



State of New Hampshire
 DEPARTMENT OF NATURAL & CULTURAL RESOURCES
 DIVISION OF PARKS & RECREATION

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JH
2024

August 13, 2024

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

REQUESTED ACTION

1. Pursuant to RSA 227-H:9, authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation (Department) to enter into a **Retroactive** Memorandum of Understanding (MOU) with the Department of Environmental Services for air quality monitoring equipment space and internet and electrical services at Mount Washington State Park for a 5-year period, effective upon Governor and Council approval for the period July 1, 2024 through June 30, 2029.
2. Further, authorize the Department to accept annual rental payments as outlined in the terms of the MOU for a total amount of \$28,800.

Funds to be deposited in the following account:

03-035-035-351510-37420000 - Mt Washington Commission

Fiscal Year	Date Range	Class-Account- RG	Class- Account Title	Annual Rent Amount
2025	7/1/2024-6/30/2025	003-402040-26	Revolving Fund - Mt Washington Commission	\$5,760
2026	7/1/2025-6/30/2026	003-402040-26	Revolving Fund - Mt Washington Commission	\$5,760
2027	7/1/2026-6/30/2027	003-402040-26	Revolving Fund - Mt Washington Commission	\$5,760
2028	7/1/2027-6/30/2028	003-402040-26	Revolving Fund - Mt Washington Commission	\$5,760
2029	7/1/2028-6/30/2029	003-402040-26	Revolving Fund - Mt Washington Commission	\$5,760
			Total:	\$28,800

EXPLANATION

This MOU is **retroactive** because of administrative delay in receiving approval of the content as to form and substance.

In accordance with RSA 227-H:9, this requested MOU, upon approval, will enable the Department of Environmental Services (DES) to operate and maintain an air monitoring station at Mount Washington State Park to gather and analyze air quality data to monitor and protect public health, support state and federal policymaking, and secure the economic welfare of NH citizens and businesses. The Department will provide a 16 square foot space in the Yankee Building to house air monitoring equipment owned and operated by the DES and will provide internet service and electrical service to the DES as outlined in the MOU.

The Attorney General's office has reviewed and approved this MOU as to form, substance, and execution.

Respectfully submitted,



Brian J. Wilson
Director

Concurred,



Sarah L. Stewart
Commissioner

State of New Hampshire

Interagency Memorandum of Understanding

(For use between an executive branch agency and another agency or branch of government of the State of New Hampshire)

Whereas, the Department of Natural and Cultural Resources ["DNCR"] is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, the Department of Environmental Services ["DES"] is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, pursuant to RSA 12-A:1-c(b), the DNCR is responsible for developing strategies for the conservation, management, and protection of the state's forests and lands and the promotion of the state's parks and recreation resources.

Whereas, the DNCR desires to permit DES to operate and maintain an air monitoring station at Mount Washington State Park.

Whereas, pursuant to RSA 21-O:1 (g), DES is responsible for air pollution control.

Whereas, DES desires to collect air quality data at mountain peaks to track the characteristics and impacts of air pollution transport.

NOW, THEREFORE, the parties enter into this Memorandum of Understanding to their mutual benefit, the benefit of the State and in furtherance of constitutional or statutory authority and objectives.

1. The **DNCR** agrees to:

- A. Pay **DES** the amount of \$ _____ for the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

Payment shall be provided from:

- B. Perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

2. The **DES** agrees to:

- A. Pay **DNCR** the amount of \$28,800. for the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

Payment shall be provided from:

- i. Lease (Rent) 03-44-44-443010-9000-022-500248 – not to exceed \$80 monthly (\$960 annually)
- ii. Internet 03-44-44-443010-9000-039-500180 – not to exceed \$50 monthly (\$600 annually)

Electricity 03-44-44-443010-9000-023-500291 – not to exceed \$350 monthly (\$4,200 annually - safely projected based on current and future use – See Attachment B)



B. Perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

- 3. The method of payment and payment amount for the above-referenced services, if any is required, is described in the attached MOU Exhibit B, such exhibit being hereby incorporated by reference.
- 4. All obligations hereunder are contingent upon the availability and continued appropriation of funds. The agencies shall not be required to transfer funds from any other account in the event that funds are reduced or unavailable.
- 5. The Memorandum of Understanding is effective until June 30, 2029.
- 6. This Memorandum of Understanding may be amended by an instrument in writing signed by both parties. Either party may terminate this agreement by providing written notice to the other party at least 30 days prior to termination.
- 7. The Parties agree that the obligations, agreements and promises made under this Memorandum of Understanding are not intended to be legally binding on the Parties and are not legally enforceable.
- 8. 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.
- 9. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
- 10. The parties hereto do not intend to benefit any third parties and this Memorandum of Understanding shall not be construed to confer any such benefit.
- 11. 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.
- 12. 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.

13. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.

14. Department of Natural and Cultural Resources

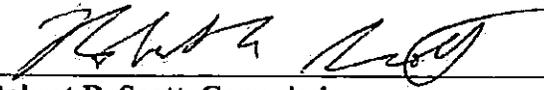


Sarah L. Stewart, Commissioner

8/1/2024

Date

15. Department of Environmental Services



Robert R. Scott, Commissioner

6/7/24

Date

PLEASE NOTE

1. MOU Exhibit A (MOU Terms) and, if applicable, MOU Exhibit B (Payment Terms) must be attached to this form.
2. *This form is intended only for use with Interagency Memoranda of Understanding ("MOUs"). Please refer to the MOU 1 checklist and instructions when executing this document. For Interagency MOUs, Department of Justice review and execution is only required if the MOU involves an expenditure of funds in an amount which is equal to or greater than the approval threshold established by the Governor and Executive Council in Chapter MOP 161 of the Department of Administrative Services Manual of Procedures.*
3. *If more than two agencies or branches are involved in the agreement, please include all information listed above for each agency or branch, identifying them as, for example, "Agency 3," "Agency 4," and so forth.*
4. *No changes may be made to the preprinted terms of this form without the approval of the Department of Justice.*
5. The Department of Justice and Governor and Council approvals appearing below are only required if this MOU is submitted to the Governor and Council for approval.

Approved by the New Hampshire Department of Justice for form, substance, and execution:

By: Sheri Phillips

Sheri L. Phillips, Assist. Attorney General

On: 8/13/2024

Date

Approved by the Governor and Executive Council

By: _____

On: _____
Date

EXHIBIT A, Terms of the Agreement and Services to be Performed:

1. DNCR shall permit DES to operate and maintain an air monitoring station at the State Park for a five (5) year period from July 1, 2024 through June 30, 2029, with approval from the Governor and Executive Council.
2. DNCR shall assign an area located within the "Camden Cottage Suite" on the second floor of the Yankee Building to enable DES to operate an air monitoring station at the State Park. The location and size of the space assigned to DES for the air monitoring station is 16 s.f. and shall be documented by DNCR and incorporated into this Agreement as Attachment A, "Premises."

The location shall permit access to electricity, communications, suitable indoor climate control, and the ability for DES to draw outdoor air samples from the existing inlet.

The use of the Camden Cottage Suite is non-exclusive and may be shared with other users. DES shall submit to DNCR all requests to relocate the air monitoring station or to expand the size of the space utilized. The decision to grant such requests is at the sole discretion of DNCR.

3. DES shall install, operate and maintain the air monitoring station at its sole expense. DES shall provide DNCR a detailed list of DES equipment installed on the Premises, and incorporated into this Agreement as Attachment B, "DES Equipment List."
4. DES shall submit to DNCR all requests for improvements to the air monitoring station that may impact DNCR property, including but not limited to electrical upgrades. The decision to grant such requests is at the sole discretion of DNCR.
5. DES shall reimburse DNCR any improvements made by DNCR staff, including but not limited to labor and materials. DES shall be responsible for obtaining, at its sole cost, any and all required permitting and approvals for the improvements.
6. The parties agree that DNCR's use of its internet in the Yankee Building shall take precedence. At the discretion of DNCR, should DES's use of the DNCR internet cause interference to DNCR operations, DNCR shall notify DES and DES shall immediately disconnect its use of the internet until such time that the cause of interference is resolved by DNCR. Should DNCR require any part of the bandwidth being used by DES, DNCR shall notify DES and DES's bandwidth shall be reduced.
7. DNCR reserves its right to change its lease rates and/or its electric rates at any time. DNCR shall provide DES with advance notice prior to implementing any rate changes.
8. DES shall inform the State Park manager of its need to access the air monitoring station at least 48 hours prior to their visit. Prior notification shall not be required in the case of an emergency, unless DES is requiring DNCR assistance with travel during the Park's non-operating hours and/or during off-season travel of the Auto Road, in which case DES will coordinate and schedule with the Park Manager as soon as possible.

9. DES's use of the Auto Road that is owned and operated by the Mount Washington Auto Road Company shall be by separate arrangement and at the sole expense of DES.

DES may request to travel with state park staff, if, at the sole discretion of state park staff, travel schedules and state park vehicle capacity allows. DES shall reimburse DNCR for such travel costs.

10. DNCR reserves its right to restrict or close its lands, facilities, or trails to public use, pursuant to its administrative rules Res 7300, or for other DNCR activities, including but not limited to communications and park operations.
11. For the purpose of maintaining or making improvements or replacements of the Premises, DNCR reserves its right to restrict or close the Premises or portions therein, that cause or may cause interruptions in tenant operations. DNCR shall provide DES advance notice of such restrictions, interruptions or closures. DES shall, at its expense, cease operations or move its equipment to an area assigned by DNCR.
12. The Premises are contracted to DES in "as is" condition. DNCR does not make any claims or assurances as to the suitability of the Premises for the DES's use, including but not limited to utilities and communications services. DNCR shall not be required, responsible, nor obliged to provide any improvements, upgrades, or alterations to the Premises prior to or during the term of this Agreement for the benefit of DES.

All property of every kind on the Premises shall be at the sole risk of DES, and DNCR shall not be liable to DES or any other person or entity for any injury, loss, damage, or inconvenience occasioned by any cause whatsoever to DES property or programs, including, but not limited to, any loss of income for any function, program or contract that may not take place for whatever reason due to an emergency or unforeseeable situation.

13. DES shall be held legally and financially liable for any and all damages, repairs or rehabilitation of DNCR property caused by DES operations. Within 24-hours, DES shall report to DNCR any and all damages resulting from the DES's use of DNCR property, including damages caused by DES subcontractors or any and all affiliates. DES shall restore or repair any and all damages of DNCR property caused by DES subcontractors or any and all affiliates, or shall reimburse DNCR for the repair or restoration of DNCR property that is performed by DNCR.
14. DES agrees that DNCR or any of his/her duly authorized agents may at any time examine and inspect any and all property located and situated on and within these Premises. Furthermore, DES agrees to comply with all reasonable requests of the State or any of his/her agents.
15. The State of New Hampshire does not maintain liability insurance coverage for the general operations of state agencies, including DES. The State has elected to self-insure for this exposure. Any liability incurred by DES arising out the use of the Premises would be handled as a general obligation of the State.

16. DES shall have no authority to bind, obligate, or restrict DNCR in any way or at any time for any reason, including but not limited to any and all obligations, conditions, restrictions, regulation, or stipulations of any grant funding, donations, subcontracts, agreements or permits obtained or executed by or that may arise out of DES in its performance of its operations. Third party grants, donations or other contributions or material support shall not constitute a claim or interest within or upon DNCR assets. This Agreement shall not transfer to DES any claim, interest or right held by DNCR, and DES shall in no way nor at any time interfere, prevent, or obstruct any activity, operation, management, or use of land or rights held by DNCR.

EXHIBIT B, Payment Terms:

1. DES shall pay DNCR as described below:

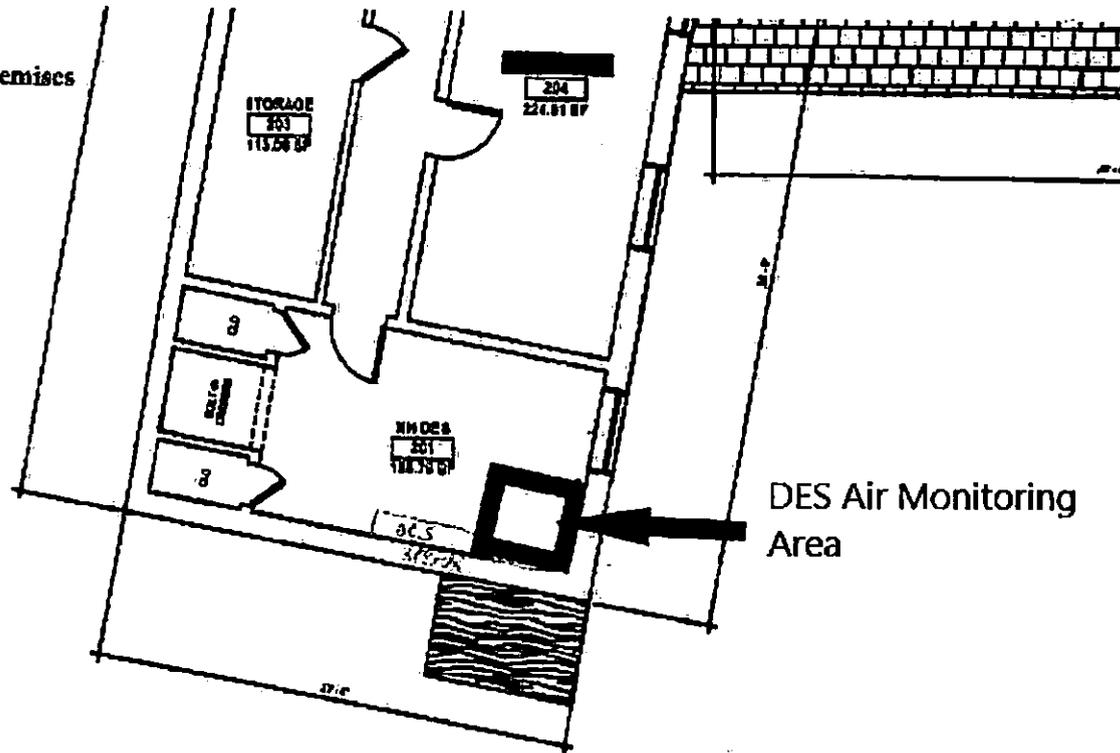
- a. DES shall make monthly lease payments to DNCR for the 16 s.f. space assigned to DES in the Yankee Building. The payment is based on the \$5.00/s.f. per month lease fee for an amount of \$80/month, payable upon monthly invoice from DNCR.
- b. DES shall make monthly payments to DNCR for the use of the DNCR internet in the Yankee Building to operate the air monitoring station. The payment will be \$50 per month, payable upon invoice from DNCR.
- c. DES shall make monthly payments to DNCR for the use of electricity to operate the air monitoring station. The payment will be based on metered total kilowatt hours used each month, currently \$0.55 kWh, and payable upon invoice from DNCR.
- d. DES shall utilize the following Accounting Strings to pay DNCR:
 - i. Lease (Rent) 03-44-44-443010-9000-022-500248 – not to exceed \$80 monthly (\$960 annually)
 - ii. Internet 03-44-44-443010-9000-039-500180 – not to exceed \$50 monthly (\$600 annually)
 - iii. Electricity 03-44-44-443010-9000-023-500291 – not to exceed \$350 monthly (\$4,200 annually - safely projected based on current and future use – See Attachment B)
- e. Total annual costs associated with this MOA shall not exceed \$5,760

BJW/CSC/tl-052924

Attachment A, Premises

Attachment B, DES Equipment List

Attachment A Premises



EXISTING SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"



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The H.L. Turner Group Inc.

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**Attachment B
DES Equipment List**

Currently Operating:

Ozone Analyzer *

Calibrator *

Data Logger *

Zero Air Supply *

Rack for monitoring equipment

Carbon Monoxide Analyzer *

Carbon Monoxide Cylinder

Thermometer

ASA5506 Internet device (to be replaced with a FirePower 1010 in 2024 due to end of life of the model 5506)

Uninterruptable Power Supply*

Total current electrical use is approximately 382 KWH per Month @\$0.55 = \$210.10

Additional Equipment to Add:

None expected at this time.

Total electrical use per this entire equipment list is projected to be 382 KWH per Month @ \$0.55 = \$210.10 (The MOA allows up to \$350 per Month)

* Denotes equipment that uses notable electricity