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STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS
OFFICE OF THE COMMISSIONER

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Helen E. Hanks
Commissioner

Paul D. Raymond, Jr.
Assistant
Commissioner

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April 28, 2023

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 \$350,000.00 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 March 18, 2023 through June 26, 2023. **100% Federal Funds.**

Funds are anticipated to be available in 02-46-46-460510-26360000¹ for Fiscal Year 2023 as follows:

Account	Description	FY 23 Total
085-588512	Inter-Agency transfers out of Federal Funds	\$350,000.00

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 security staffing matrix. NHDOC is experiencing severe staff shortages exacerbated by the COVID-19 pandemic and requires NHDMAVS support for up to eighteen (18) NH National Guard (NHNG) members for a period of ninety (90) days. NHDOC has \$154,957 remaining in unused ARPA funds from our G&C item #57 (approved on 1/26/22) to offset our current ARPA request for additional funds.

Activated NHNG members will bridge current NHDOC staff shortages directly linked to the adverse prolonged impacts of COVID-19. NHDOC saw many staff retirements during the COVID-19 pandemic and recruitment challenges have been further intensified during this time.

¹ All direct program costs will be accounted for using activity OOFRF602PH4603A. Accounting classifications may be subject to technical changes at the discretion of the Department of Administrative Services' Division of Accounting Services.

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 and ensuring the proper delivery of healthcare and programmatic services to those incarcerated.

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 the NHNG are engaged in NHDOC duties. Such costs will be billed monthly to the NHDOC and shall not exceed the total of \$350,000 (\$195,043 new funding request plus the \$154,957 reallocation of ARPA funds unexpended).

This request is necessary based upon our necessity to provide safety for staff and those incarcerated, as well as to maintain the post requirements necessary to provide residents with access to treatment, education, oversight in rehabilitative areas of the prison, and access to other prison-based resources.

Respectfully Submitted,



Helen E. Hanks
Commissioner

THE STATE OF NEW HAMPSHIRE
INTERAGENCY MEMORANDUM OF UNDERSTANDING
DEPARTMENT OF CORRECTIONS SUPPORT MISSION

THIS INTERAGENCY MEMORANDUM OF UNDERSTANDING (this "Agreement") dated March 18, 2023, between the New Hampshire Department of Corrections ("DOC"), a duly constituted executive branch agency of the State of New Hampshire under RSA Chapter 21-H, and the New Hampshire Department of Military Affairs and Veterans Services ("DMAVS"), a duly constituted executive branch agency of the State of New Hampshire under RSA Chapter 110-B, sets forth the terms and conditions by which *His Excellency*, Christopher T. Sununu, Governor, acting through DMAVS and pursuant to RSA 110-B:6, will order elements of the New Hampshire National Guard (defined below) into the active service of the State to support DOC's operations at the New Hampshire State Prison for Men in Concord (the "NHSP-MC").

WHEREAS, pursuant to RSA Chapter 21-H, DOC is responsible for, among other duties, providing for, maintaining, and administering such State correctional facilities and programs as may be required for the custody, safekeeping, control, correctional treatment, and rehabilitation of inmates, including the NHSP-MC;

WHEREAS, pursuant to RSA Chapter 110-B, DMAVS is responsible for, among other duties, the State's militia, including the army national guard, air national guard, the inactive national guard, the State guard, and the unorganized militia (collectively, the "New Hampshire National Guard" or "NHNG");

WHEREAS, DOC has requested that the Governor, acting through DMAVS, order certain elements of the NHNG into the active service of the State to address severe staffing shortages at the NHSP-MC, which, if not addressed immediately, could jeopardize public peace and domestic security within and around that institution and could undermine the execution and enforcement of the laws of this State;

WHEREAS, RSA 110-B:6 authorizes the Governor, for, among other reasons, 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 NHNG;

WHEREAS, DMAVS will support the DOC at the NHSP-MC by deploying NHNG members into the NHSP-MC to staff specific operational support positions, without direct contact with the institution's residents, limited to Visiting Control Room Officer, Kitchen / Laundry Control Room Officer, and Health Services Control Room Officer (the "DOC Support Mission"); and

WHEREAS, the Governor will order the mobilization and deployment of up to eighteen (18) NHNG members for assignment to the DOC Support Mission for up to ninety (90) days.

NOW, THEREFORE, the agencies enter this Agreement to their mutual benefit, the benefit of the State, and in furtherance of constitutional or statutory authority and objectives.

1. DMAVS's Responsibilities. DMAVS will perform the services and duties described in Section I, of Exhibit A.

2. DOC's Responsibilities. DOC will make the payments and perform the services and duties described in Section II, of Exhibit A.

3. Payment Method. The payment method and amount for the above-referenced services, if required, are described in Exhibit B.

4. Contingent Obligations. All obligations hereunder are contingent upon the availability and continued appropriation of funds. No agency will not be required to transfer funds from any other account or funding source if the funding identified in this Agreement is reduced or unavailable.

5. Term; Early Termination. This Memorandum of Understanding will begin on the Effective Date (defined below) and continue until the later of that date (a) occurring ninety (90) days after the Effective Date, or (b) on which the NHNG is demobilized at the conclusion of the DOC Support Mission. Notwithstanding the preceding sentence, DMAVS or DOC may terminate this Agreement, with or without cause, at any time upon written notice to the other party, in which case the termination will be effective thirty (30) days after the date of the notice, or a later date specified in the notice or agreed in writing by the agencies. This Agreement is dated as of and effective upon the date approved by the Governor and Executive Council for the period beginning March 18, 2023 (the effective date) through up to 90 days.

6. Amendments. No amendment or other modification of this Agreement or waiver of any term hereof will be effective unless in writing and executed by the duly authorized representative of each agency.

7. Nature of Agreement. Per the New Hampshire Department of Administrative Services ("DAS") Manual of Procedures ("MOP") 161, the obligations, agreements, and promises made between the agencies in this Agreement are not intended to be legally binding on the agencies and are not enforceable in a court of law.

8. Governing Law; Dispute Resolution. This Agreement is governed by and will be construed according to the laws of the State of New Hampshire, without regard to its

conflict of laws principles. Disputes arising from this Agreement that cannot be resolved through the reasonable efforts of the agencies negotiating in good faith will be referred to the Department of Justice for final resolution.

9. No Third-Party Beneficiaries. This Agreement is being entered into for the sole benefit of the agencies hereto, and nothing herein is intended to or will confer upon any other person, sister agency, or other branch or subdivision of the State's government any legal or equitable right, benefit, or remedy of any nature whatsoever.

10. Severability. If any term of this Agreement is deemed to be invalid, illegal, or otherwise unenforceable, (a) the agencies will use all reasonable efforts to negotiate in good faith to amend the term to eliminate any such invalidity, illegality, or unenforceability to the extent practically possible, taking into account their original intent when entering into this Agreement in the first instance, and (b) the remaining provisions hereof will continue in full force and effect.

11. Counterparts; Entire Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all taken together will constitute the same instrument. An executed copy of this Agreement delivered by email or other means of electronic transmission will be deemed as effective as an original signed copy. This Agreement including the attached Exhibit A (MOU Terms), Exhibit B (Payment Terms), and Exhibit C (Approved Post Orders), each expressly incorporated by this reference, sets forth the entire agreement between the agencies concerning its subject matter and supersedes any prior agreements or communications, whether written or oral, relating hereto. For the avoidance of doubt, the provisions of Exhibit A, firstly, then Exhibit B, secondly, and then Exhibit C, thirdly, will prevail over any ambiguities or inconsistent terms contained in this Agreement.

12. No Waiver of Sovereign Immunity. Nothing in this Agreement is intended or will be construed as a waiver of the State's sovereign immunity, such immunity being specifically preserved.

[Signature page follows]

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

DEPARTMENT OF CORRECTIONS

**DEPARTMENT OF MILITARY
AFFAIRS AND VETERAN SERVICES**

By: 
Helen E. Hanks, Commissioner

By: 
David J. Mikolaities, Major General
The Adjutant General

Date: 4/21/2023

Date: April 26, 2023

Approved as to form, substance, and execution.

DEPARTMENT OF JUSTICE

By: 
Michael Grandy
Assistant Attorney General

Date: April 21/2023

CERTIFICATION

I certify that the preceding was approved as item no. _____ at the meeting of the Governor and Executive Council held on: _____.

SECRETARY OF STATE

By: _____

Date: _____

Name: _____

Title: _____

[Signature page to Memorandum of Understanding for Department of Corrections Support Mission]

EXHIBIT A.
MOU TERMS

I. DMAVS's Responsibilities.

(a) **Staffing.** DMAVS will mobilize up to eighteen (18) members of the NHNG to support the DOC at the NHSP-MC in certain operational positions without direct contact with the institution's residents. Written duty descriptions (each a "Post Order") must be reviewed and approved by the New Hampshire Department of Justice ("DOJ") and the Judge Advocate Officer of the NHNG before any such Post Order becomes effective. The specific duties to be performed by each NHNG member are limited to the previously approved written duty description (each an "Approved Post Order") applicable to each such NHNG member. Each Approved Post Order is attached to the Agreement as Exhibit C. Notwithstanding any other provision of this Agreement to the contrary, no duty will be assigned to any NHNG member by DOC unless such duty is part of an Approved Post Order applicable to the NHNG member.

(b) **Protection of Confidential Information.** While supporting the DOC, individual NHNG members may be provided with or discover information possessed or 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 RSA 91-A:5 and all resident health information protected under the Health Insurance Portability and Accountability Act (HIPAA). DMAVS agrees that each NHNG member assigned to the NHSP-MC will be ordered not to disclose any Confidential Information provided to or discovered by any such NHNG member to any person except Authorized Persons. For this Agreement, the term "Authorized Persons" means (y) specifically designated DOC personnel and (z) commissioned and noncommissioned officers in the NHNG member's chain of command. To the extent authorized by applicable law, DMAVS will promptly report any suspected or actual violation of this Agreement's confidentiality provisions to the DOC commissioner.

(c) **Preexisting Relationships with Residents.** To the maximum extent permitted by applicable law, DMAVS will screen each NHNG member to be deployed to the NHSP-MC for any familial or other close preexisting relationship with any resident housed at the NHSP-MC. Should DMAVS determine that an NHNG member has a domestic or other close preexisting relationship with any such resident, DMAVS may, in its sole discretion, remove the NHNG member from the DOC Support Mission, or DMAVS and DOC, acting collectively, will, to the extent practicable, assign any such NHNG member to a post where there is no potential for contact with the specific resident.

II. DOC's Payments and Responsibilities.

(a) Payments to DMAVS. DOC will pay DMAVS up to Three Hundred Fifty Thousand and 00/100 dollars (\$350,000.00) for the performance of the services described in Section I. above. Payments will be provided from interagency transfers out of Federal funds.

(b) Mission Support. DOC will provide training, workspace, and necessary support to NHNG members mobilized for the DOC Support Mission and ensure that individual NHNG members are not assigned duties outside the scope of each such NHNG member's Approved Post Order.

(c) NHNG Member Injury and Death Benefits. Notwithstanding any provision of Exhibit B to the contrary:

(i) in the event of the death of an NHNG member while deployed to the DOC Support Mission, DOC will process and pay the one hundred-thousand-dollar (\$100,000.00) death benefit intended for the family of the deceased NHNG member, under RSA 110-B:37-a; and

(ii) in the event of an injury to an NHNG member while deployed to the DOC Support Mission, DOC will process and pay the NHNG Member's worker's compensation costs resulting from such injury under RSA 281-A:2-XI.

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EXHIBIT B.
PAYMENT TERMS

I. NHNG Mission Costs. DMAVS will pay all costs and expenses incurred for or in relation to the DOC Support Mission, whether incurred before, on or after the effective date of this Agreement, including, without limitation, the following (collectively, the “NHNG Mission Costs”):

(a) **NHNG Mobilization Costs.** All costs and expenses arising from or related to the mobilization of NHNG members for the DOC Support Mission, arising or occurring on and between March 18, 2023, and that date which is ninety (90) days thereafter, or until such other date as may be specified by order of the Governor (collectively, the “NHNG Mobilization Costs”);

(b) **NHNG Deployment Costs.** all costs of deployment, including, without limitation, the following (collectively, the “NHNG Deployment Costs”):

(i) **NHNG Personnel Costs.** all personnel costs and expenses incurred during the DOC Support Mission, including, without limitation, all salaries, per diems, health insurance premiums, and mileage reimbursements of (A) all NHNG members mobilized to support DOC at the NHSP-MC and (B) all DMAVS State employees tasked with supporting the NHNG members deployed in support of DOC (collectively, the “NHNG Personnel Costs”),

(ii) **NHNG Equipment Costs.** all costs and expenses of, or related to, all equipment used during the DOC Support Mission, including, without limitation, all equipment maintenance costs, replacement parts and consumables, and related expenses thereto (collectively, the “NHNG Equipment Costs”), and

(iii) **Other Deployment Costs.** all costs and expenses of, or related to, (A) all consumables, including, without limitation, all uniforms and other clothing, fuel, food, water, and office supplies, (B) all third-party services, and (C) all other costs and expenses of deployment, incurred, used, consumed, or depleted for, or in relation to, the DOC Support Mission; and

(c) **NHNG Demobilization Costs.** all costs and expenses of, or related to, the demobilization of the NHNG after the DOC Support Mission (collectively, the NHNG Demobilization Costs).

II. Reimbursements. NHNG will submit monthly invoices to DOC for reimbursable NHNG Mission Costs, and DOC will remit all such reimbursements to DMAVS as specified on each such monthly invoice no later than thirty (30) days after DOC's receipt thereof. DOC will reimburse DMAVS for the total amount of all NHNG Mission Costs

incurred for, or in relation to, the DOC Support Mission. Reimbursements will be remitted to DMAVS as NHNG Mission Costs are incurred.

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