement, subject to the continued availability of funds, satisfactory performance of responsibilities, and approval of the Governor and Executive Council.
- 2.3. Modification: The parties may modify this MOU by mutual written agreement at any time, subject to approval of the Governor and Executive Council.
- 2.4. Termination: Either party may unilaterally terminate this MOU upon written notice to the other party, in which case the termination shall be effective thirty (30) days after the date of that notice or at a later date specified in the notice.



3. RESPONSIBILITIES OF THE NEW HAMPSHIRE DEPARTMENT OF AGRICULTURE, MARKETS, AND FOOD

3.1. The NHDAMF agrees to:

3.1.1. Develop annual plans for sampling of feed and agricultural samples, which shall include, but are not limited to:

3.1.1.1. Selection of samples or sites;

3.1.1.2. Preparation and treatment of sample(s) from a substance, material or product to yield the required item for subsequent testing or calibration.

3.1.2. Obtain two hundred (200) official feed fed to fish raised at the state's fish hatcheries and other agricultural samples, as requested, for testing of contamination or adulteration at the DHHS Public Health Laboratories per State Fiscal Year, including samples from manufacturer and retail locations. NH DAMF will provide quarterly detailed sample documentation to the NH DHHS including, but not limited to:

3.1.2.1. Sample number.

3.1.2.2. Product description.

3.1.2.3. Manufacturer/brand of the product.

3.1.2.4. Any codes listed on the product.

3.1.2.5. Product expiration date.

3.1.2.6. Country of origin (if available).

3.1.2.7. Collecting entity name.

3.1.2.8. Date collected.

3.1.3. Obtain supplies to utilize during sample collection.

3.1.4. Deliver samples to DHHS's Public Health Laboratories on a mutually agreed upon schedule.

3.1.5. Ensure sample collectors are trained in sample collection by the Association of American Feed Control Officials (AAFCO).

3.1.6. Participate in conference calls and meetings regarding MOU activities.

3.1.7. Mail, or email, monthly invoices to:

**Financial Manager
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301
PHLAccountsPayable@dhhs.nh.gov**

3.2. The Department of Health and Human Services shall make payment to NHDAMF within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available.



4. RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

4.1. The DHHS agrees to:

- 4.1.1. Complete testing for contamination in feed or agricultural products at the Public Health Laboratories using the guidance of the Food Safety Modernization Act (FSMA) and working collaboratively with the FDA.
- 4.1.2. Remain a member of the Food Emergency Response Network (FERN).
- 4.1.3. Participate in conference calls and meetings regarding MOU activities.
- 4.1.4. Attend conference calls, along with FERN-wide and regional calls to discuss program activities.
- 4.1.5. Send at least one key personnel member including the Chemistry PI/PD to the national laboratory face-to-face meetings.
- 4.1.6. Provide a quarterly summary of the status of the project, which includes but is not limited to:
 - 4.1.6.1. Samples analyzed through proposed plan, or FDA-approved.
 - 4.1.6.2. Status and results of any small-scale, short-term method development.
 - 4.1.6.3. Method validation, and matrix extension projects.
 - 4.1.6.4. Status of publications, research projects, or other special projects funded under this project.
 - 4.1.6.5. Any hiring of new personnel, and training or existing personnel, working on this project.
 - 4.1.6.6. Status on the installation and operational readiness of any analytical equipment utilized for this project.
 - 4.1.6.7. Any regulatory actions taken by FDA or another regulatory agency, or any other significant laboratory findings.
 - 4.1.6.8. Participation, including attendance, in any professional meetings or conferences supporting work related to this project.
 - 4.1.6.9. Details of any completed proficiency testing for work done under this project.
 - 4.1.6.10. Changes in ISO 17025 accreditation status, or quality management system.
 - 4.1.6.11. Contact information for the key personnel working on each analytical track, including name, title, phone number, and email address.

5. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE PARTIES:

- 5.1. The DHHS will provide funding to the NHDAMF upon receipt of approved invoices and subject to NHDAMF's compliance with the terms and conditions of this MOU as follows:

**Memorandum of Understanding Between DHHS and NHDAMF
MOU-2021-DPHS-04-FOODP**



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- 5.1.1 \$14,000 per State Fiscal Year, from the FDA Fern grant CFDA #93.103, for a total price limitation of \$70,000.
- 5.2. Notwithstanding any provision of this agreement to the contrary, all obligations of the DHHS hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. The DHHS shall not be required to transfer funds from any other source in the event that funds become unavailable.
- 5.3. Disputes arising under this Memorandum of Understanding which cannot be resolved between the agencies shall be referred to the New Hampshire Department of Justice for review and resolution.
- 5.4. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
- 5.5. In the event any of the provisions of this Memorandum of Understanding are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Understanding will remain in full force and effect.
- 5.6. This Memorandum of Understanding, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Understanding and understandings between the parties, and supersedes all prior Memoranda of Understanding and understandings relating hereto.
- 5.7. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.

