

The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

March 29, 2024

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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 Understanding (MOU) 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 \$3,322,910 for establishing a PFAS drinking water analytical laboratory, effective upon Governor and Council approval, through September 30, 2029. 100% Federal funds.

Funding is available in the account as follows:

03-44-44-442010-6361-085-588590	<u>FY 2024</u>
Dept Environmental Services, WIIN Emerging Contaminants, Interagency XFR out of Fed FN	\$3,322,910

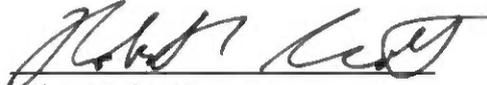
EXPLANATION

The BIL (P.L. 117-58), also known as the "Infrastructure Investment and Jobs Act of 2021" includes \$50 billion to the Environmental Protection Agency (EPA) to strengthen the nation's drinking water and wastewater systems. Among its provisions, the BIL provides a total of \$5 billion in fiscal years 2022-2026 for the EC-SDC grant program, which focuses on addressing emerging contaminants, including perfluoroalkyl and polyfluoroalkyl substances (PFAS) in small or disadvantaged communities' drinking or source water. This new funding includes \$18,914,000 for New Hampshire to assist public water systems with emerging contaminants by providing infrastructure grants, establishing PFAS drinking water testing services at the DHHS Public Health Laboratory, toxicology reviews and risk assessments for emerging contaminants and source water protection initiatives for PFAS in drinking water.

In 2023, EPA approved a workplan submitted by NHDES and awarded a grant that included \$3,322,910 to fund the development of a PFAS testing laboratory at DHHS. DHHS will use the grant funds to support the testing of drinking water for PFAS. The grant will cover certain Public Health laboratory costs, lead testing equipment and fund two full-time temporary laboratory scientist positions through September 30, 2029.

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

We respectfully request your approval.


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)

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 485-16-e [*insert, for example, RSA or Chapter Law number*] **AGENCY 1** is responsible for:

Administering and enforcing maximum contaminant levels for per and polyfluoroalkyl
Substances in drinking water for public water systems.

Whereas, **AGENCY 1** desires to:

reduce the public's exposure to per and polyfluoroalkyl substances in drinking water by
testing and mitigating elevated levels of contamination in sources of drinking water for public
water systems.

Whereas, pursuant to RSA 131 [*insert, for example, RSA or Chapter Law number*]

AGENCY 2 is responsible for:

Making analyses of the drinking water quality of the public water systems of the state.

Whereas, **AGENCY 2** desires to:

support water systems by providing drinking water testing services for poly and
perfluoroalkyl substances.

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*]:

- A.** Pay **AGENCY 2** the amount of \$ 3,322,910 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]:**

03-44-44-442010-6361-085-588590

- 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.

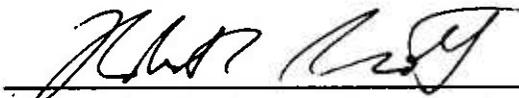
Execute the following if Box 2. A is checked: Payment shall be provided from **[IDENTIFY FUND]:**

- 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 September 30, 2029 **[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.

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



[Agency Head or Commissioner signature]

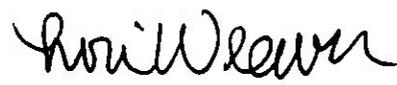
4/11/24

Date

Robert R. Scott

[Agency Head or Commissioner name in print]

FOR AGENCY 2 [Name of Agency]: NH DHHS- Division of Health Services



[Agency Head or Commissioner signature]

2/27/24

Date

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: 4/9/2024
 [Name of Assistant Attorney General] Date
 Joshua C. Harrison

Approved by the Governor and Executive Council

By: _____ On: _____
 Date

Interagency Memorandum of Understanding Exhibit A

For the purposes of the Memorandum of Understanding (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. NHDES agrees to provide funding as described in Exhibit B.
- II. DHHS/DPHS agrees to:
 1. Procure poly and perfluoroalkyl substance laboratory testing equipment such as liquid chromatography-mass spectrometer/mass spectrometer equipment including extraction technology;
 2. Purchase supplies required to complete poly and perfluoroalkyl substance testing;
 3. Purchase laboratory equipment service contracts required to maintain testing equipment;
 4. Fund the retrofitting of existing laboratory space and purchase a chemical fume hood; and
 5. Fund two laboratory scientists, associated computer equipment and other indirect costs for a period of six years to establish and maintain a PFAS testing laboratory.
- III. Mutual agreements of the parties

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

1. This MOU 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 MOU illegal, void, impractical or impossible, those responsibilities shall be removed from this MOU but such removal shall not affect the other provisions contained within the remainder of this MOU.

Interagency Memorandum of Understanding Exhibit B
Payment Terms

Funding to DHHS 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), Small, Underserved and Disadvantaged Communities Grant program by the U.S. Environmental Protection Agency (USEPA). (CFDA 66.442)

All applicable requirements, regulations, provisions, terms and conditions of this grant award 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 with supporting documentation to NHDES for the cost it incurs.

In accordance with the project workplan approved by USEPA, the following funding is available to DHHS through September 30, 2029:

PFAS Laboratory Cost Allocation	Total
LC-MS/MS equipment including extraction unit and training	\$807,807
Equipment service contract	\$222,613
Reagents and supplies	\$204,057
Salary and Benefits for 1 Laboratory Scientist IV & 1 Laboratory Scientist II	\$1,339,140
(2)Computers, information technology	\$5,000
Facilities upgrade/lab renovation	\$30,000
Chemical fume hood	\$20,000
Other Costs (rent, OIT, software, phone, consumables)	\$300,000
15% Contingency	<u>\$394,293</u>
Total	\$3,322,910

INVOICING

DHHS will submit quarterly invoices to NHDES for personnel time and other costs.