



STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS
DIVISION OF ADMINISTRATION
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HELEN E. HANKS
COMMISSIONER

JONATHAN K. HANSON
DIRECTOR

February 1, 2022

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

REQUESTED ACTION

Authorize the NH Department of Corrections (NHDOC) to enter into a **retroactive** Memorandum of Understanding (MOU) with the NH Department of Military Affairs and Veterans Services (VC# 177873) in the amount of \$490,000.00 to provide state active-duty support services at the NH State Prison for Men (NHSP-M), Concord, NH effective upon Governor and Executive Council approval for the period of January 10, 2022 through March 11, 2022. **100% Federal Funds**

Funds are anticipated to be available in 02-46-46-460510-26XX0000¹ for Fiscal Year 2022 as follows:

Account	Description	FY 22 Total
085-588512	Inter-Agency transfers out of Federal Funds	\$490,000.00

EXPLANATION

This request is **retroactive** due to the emergent need of assistance from the NH Department of Military Affairs and Veterans Services (NHDMAVS) to augment the NHDOC's staffing matrix due to an increase in COVID positive staff and staff retirements for up to thirty-five (35) NH National Guard (NHNG) members for a period of sixty (60) days.

Activated NHNG members will bridge current NHDOC staff outages associated with COVID-19 infections and staff retirements driven by the operational challenges caused by infection control procedure adjustments for medical isolation and quarantine at the NH State Prison for Men.

The NHDOC will provide training, workspace, and the necessary administrative support to select activated members. Upon completion of NHDOC training and orientation, selected NHNG staff will provide limited duty post assignments to support the NHDOC's mission of providing safe and secure housing to ensure the proper delivery of healthcare and programmatic services to those incarcerated.

¹ All direct program costs will be accounted for using activity 00FRF602PH4603A. Accounting classifications may be subject to technical changes at the discretion of the Department of Administrative Services' Division of Accounting Services.

This MOU will permit the NHDOC to reimburse the NHDMAVS for the costs incurred, including salaries, per diem, health insurance premiums, and mileage while the selected and activated members of NHNG are engaged in NHDOC duties. Such costs will be billed monthly to the NHDOC and shall not exceed \$490,000.00.

Without the use of the activated members to fill current vacancies, the NHDOC would experience difficulty maintaining the post requirements necessary to meet the operational impacts of COVID-19, provide access to education, treatment and other prison-based resources, and oversight in rehabilitative areas of the prison.

Respectfully Submitted,



Helen E. Hanks
Commissioner

**MEMORANDUM OF UNDERSTANDING REGARDING STATE ACTIVE DUTY
SUPPORT TO NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS**

BETWEEN

NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS AND

**NEW HAMPSHIRE DEPARTMENT OF MILITARY AFFAIRS AND VETERANS
SERVICES**

A. Agreement

This Memorandum of Understanding (MOU) between the New Hampshire Department of Military Affairs and Veterans Services (DMAVS) and the New Hampshire Department of Corrections (DOC) is intended to set forth the terms and conditions for delivery of certain services when DMAVS activates members of the New Hampshire National Guard (NHNG) to state service in support of DOC to fill staffing vacancies at the state prison system for men in Concord, NH because of rising Covid-19 cases. These activations occur when ordered by the Governor pursuant to RSA 110-B:6. In support of the anticipated cooperation of the Parties in the oversight, performance of, and payment for these services, the Parties agree as follows:

B. Authority for Activation

WHEREAS RSA 110-B:6 states in part, "The governor shall have power, in case of invasion, disaster, insurrection, riot, breach of the peace, resistance to process of this state, or imminent danger thereof, or for the safety of the inhabitants of the state, to order into the active service of the state for such period, to such extent, and in such manner as the governor may deem necessary, all or any part of the national guard".

WHEREAS, the COVID-19 pandemic has caused unprecedented financial and economic damage across numerous sectors of the State's economy, including healthcare, manufacturing, hospitality, congregate living facilities (i.e. prisons and jails) and numerous other sectors, and this damage must be addressed immediately in order to minimize long-term and detrimental economic and adverse health outcomes to the greatest extent possible; and

WHEREAS, the Governor has authorized the activation of up to 35 members of the NHNG to support DOC for up to 60 days

NOW THEREFORE, the parties agree as follows with respect to the oversight, performance of, and payment for the activation of NHNG members in support of DOC.

C. DMAVS Responsibilities

DMAVS, when ordered by the Governor, will activate members of the NHNG to support the DOC by filling staffing vacancies at the state prison for men in Concord, NH. The specific duties to be performed by NHNG members shall be limited to approved written "Post Orders." Prior to the filling of staffing vacancies by NHNG, Post Orders will be reviewed and approved by the office of the New Hampshire Attorney General and NHNG. No NHNG member will be assigned duties that have not been approved in this manner.

D. DOC Responsibilities

DOC will provide training, workspace and necessary administrative support to members of the NHNG activated to support DOC missions. DOC will ensure that NHNG members are not tasked with duties that are outside of the scope of approved "Post Orders". Additionally, DOC will reimburse DMAVS for all costs incurred as the result of activations of members of the NHNG which began on 10 January 2022 for up to 60 days. These costs include payroll, per diem, health insurance premiums and mileage.

E. Payment for Services

DMAVS will pay all costs, including salaries, per diem, health insurance premiums, and mileage of the activated members. DOC will reimburse DMAVS the full amount of all costs incurred, while members of the NHNG are engaged in DOC duties. DMAVS will submit invoices to DOC on a monthly basis. This includes the costs incurred by DMAVS to date, plus all future expenses. In any event, all such amounts shall be made in accordance with RSA 110-B:37 and the total amount of payments shall not exceed \$490,000 as approved by action of the Governor and Executive Council.

F. Protection of Confidentiality

In performing the work under this MOU, DMAVS members may gain access to information possessed and used by DOC in the performance of its statutory duties to administer the state prison system (the "Confidential Information"). The Confidential Information includes, without limitation, information exempted from public disclosure under NH's Right-to-Know law, RSA 91-A:5, and prisoner health information protected under the Health Insurance Portability and Accountability Act (HIPAA). DMAVS agrees that its members shall not use the Confidential Information except as directly connected to and necessary for performance of the work under this Agreement. Unless authorized to do so by DMAVS, members shall not disclose any information learned in the course of the work to any individual outside of DOC and shall report promptly any suspected or actual violation of the confidentiality requirements of this MOU.

G. Conflicts of Interest

It is DOC policy to avoid the appearance of bias or favoritism. In keeping with that policy, it will be the responsibility of DMAVS members to notify their DOC supervisor if they have a close friend or relative housed in the DOC facility where the DMAVS member has been assigned to work. Upon receiving such notification, DOC will, to the extent practicable, assign the DMAVS member to a post where there is no potential for direct contact with the member's friend or relative.

H. Termination

Either party may terminate this MOU, with or without cause, 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 a later date specified in the notice or agreed to by the parties.

I. Duration

This Agreement is effective on 10 January 2022, the date that the NHNG was ordered to state service in support of the DOC to fill staffing vacancies at the state prison system for men in Concord, NH. It shall continue for up to 60 days.

J. Miscellaneous

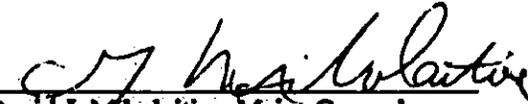
- A. This Agreement and its Attachments, if any, constitute the entire agreement and understanding and supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof and may be amended only in writing signed by both Parties.
- B. The parties hereto do not intend to benefit any third parties and this MOU shall not be construed to confer any such benefit.
- C. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire.
- D. In the event any of the provisions of this MOU are held by a court of competent jurisdiction or by any State or Federal Agency competent to make such a determination, to be contrary to any state or federal law or regulation, the remaining provisions of this Agreement will remain in full force and effect.
- E. No provision in this MOU is intended to be nor should be interpreted to be a waiver of sovereign immunity by the State of New Hampshire, which is hereby expressly reserved.

IN WITNESS WHEREOF, the authorized representatives of the Parties have signed this MOU on the dates set forth below.



Helen E. Hanks, Commissioner
New Hampshire Department of Corrections

1/31/2022
Date

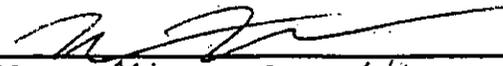


David J. Mikolaitis, Major General
The Adjutant General
Department of Military Affairs and Veterans Services

2/1/2022
Date

The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL



Name: Mike Grandy
Title: Assistant Attorney General

2/1/2022
Date

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Name:
Title:

Date