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STATE OF NEW HAMPSHIRE



GOVERNOR'S OFFICE

for

EMERGENCY RELIEF AND RECOVERY

June 30, 2022

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

**REQUESTED ACTION**

Authorize the Governor's Office for Emergency Relief and Recovery (GOFERR) to enter into a **retroactive** Memorandum of Understanding with the Department Business and Economic Affairs (BEA) (Vendor Code 287201) in an amount not to exceed \$56,540.72 as part of a temporary staff assignment to provide support in helping administer the CARES Act Coronavirus Relief Fund ("flex funds") of \$1,250,000,000 from the Coronavirus, Aid, Relief and Economic Security Act ("the CARES Act"), March 27, 2020; Section 501(a) of Division N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, (Dec. 27, 2020) (ERAPI); and the American Rescue Plan Act of 2021 ("ARPA"), H.R. 1319, Section 9901 on March 11, 2021, or such other federal relief funds related to the COVID-19 response in New Hampshire that are available, retroactively effective from April 9, 2021 to December 2, 2021 upon Governor and Council approval. **100% Federal Funds.**

Funding is available in account 01-02-002-020210-19110000 Office of the Director as follows:

		<u>FY2021</u>	<u>FY2022</u>	<u>TOTAL</u>
<u>CLASS</u>	<u>ACCOUNT</u>			
050 - Salaries	500109	\$ 14,539.50	\$ 23,071.93	\$ 37,611.43
060 - Benefits	500601	\$ 7,186.95	\$ 11,742.34	\$ 18,929.29
<b>TOTAL EXPENSES</b>		<b>\$ 21,726.45</b>	<b>\$ 34,814.27</b>	<b>\$ 56,540.72</b>

**EXPLANATION**

GOFERR was created by Governor Sununu by Executive Order 2020-06 on April 14, 2020, as amended by Exhibit 1 on June 11, 2021, which sets out the background and compelling public health needs related to the COVID-19 State of Emergency and also states the need and authority for establishing GOFERR.

GOFERR will retroactively enter into the attached Memorandum of Understanding (MOU) with the BEA. The temporary staff assignment of the person identified in the MOU provided part-time support to GOFERR to administer CARES Act and ARPA funds.

This item is retroactive due to timing, schedule, and resources. The identified employee was initially "borrowed" while under the State of Emergency, but her time extended outside of that period (April 9 – December 2, 2021). During that time, GOFERR operated with a majority of its team "borrowed" from other agencies via similar MOUs. In this instance, although documentation of time and pay occurred, an

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MOU was not properly executed. This request for a retroactive MOU is meant to rectify that issue so that GOFERR and BEA have an appropriate record of the prior agreement that this employee be "borrowed" by GOFERR for the timeframes listed therein.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CHAS H", with a horizontal line extending to the right.

Chase Hagaman  
Deputy Director, GOFERR

**MEMORANDUM OF UNDERSTANDING REGARDING TEMPORARY  
REASSIGNMENT OF STATE EMPLOYEES**

**A. Agreement**

This Memorandum of Understanding between the New Hampshire Department of Business and Economic Affairs ("BEA") and the Governor's Office for Emergency Relief and Recovery ("GOFERR") sets forth the terms and conditions whereby BEA will temporarily assign the person and position identified herein to work in the GOFERR to administer the CARES Act Coronavirus Relief Fund of \$1,250,000,000 from the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), March 27, 2020; Section 501(a) of Division N of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, (Dec. 27, 2020) ("ERAPI"); and the American Rescue Plan Act of 2021 ("ARPA"), H.R. 1319, Section 9901 on March 11, 2021, or such other federal relief funds related to the COVID-19 response in New Hampshire that are available, or become available, that are assigned to GOFERR by Governor Sununu.

**B. Authority for Reassignment**

GOFERR was created by Governor Sununu by Executive Order 2020-06 on April 14, 2020, which sets out the background and compelling public health needs related to the COVID-19 State of emergency and also stated the need and authority for establishing the GOFERR in relevant part as follows:

WHEREAS on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, An order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

WHEREAS, on Friday, April 3, 2020, the Governor issued Executive Order 2020-05, which extended the State of Emergency declared in Executive Order 2020-04, and all emergency orders issued pursuant thereto, for an additional 21 days; and

WHEREAS, the COVID-19 pandemic has caused unprecedented financial and economic damage across numerous sectors of the State's economy, including healthcare, manufacturing, hospitality, and numerous other sectors, and this damage must be addressed immediately in order to minimize long term and detrimental economic impacts to the greatest extent possible; and

WHEREAS, since issuing Emergency Order #5 on March 17, 2020 expanding eligibility for unemployment compensation benefits for those whose employment has been impacted by COVID-19, there have been over 100,000 new claims for unemployment benefits filed in New Hampshire thus exceeding in three weeks the total number of initial claims filed in the past three years; and

WHEREAS, on March 27, 2020, the United States Congress passed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") and President Donald Trump signed the CARES Act into law; and

WHEREAS, the CARES Act provides significant emergency relief funding to New Hampshire, including the following (all of which hereafter referred to as "CARES Act emergency relief funds"): (i) \$7,496,020 in Community Development Block Grant funds, (ii) \$3,800,000 in Emergency Solutions funds, (iii) \$404,880 in Housing for Persons with AIDS (HOPWA) funds, (iv) \$3,262,422 in Election Security Grant funds, (v) \$4,410,342 in Byrne-JAG State and Local Law Enforcement Grant funds, (vi) \$6,947,671 in Childcare and Development

Block Grant funds, (vii) \$82,534,000 in Education Stabilization funds, (viii) \$5,448,000 in Public Health Emergency Preparedness (PHEP) funds, (ix) \$37,891,454 in Federal Transit Administration Grant funds, (x) \$5,541,000 in Low Income Home Energy Assistance Program funds, (xi) \$427,000 in National Endowment for the Arts funds, (xii) \$423,000 in National Endowment for the Humanities funds, and (xiii) \$1,250,000,000 from the CARES Act Coronavirus Relief Fund ("flex funds"); and

WHEREAS, the \$1,250,000,000 in flex funds that New Hampshire is set to receive may only be used to cover costs incurred by the State that (i) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; (ii) were not accounted for in the budget most recently approved as of the date of enactment of the CARES Act; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and

WHEREAS, it is reasonable to expect that the United States Congress may enact additional legislation that provides increased and additional federal relief and stimulus funding to the State of New Hampshire; and

WHEREAS, in the wake of the September 11, 2001 terrorist attacks, the General Court enacted legislation giving the Governor broad authority to take necessary and extraordinary actions, which includes the expenditure of funds, during a State of Emergency, with this authority now codified in various statutes including RSAs 4:45, 4:47, 21-P:35, 21-P:37, and 21-P:43; and

WHEREAS, RSA 21-P:3 5, V defines "emergency management" as "preparation for and the carrying out of all emergency functions, including but not limited to emergency response and training functions, to prevent, minimize, and repair injury or damage resulting from the occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or human cause, including but not limited to fire, flood, earthquake, windstorm, wave actions, technological incidents, oil or chemical spill, or water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, drought, infestation, explosion, terrorist act, or riot."; and

WHEREAS, pursuant to RSA 21-P:3 7, "In the event of disaster beyond local control, the governor may assume direct operational control over all or any part of the emergency management functions within the state."; and

WHEREAS, pursuant to RSA 21-P:43, "Whenever the federal government or any federal agency or officer offers to the state, or through the state to any of its political subdivisions, services, equipment, supplies, materials, or funds by way of gift, grant or loan for purposes of emergency management the state, acting through the governor ... may accept such offer, subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer."; and

WHEREAS, during a State of Emergency, RSA 4:45, III(b) gives the Governor the authority to "sell, lend, lease, give, transfer, receive, or deliver materials or perform services for emergency management purposes on such terms and conditions as the governor shall prescribe and without regard to the limitations of any existing law, and to account to the state treasurer for any funds received for such property."; and

WHEREAS, during a State of Emergency, the Governor has the authority, pursuant to RSA 4:45, III(e), to "perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population."; and

WHEREAS, during a State of Emergency, the Governor has the authority, pursuant to RSA 4:47, III, to "make, amend, suspend and rescind necessary orders, rules and regulations to carry out the provisions of this subdivision in the event of a disaster beyond local control."; and

WHEREAS, the outbreak of COVID-19 has confronted the State with an unprecedented public health emergency and with financial and economic devastation resulting therefrom, which require the State to respond rapidly to ensure that necessary supplies, economic infrastructure, and other appropriate emergency responses are provided immediately; and

WHEREAS, the State must manage and expend emergency relief funds consistent with the urgent need and required expedited timetable for expending CARES Act emergency relief funds.

The mission of GOFERR is the management and expenditure of (i) emergency relief funds received under the CARES Act and (ii) any additional Federal emergency funds received to address the impacts of the Novel Coronavirus (COVID-19). Executive Order 2020-04 declaring the state of emergency under RSA 4:45 specifically authorized the reassignment of staff to address COVID in paragraph 1. Executive Order 2020-06 further directs that GOFERR shall be staffed by such additional staff as the Director deems necessary to carry out the operations of GOFERR. This agreement is therefore entered into under the Governor's emergency authority under RSA 4:45 and RSA 21-P:35 – 47. To the maximum extent feasible, the staff of GOFERR shall be made up of current State employees who the Governor may, in consultation with the Director, temporarily assign to GOFERR. Any State employee who is temporarily assigned to GOFERR shall be entitled to the same salary and benefits to which they would otherwise be entitled in their position as a State employee and shall remain employees of their State agencies for all other purposes, except that their duties during the period of temporary assignment shall be supervised by the Director.

Governor Sununu appointed Taylor Caswell, Commissioner of the New Hampshire Department of Business and Economic Affairs as Executive Director of GOFERR and Chase Hagaman as Deputy Director of GOFERR. Governor Sununu and the Executive Director have identified Laura LeCain, at the time a classified employee with BEA, position number 43679, as needed for the staff for GOFERR.

#### **C. Employing Agency Responsibilities**

BEA agrees to continue to provide the employee's computer and computer program licenses. BEA will also continue to provide a cellphone and access to any other technological resources currently available with BEA to the employee. BEA shall also continue to provide work space, parking and appropriate furniture for the employee at BEA. The employee's time may be shared between BEA and GOFERR, although work for GOFERR shall take a priority. The employee shall retain their current position throughout the assignment.

#### **D. GOFERR Responsibility**

GOFERR will provide work space, furnishing and necessary administrative support to employee for purposes of GOFERR work. Currently, GOFERR is located in the Department of Business and Economic Affairs offices at One Eagle Square in Concord, NH. If employee is a classified employee, they will continue to be required to enter time in NH First under their

current position, but shall also track all hours spent on GOFERR duties. Unclassified employees spending at least an average of 7.5 hours per business day on GOFERR duties during a week, shall be considered as performing full-time duties for GOFERR. If the employee's duties for GOFERR are less than an average of 7.5 hours per business day in a week, the unclassified employee shall track the amount of time spent on GOFERR duties for purposes of proration of their salary between agencies. If taking annual leave time or sick time, the time shall be prorated or charged based on time in the immediately preceding week. GOFERR shall provide such tracking to BEA and maintain the documentation for audit purposes. Supervision of employee's responsibilities for GOFERR shall be as provided in Executive Order 2020-06.

**E. Payment for Services**

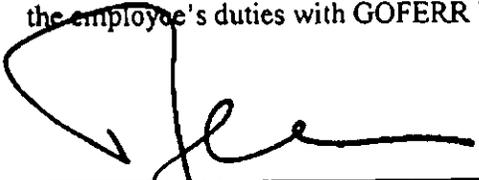
BEA will pay the wages, including any overtime, salaries or benefits of the employee that they are currently entitled to in their current position in the first instance. GOFERR will reimburse BEA the full amount of all wages and salaries for employee while engaged on GOFERR duties. GOFERR will also reimburse BEA for all benefits, including but not limited to health insurance, for the time period that they are engaged in duties for GOFERR. If the employee's duties for GOFERR are less than full time, the reimbursement shall be based on the actual hours worked for hourly employees, or a prorated percentage for salaried unclassified employees. The total reimbursement amount for the term of this Agreement shall not exceed \$56,540.72.

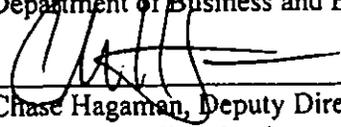
**F. Complete Agreement**

The entire understanding between the parties is compiled in the Agreement. Neither party may further modify or amend the terms of this Agreement except by written agreement signed by both parties. This Agreement shall be construed under the laws of the state of New Hampshire.

**G. Duration**

This Agreement is **retroactive** and shall commence on April 9, 2021, the date on which the employee's duties with GOFERR began. The Agreement shall end on December 2, 2021.

  
\_\_\_\_\_  
Taylor Caswell, Commissioner  
Department of Business and Economic Affairs

  
\_\_\_\_\_  
Chase Hagaman, Deputy Director  
Governor's Office for Emergency Relief and Recovery

7/5/22  
Date

07/05/22  
Date

I have read and agree to this reassignment.

Laura LeCain  
Laura LeCain

7/1/2022  
Date

Reviewed and approved by:

Shen Phillips  
Office of the Attorney General

7/5/2022  
Date

\_\_\_\_\_  
Governor and Council

\_\_\_\_\_  
Date