



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

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October 18, 2023

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

REQUESTED ACTION

Authorize the Department of Environmental Services to enter into a Memorandum of Agreement (MOA) with the New Hampshire Department of Health and Human Services (DHHS), Division of Public Health Services (VC# 177921-B001), Concord, NH in the amount of \$1,087,404 for lead removal in drinking water at NH schools and child care facilities, effective upon Governor and Council approval, through December 31, 2025. 36% Drinking Water/Groundwater Trust Fund & 64% Federal funds.

Funding is available in the account as follows:

03-44-44-442010-7428-073-500580	<u>FY 2024</u>
Dept Environmental Services, Drinking Water/Groundwater Trust, Grants Non-Federal	\$400,000
03-44-44-442010-2047-085-588582	
Dept Environmental Services, Water Planning, Interagency Transfer Out of Fed Funds	\$524,491
03-44-44-442010-2047-085-588582	<u>FY2025</u>
Dept Environmental Services, Water Planning, Interagency Transfer Out of Fed Funds	\$162,913

EXPLANATION

The Drinking Water and Ground Water Trust Fund was created in 2016, using \$276 million of MtBE trial judgement funds, as authorized by RSA 485-F. The purpose of the Trust Fund is to provide sustainable, long-term funding for the protection, preservation, and enhancement of the drinking water and groundwater resources of the state. The Drinking Water and Groundwater Advisory Commission was established to administer the Trust Fund and to provide guidance to the State on the use of the Trust Fund.

On April 10, 2023, the Advisory Commission approved \$400,000 to fund a lead remediation grant program administered by DHHS for licensed childcare facilities. DHHS will use the grant funds to support the lead remediation efforts in NH licensed childcare facilities utilizing contractors and a grant

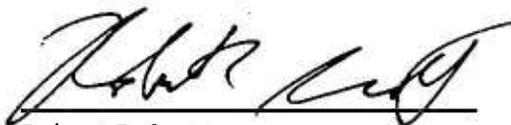
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reimbursement program. NHDES will transfer funds to cover personnel costs for administering the remediation grant program; to purchase lead testing equipment and fund a part-time, temporary laboratory scientist position through FY 2025.

This agreement has been approved by the Attorney General's Office as to form, substance and execution.

We respectfully request your approval.

A handwritten signature in black ink, appearing to read "Robert R. Scott", written over a horizontal line.

Robert R. Scott
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)

dssds

Whereas, the NH Department of Environmental Services (NHDES) ["AGENCY 1"] is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, the NH Department of Health and Human Services (NH DHHS) ["AGENCY 2"] is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, pursuant to RSA 485-17a [insert, for example, RSA or Chapter Law number] AGENCY 1 is responsible for: overseeing the testing and remediation of drinking water outlets at schools and licensed child care programs.

Whereas, AGENCY 1 desires to: reduce children's exposure to lead in drinking water by connecting licensed child care programs with available resources to complete their testing, and providing funding for programs to complete any required remediation.

Whereas, pursuant to RSA 125:8-a [insert, for example, RSA or Chapter Law number] AGENCY 2 is responsible for: providing measures to improve and preserve the health of the citizens of New Hampshire.

Whereas, AGENCY 2 desires to: support child care providers in creating safe and healthy environments for children in their care and reduce children's exposure to lead in drinking water.

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 NHDES [AGENCY 1] agrees to [check all that apply]:

X

A. Pay **AGENCY 2** the amount of \$ 1,087,404 for the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

Execute the following if Box 1., A is checked: Payment shall be provided from **[IDENTIFY FUND]:**

03-44-44-442010-2047-085-588590 (\$687,404)
& 03-44-44-442010-7428-073-500580 (\$400,000)

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

2. The NH DHHS [AGENCY 2] agrees to **[check all that apply]:**

A. Pay **AGENCY 1** the amount of \$ _____ for the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

Execute the following if Box 2. A is checked: Payment shall be provided from **[IDENTIFY FUND]:**

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 December 31, 2025 **[DATE]**.

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 **[NUMBER]** 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. **FOR AGENCY 1** [Name of Agency]: NH Dept of Environmental Services



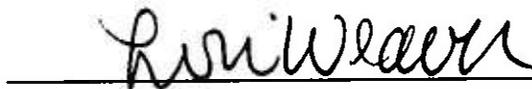
[Agency Head or Commissioner signature]

Date 10/18/23

Robert R. Scott

[Agency Head or Commissioner name in print]

15. **FOR AGENCY 2** [Name of Agency]: NH DHHS- Division of Public Health Services



[Agency Head or Commissioner signature]

Date 10/10/23

Lori A. Weaver

[Agency Head or Commissioner name in print]

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:  On: 10/23/2023
 [Name of Assistant Attorney General] Date

Approved by the Governor and Executive Council

By: _____ On: _____
 Date

Interagency Memorandum of Understanding Exhibit A

For the purposes of the MOU, the New Hampshire Department of Environmental Services (NHDES) and the New Hampshire Department of Health and Human Services, Division of Public Health Services (DHHS/DPHS) agree to cooperate as follows:

I. Department of Environmental Services:

The Department of Environmental Services agrees to:

1. Provide DHHS with technical expertise, including Get the Lead Out of Drinking Water program materials and access to NHDES' contractor, as well as testing results and remediation information, which are publicly available on NHDES' website.
2. Assist DHHS with project planning when appropriate.
3. Provide DHHS with funding as described in Exhibit B.
4. Approve final remediation plans submitted by child care providers to the Get the Lead Out program.

II. Department of Health and Human Services/Division of Public Health Services

The Department of Health and Human Services/ Division of Public Health Services agrees to:

1. Administer and manage a lead remediation grant for licensed child care programs. Grants should cover 100% of approved remediation costs for drinking water outlets that test at or above 5 parts per billion (ppb) for lead. Funding to DHHS for remediation of lead in drinking water for child care facilities is available via this MOU from the New Hampshire Drinking Water and Groundwater Trust Fund. The total cost of lead in drinking water remediation efforts covered by this MOU shall not exceed \$400,000.
2. Develop a grant application and review process, including application form(s).
3. Ensure that grant applicants have provided necessary documentation, including the grant application, a description of the work that was completed, and invoices/receipts/quotes detailing remediation costs.
4. Confirm that outlets were retested following remediation and that all outlets testing at/above 5 ppb were addressed.

5. Issue payments to grant awardees for lead remediation efforts. (Remediation costs for any other contaminants are not eligible for funding under this MOU.)
6. Submit disbursement requests to NHDES.
7. Connect facilities with resources to help them evaluate their remediation options, including the Get the Lead Out of Drinking Water Program Remediation Guide and NHDES' contractor.
8. Promote the grant program to child care providers via outreach to various professional organizations and via direct outreach to providers.
9. Participate in NHDES's Get the Lead Out of Drinking Water Advisory Team, and provide guidance on how best to engage with child care programs, promote the grant program, and recommend any changes that might be needed to more actively engage with child care providers to ensure compliance with the required testing.
10. Perform outreach to child care providers who have not completed testing to encourage them to test and connect them with available resources. Also perform outreach to child care providers who have not submitted remediation information to connect them with available resources.
11. Assist NHDES' efforts to provide additional support to child care programs in disadvantaged communities, which may include enrolling them in the lead testing program, assisting with completion of the outlet inventory, and to the extent feasible, providing sampling assistance.
12. Coordinate with the Child Care Licensing Unit to update licensing rules to be consistent with the lead testing requirements in RSA 485:17-a.
13. Purchase equipment for analyzing lead and other metals in drinking water. DHHS will purchase a new inductively coupled plasma mass spectrometer (ICPMS) and additional spare parts, as described in the table below, the total cost for which is estimated to be \$200,000. This new instrument will expand the state's capacity for testing water samples, including lead in drinking water samples collected at schools and child care facilities.

Item	Description and Use
Inductively Coupled Plasma Mass Spectrometer (ICPMS)	Machine used to analyze drinking water samples for lead and other metals
Additional Spare Parts	Nebulizer, set of MS cones and tubing

14. Fund existing part-time and full-time positions to complete the lead testing and remediation activities described in items 1 to 12 above. The total cost of the positions and associated administrative costs is anticipated to be \$387,404 between the time of execution of this MOU and December 31, 2025.
15. Hire a temporary, part-time Laboratory Scientist to provide additional capacity for the Lab to analyze drinking water samples, including lead in drinking water samples collected as part of the RSA 485-17a testing program. The total cost of the position is anticipated to be \$100,000 between the time of execution of this MOU and December 31, 2025.

III. Mutual agreements of the parties

It is further understood and agreed between NHDES and DHHS/DPHS:

1. This MOA may be modified in writing at any time by mutual consent of both parties and approval by the Governor and Council.
2. In the event that changes in either State or Federal laws or regulations occur which render the performance of portions of this MOA illegal, void, impractical or impossible, those responsibilities shall be removed from this MOA but such removal shall not affect the other provisions contained within the remainder of this MOA.

Interagency Memorandum of Understanding Exhibit B
Payment Terms

Personnel Time

Funding to DHHS for personnel time for this project is available via this MOU from federal grant funds awarded to NHDES as part of the Water Infrastructure Improvements for the Nation (WIIN) program by the U.S. Environmental Protection Agency (USEPA).

All applicable requirements, regulations, provisions, terms and conditions of this MOU will be adopted in full force and effect for the purpose of the work performed under this MOU in any subsequent agreement between the parties.

DHHS will submit quarterly invoices to NHDES for personnel time and administrative costs. Payment from NHDES will be made within 30 days of invoice receipt. The total amount of personnel time and administrative costs covered by this MOU shall not exceed \$487,404.

Lead Remediation Grant

Funding to DHHS for remediation of lead in drinking water for child care facilities is available via this MOU from the New Hampshire Drinking Water and Groundwater Trust Fund. DHHS will submit requests on an agreed upon schedule for reimbursement to NHDES using the Drinking Water and Groundwater Trust Disbursement form as supplied by the NHDES for payment of eligible lead remediation costs. The disbursement form shall be accompanied by proper supporting documentation based upon direct costs for lead remediation. All work shall be performed to the satisfaction of the NHDES before payment is made. The total cost of lead in drinking water remediation efforts covered by this MOU shall not exceed \$400,000.

Purchase of Lead Testing Equipment and Additional Spare Parts

Funding to DHHS for lead testing equipment is available via this MOU from federal grant funds awarded to NHDES as part of the Water Infrastructure Improvements for the Nation (WIIN) program by the U.S. Environmental Protection Agency (USEPA). DHHS shall provide invoices with supporting documentation to NHDES for the cost of purchasing the equipment. Payment from NHDES will be made within 30 days of invoice receipt. The total cost of lead testing equipment covered by this MOU shall not exceed \$200,000.