



STATE OF NEW HAMPSHIRE



GOVERNOR'S OFFICE

for

EMERGENCY RELIEF AND RECOVERY

August 18, 2021

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 the attached **Memorandum of Understanding** with the New Hampshire Judicial Branch (VC# 177872) in an amount not to exceed \$425,000 as part of the Housing Stability Program to help develop a mediation program that helps both landlords and tenants, reduces evictions and increases participation in New Hampshire Emergency Rental Assistance Program (NHERAP). This is an allowable use of ERA Housing Stability funds under Consolidated Appropriations Act, Division N, Section 501(c), Emergency Rental Assistance (ERA1) to help keep households stably housed from the effects of the public health emergency, effective upon Governor and Council approval through September 30, 2022. **100% Federal Funds.**

Funding is available in the account as follows:

01-02-002-0202 – Governor's Office for Emergency Relief and Recovery – Office of the Director,
19710000 – Emergency Rental Assistance

085 – 588510 Transfer to State Agency Of Federal Funds	<u>FY22</u>
	\$425,000

EXPLANATION

GOFERR will enter into the attached Memorandum of Understanding (MOU) with the NHJB. Under the terms of the MOU, NHJB will use funds to develop these mediation programs, which are intended to benefit both landlords and tenants, reduce evictions, and increase participation in NHERAP.

This program would expand landlord and tenant mediation from a very limited mediation pilot program that has been offered in just two circuit court locations since February 2021 to a statewide model. The dual track approach includes: (1) a statewide, pre-filing eviction diversion program, and (2) a post-filing mediation program that will be implemented in the highest volume courts which have sufficient resources to operate the program. Both programs would be ready to launch on November 1, 2021.

Mediation benefits both tenants and landlords. The initial results of the Landlord and Tenant Mediation Pilot Project indicate that mediation in eviction cases can be effective in aiding parties to reach agreement to settle their cases, often with better results than either of them could achieve in court.

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The Eviction Diversion program provides the opportunity to utilize the Office of Mediation and Arbitration's mediation resources, ideally in conjunction with rental assistance and other community-based services, without having to file an eviction action. This program would operate on an opt-in basis.

The Landlord and Tenant Mediation program would be provided at targeted court locations (Concord, Manchester, and Nashua). NHJB will consider adding locations to the post-filing program depending on the success of the program. This program would operate on an opt-out basis. Because the staff member assigned to the landlord and tenant docket at the courts participating in mediation would be a housing specialist, the staff member could assist in providing information about available resources including the New Hampshire Emergency Rental Assistance Program and make appropriate referrals.

To summarize, the main components of the programs are:

Statewide Pre-filing Mediation (Eviction Diversion)

- a. Conducted through ADR Office
- b. Voluntary, opt-in
- c. Remotely or in-person, available statewide
- d. Program marketed through court including notice of program printed on court-provided "Eviction Notice", as well as relevant stakeholders and community organizations

Post-filing Landlord and Tenant Mediation at Targeted Courts (Concord, Manchester, and Nashua, additional court locations may be added, if successful)

- a. Conducted through circuit court mediators
- b. Voluntary, opt-out
- c. In-person, may be specially scheduled (Concord) or may be held on same-day as landlord/tenant hearing dates (Manchester and Nashua)
- d. Court staff may be available to assist with the New Hampshire Emergency Rental Assistance Program (NHERAP) application at time of mediation

This is an allowable use of ERA Housing Stability Services funds under the Consolidated Appropriations Act, Division N, Section 501(c), Emergency Rental Assistance (ERA1) to help keep households stably housed.

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

Respectfully submitted,


Taylor Caswell,
Executive Director, GOFERR

State of New Hampshire
Intergovernmental Branch Memorandum of Understanding

Whereas the Governor's Office for Emergency Relief and Recovery (GOFERR) is a duly constituted instrumentality of the executive branch of the State of New Hampshire;

Whereas, the New Hampshire Administrative Office of the Courts (AOC) is a duly constitute agency of the judicial branch of the State of New Hampshire;

Whereas pursuant to Executive Order 2020-06, GOFERR is responsible for providing funding through a subgrant of the State's allocation of Consolidated Appropriations Act, Division N, Section 501(c), Emergency Rental Assistance (ERA1), Housing Stability Services Funds to AOC, CFDA number 21.023, FAIN Nos. ERA0012 and ERA0435;

Whereas, GOFERR desires to enter into a subgrant with AOC for a term from Governor and Council approval through September 30, 2022 in an amount not to exceed \$425,000;

Whereas, AOC is responsible for adhering to all conditions as set forth in ERA1 and all applicable rules and regulations;

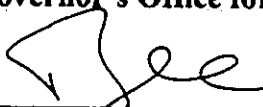
Whereas, AOC desires to provide Eviction Diversion and Landlord and Tenant Mediation to increase housing stability;

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

1. GOFERR agrees to pay AOC the amount of \$425,000 for the services described in the attached MOU Exhibit A, which is hereby incorporated by reference. Payment shall be provided from 01-002-002-0202-19710000-588510.
2. AOC agrees to perform the services described in the attached MOU Exhibit A.
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. This MOU is effective until September 30, 2022.
6. This MOU 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 MOU are not intended to be a legally binding contract as both parties are entities of the State, this agreement is not legally enforceable through court action and disputes must be resolved as set forth in paragraph 8.
8. Disputes under this MOU which cannot be resolved between the parties shall be referred to the Department of Justice, Civil Bureau, for review and resolution.
9. This MOU 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 MOU shall not be construed to confer any such benefit.
11. In the event any of the provisions of this MOU are held to be contrary to any state or federal law, the remaining provisions of the MOU will remain in full force and effect.
12. This MOU, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire MOU and understandings between the parties, and supersedes all prior memoranda of understandings and understandings related hereto.
13. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being specifically preserved.

Governor's Office for Emergency Relief and Recovery

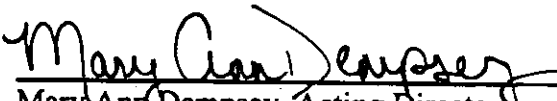


 Taylor Caswell, Executive Director

08/18/2021

 Date

New Hampshire Judicial Branch



 Mary Ann Dempsey, Acting Director
 Administrative Office of the Courts

8/17/21

 Date

Approved by the Attorney General (Form, Substance and Execution)



8/18/21

 Date

Approved by Governor and Executive Council

 Date

EXHIBIT A

SCOPE OF SERVICES

1. AOC as Subrecipient shall receive a grant from GOFERR for expenses incurred for expanding landlord and tenant mediation, which will provide: (1) a statewide, pre-filing eviction diversion program, and (2) a post-filing mediation program that will be implemented in the highest volume courts (Concord, Manchester and Nashua) which have sufficient resources to operate the program. AOC will consider adding locations to the post-filing program depending on the success of the program. Both programs would be ready to launch on November 1, 2021. Expenses eligible for reimbursement include, but are not limited to, the actual costs of third party mediators, costs of administration, technology, transportation, insurance, telephone calls, photocopies, and clerical materials and services.
2. To summarize, the main components of the programs are:

Statewide Pre-filing Mediation (Eviction Diversion)

- a. Conducted through ADR Office
- b. Voluntary, opt-in
- c. Remotely or in-person, available statewide
- d. Program marketed through court including notice of program printed on court-provided materials, as well as relevant stakeholders and community organizations

Post-filing Landlord and Tenant Mediation at Targeted Courts (Concord, Manchester, and Nashua, additional court locations may be added, if successful)

- a. Conducted through court-contracted mediators
- b. Voluntary, opt-out
- c. In-person, may be specially scheduled (Concord) or may be held on same-day as landlord/tenant hearing dates (Manchester and Nashua)
- d. Assistance may be available to apply for the New Hampshire Emergency Rental Assistance Program (NHERAP) at time of mediation

3. The Subrecipient shall be reimbursed by GOFERR based on budgeted expenditures described in Exhibit B. The Subrecipient shall submit incurred expenses for reimbursement on the GOFERR approved expenditure reporting form as provided. Expenditure reports shall be submitted on a quarterly basis, within 15 days following the end of the quarterly activities. Expenditure reports submitted later than 15 days following the end of the quarter will be considered late and out of compliance.
4. Between the Effective Date and the date 5 years after the Completion Date, the Subrecipient shall keep detailed accounts of all expenses incurred in connection with the Grant, including, but not limited

to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

Between the Effective Date and the date five (5) years after the Completion Date, at any time during the Subrecipient's normal business hours, and as often as the GOFERR, the U.S. Department of Treasury or OMB shall demand, the Subrecipient shall make available to the GOFERR, the U.S. Department of Treasury or OMB all records pertaining to matters covered by this MOU. The Subrecipient shall permit the GOFERR, the U.S. Department of Treasury or OMB to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, personnel records, data, and other information relating to all matters covered by this MOU.

5. The Subrecipient shall, at its own expense which allowable costs are subject to reimbursement under this Agreement, provide all personnel necessary to perform the Grant. The Subrecipient warrants that all personnel engaged in the Grant Services shall be qualified to perform such Grant, and shall be properly licensed and authorized to perform such Grant Services under all applicable laws.

6. Any portion of the grant not expended by Subrecipient for allowable costs by September 30, 2022, shall lapse and shall not be paid.

EXHIBIT B

SCHEDULE/TERMS OF PAYMENT

1. The Subrecipient shall receive reimbursement in exchange for approved expenditure reports as described in EXHIBIT A.
2. The Subrecipient shall be reimbursed within 30 days following GOFERR's approval of expenditures. Said payment shall be made to the Subrecipient's account receivables address per the Financial System of the State of New Hampshire.
3. The State's obligation to compensate the Subrecipient under this MOU shall not exceed the price limitation set for in the MOU.
 - a. The Subrecipient shall be awarded an amount not to exceed \$425,000 with approved expenditure reports. This shall be contingent on federal funding and program performance.
 - b. GOFERR will not be responsible for any expenses or costs incurred under this MOU prior to Governor and Executive Council approval, nor after September 30, 2022.

EXHIBIT C

SPECIAL PROVISIONS

1. Statutes and regulations prohibiting discrimination applicable to this MOU, include, without limitation, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
- ii. The Fair Housing Act, Title VIII-IX of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- v. The Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

2. Publications: Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part by, federal award numbers ERAE0119 awarded to the State of New Hampshire by the U.S. Department of the Treasury."