



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

September 6, 2013

*Sole Source  
Retroactive*

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Environmental Services (DES) to enter into a **sole source, retroactive** Memorandum of Agreement (MOA) with the Business Finance Authority (BFA), (Vendor #170393), Concord, NH, in the amount of \$50,000.00 to assist the DES Brownfields Revolving Loan Fund (RLF) Program with underwriting and legal services for loans to private borrowers for the cleanup of brownfield sites, effective for the period of July 1, 2013 through June 30, 2015, upon Governor and Council approval. 100% Federal Funds.

Funding is available in as follows:

	<u>FY2014</u>	<u>FY2015</u>
03-44-44-444010-20160000-102-500731	\$25,000	\$25,000
Dept. of Environmental Services, Brownfields SRF, Contracts for Program Services		

**EXPLANATION**

This is a **sole source, retroactive** request. The BFA is knowledgeable in the financial aspects of the Brownfields RLF program, and BFA performs an essential governmental function in carrying out the provisions of RSA 162-A. Private banking institutions do not provide this service without actually making and servicing the loans because the loan application review alone is not profitable. Individual consultants typically charge more than the BFA, are not familiar with the working of government programs such as the Brownfields RLF program, and would require a minimum annual retainer to cover the cost of being available to perform requested services. With respect to being retroactive, approval of a new MOA was initiated by DES on June 21, 2013 which did not allow sufficient time for review and approval by the BFA board prior to the previous MOA expiring on June 30, 2013. The MOA was executed by the BFA on August 19, 2013.

The Comprehensive Environmental Response, Compensation and Liability Act, as amended, established the Brownfields RLF Program to provide low interest loans to eligible municipalities and private entities for the voluntary cleanup of hazardous waste sites for which the borrower is not a responsible party. RSA 147-F:20 authorizes DES to participate in this federally funded program.

DES administers the Brownfields RLF Program in New Hampshire and requires the assistance of the BFA, a body corporate and politic established by RSA 162-A, to review loan applications from private entities, evaluate credit worthiness, make recommendations regarding the advisability of granting each loan, provide legal services (using subcontracted local real estate attorneys), and conduct loan closings.

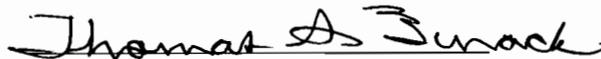
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Since 2001, DES has utilized the BFA as financial advisors when lending to private borrowers. This has allowed DES to lend approximately \$3.5 million for the cleanup of brownfield sites in every region of the State of New Hampshire.

The DES/BFA MOA reestablishes the terms and conditions of the previous MOA for providing financial advice, closing services and guidance to DES under the Brownfields RLF Program. The estimated annual budget shown above is based upon prior program experience.

This MOA has been approved by the New Hampshire Department of Justice with respect to form, substance, and execution.

We respectfully request your approval.

  
Thomas S. Burack  
Commissioner

Attachments



## **MEMORANDUM OF AGREEMENT**

Between the New Hampshire Department of Environmental Services (NHDES) and the Business Finance Authority (BFA) for financial services to assist NHDES with Brownfields Cleanup Revolving Loan Fund loans to private entities for the cleanup of brownfield sites.

This Memorandum of Agreement (MOA) outlines the general responsibilities of the NHDES and the BFA relative to providing financial services and the funding reimbursement by the NHDES.

WHEREAS, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, established the Brownfields Cleanup Revolving Loan Fund (BCRLF) Program to provide low or no interest loans to eligible municipalities and private entities for the cleanup of sites contaminated with hazardous substances and petroleum for which the borrower is not a responsible party, and

WHEREAS, the BCRLF Program is being carried out under RSA 147-F:20 and statutes and regulations of the United States Environmental Protection Agency (USEPA).

### **SCOPE OF SERVICES**

NOW THEREFORE, the NHDES requires the assistance of the BFA to review loan applications from private entities, perform credit worthiness investigations, make recommendations regarding the advisability of granting each loan, provide loan related legal services, and conduct loan closings.

For the purpose of this agreement NHDES and the BFA agree to cooperate as follows:

### **Duties and Responsibilities of NHDES**

1. Act as Fund Manager for the BCRLF.
2. Provide all necessary procedures and forms for the loan application process.
3. Determine borrower and site eligibility in accordance with the CERCLA § 104(k).
4. Provide BFA with application documents, reports, and other information necessary to evaluate loan applications.
5. Meet with BFA staff and legal counsel as needed to review individual loan applications.
6. Process loan agreements through Governor and Executive Council.
7. Provide project management including acting as Qualified Environmental Professional, providing technical project review, and performing site inspections.
8. Service loans including the review of disbursement requests, disbursing funds for eligible costs, and collecting loan repayments.
9. Maintain project files for all loan applications, loan instruments, disbursement requests and other pertinent documents.
10. Prepare quarterly reports for submittal to USEPA.
11. Reimburse funds to the BFA for the review of loan applications and the preparation of loan instruments as provided by this agreement. Funds are available in the amount of \$25,000 for each of the fiscal years FY13 and FY14.

**Duties and Responsibilities of BFA**

1. Assist NHDES in developing/implementing prudent lending practices including determination of the types of loans to be made, underwriting principles, and loan servicing.
2. Provide credit risk analyses and underwriting services for loan applications from private borrowers based on information provided by NHDES and prospective borrowers.
3. Make financial recommendations to NHDES regarding the advisability of granting a loan.
4. Prepare loan instruments and provide loan closing, recording, and legal support services for loans to private borrowers. These services may require advice from BFA legal counsel.
5. Maintain project files of loan recommendations, all loan instruments and other pertinent documents.
6. Provide documents and other information requested by NHDES as needed for reporting to USEPA.
7. Attend meetings and/or provide financial service and support guidance to NHDES as requested.
8. Accept and use funds from NHDES for the financial services provided under this agreement.

**FUNDING**

The NHDES will provide funding reimbursement from Account #03-44-44-444010-20160000-102-500731 to the BFA. The total cost for the work completed under this MOA shall not exceed \$50,000.

**INVOICING**

The BFA will submit invoices to NHDES based upon direct costs and overhead mark-up and will maintain adequate documentation to substantiate all BCRLF Program related costs.

**TERMINATION**

Either party may terminate this agreement upon providing written notice to the other, thirty (30) days prior to termination. Upon termination, the BFA will be paid for all work completed prior to termination.

**DURATION**

This agreement shall continue in effect until June 30, 2015, unless terminated earlier by either party, or extended in writing by subsequent agreement of the parties and acceptance by Governor and Council.

**AGREEMENT**

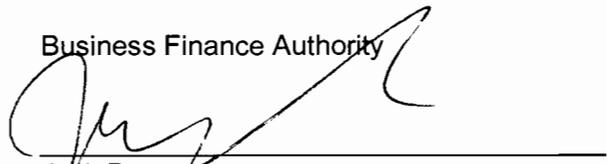
In WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective on the date the Governor and Council of the State of New Hampshire approve this Agreement.

NH Department of Environmental Services

  
 Thomas S. Burack  
 Commissioner

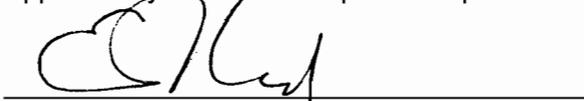
9/26/2013  
 Date

Business Finance Authority

  
 Jack Donovan  
 Executive Director

8/19/17  
 Date

Approved by the New Hampshire Department of Justice as to form, substance, and execution.

  
 Assistant Attorney General

9/30/13  
 Date

A RESOLUTION RELATING TO THE APPROVAL OF A MEMORANDUM  
OF AGREEMENT FOR THE BROWNFIELDS CLEANUP REVOLVING  
LOAN FUND PROGRAM

WHEREAS, the Department of Environmental Services (DES) has requested that the Business Finance Authority (BFA) review applications for Brownfields Cleanup RLF loans and make financial recommendations to DES regarding the advisability of granting such loans; and,

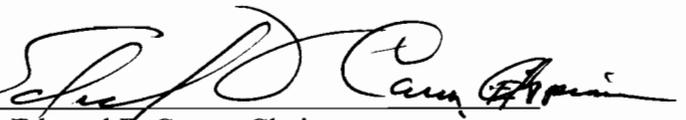
WHEREAS, DES and the BFA have developed a Memorandum of Agreement which outlines the duties and responsibilities of both DES and the BFA with respect to administration of the Brownfields Cleanup Revolving Fund Program.

IT IS HEREBY RESOLVED THAT:

The Executive Director is hereby authorized to sign the Memorandum of Agreement on behalf of the Business Finance Authority.

Passed: August 19, 2013

Attest:

  
Edward F. Caron, Chairman

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

On this the 19th day of August 2013, before me, personally appeared Edward F. Caron, as duly authorized Chairman of the BUSINESS FINANCE AUTHORITY, executed the foregoing instrument for the purpose therein contained.

In witness whereof, I set my hand and official seal:

  
Notary Public

My Commission Expires

BRENDA L. PELLETIER  
Notary Public - New Hampshire  
My Commission Expires December 5, 2017

# State of New Hampshire

## Department of State

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BUSINESS FINANCE AUTHORITY (formerly THE INDUSTRIAL PARK AUTHORITY, formerly THE INDUSTRIAL DEVELOPMENT AUTHORITY) is a New Hampshire corporation, formed by the laws of 1955 effective July 14, 1955. I further certify that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 8<sup>th</sup> day of July, A.D. 2013

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State