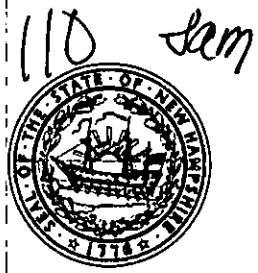




The State of New Hampshire  
**Department of Environmental Services**

Robert R. Scott, Commissioner

MAY 09 '19 PM 1:49 DAS



April 29, 2019

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

**REQUESTED ACTION**

Authorize the Department of Environmental Services (DES) to amend a **SOLE SOURCE** contract (PO# 1056972) with the Business Finance Authority (VC# 170393 B001) Concord, NH, by increasing the contract by \$130,000 to \$260,000 from \$130,000 and extending the end date to June 30, 2021 from June 30, 2019 to assist various loan programs with underwriting and legal services for loans to private borrowers, effective as of July 1, 2019 through June 30, 2021 upon Governor and Council approval. The contract was originally approved by Governor and Council on June 7, 2017, Item #93 and amended on June 6, 2018, Item #125A. 100% Federal Funds and 100% Drinking Water/Groundwater Trust Funds.

Funding is available in the accounts listed below with the authority to adjust encumbrances in each of the state fiscal years through the Budget Office, if needed and justified. Funding for FY 2020 - 2021 is contingent upon the availability and continued appropriation of funds.

Dept. of Environmental Services Account No. 03-44-44	FY 2020	FY 2021	TOTAL
441018-4718-102-500731 DWSRF Administration, Contracts for Program Services	\$30,000	\$30,000	\$60,000
441018-4788-102-500731 CWSRF Administration, Contracts for Program Services	\$10,000	\$10,000	\$20,000
444010-2018-102-500731 Brownfields RLF Repayments, Contracts for Program Services	\$15,000	\$15,000	\$30,000
442010-3904-102-500731 DWGW Trust, Contracts for Program Services	\$10,000	\$10,000	\$20,000
<b>TOTALS:</b>	<b>\$65,000</b>	<b>\$65,000</b>	<b>\$130,000</b>

**EXPLANATION**

This amendment is to extend an existing **sole source** contract with the Business Finance Authority (BFA) to continue to provide financial advice and guidance on lending funds to private individuals and corporations including review of credit worthiness, advisability on issuing loans, and preparation of loan agreements and associated legal documents. BFA has successfully provided these services to NHDES for over twenty years. In 2011, the Department solicited proposals for these services. Only one organization, the BFA, responded to the Request For Proposals.

The 1996 Amendments to the Safe Drinking Water Act, 1987 amendments to the Clean Water Act and RSA 486:14 established a State Revolving Loan Fund (SRF) to assist drinking water and wastewater utilities, communities, non-profits and other local government entities in financing the cost of drinking water and wastewater infrastructure improvements with the ultimate goal of protecting public health.

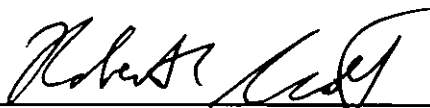
The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), established the Brownfields Revolving Loan Fund (RLF) Program to provide low or no interest loans to eligible municipalities and private entities for the cleanup of sites contaminated with hazardous substances and petroleum for which the borrower is not a responsible party, and being carried out under RSA 147-F:20 and statutes and regulations of the US Environmental Protection Agency.

The Drinking Water and Ground Water Trust Fund (DWGTF) 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 including loans to various drinking water systems.

The BFA is knowledgeable in the financial aspects of the SRF, DWGTF and RLF programs. Individual consultants typically charge more than BFA, are not as familiar with the loan programs, and may require a minimal annual retainer to cover the cost of being available to perform the requested services. BFA only charges for actual services rendered.

All other conditions of the original agreement will remain in full effect. In the event that the Federal funds become no longer available General funds will not be requested to support this program. This agreement has been approved by the Attorney General's Office as to form, substance and execution.

Respectfully submitted,



Robert R. Scott  
Commissioner

**AMENDMENT No. 2  
TO CONTRACT BETWEEN  
N.H. DEPARTMENT OF ENVIRONMENTAL SERVICES  
AND  
N.H. BUSINESS FINANCE AUTHORITY**

**AGREEMENT FOR UNDERWRITING AND LEGAL SERVICES**

WHEREAS the State of New Hampshire has entered into a contract with the N.H. Business Finance Authority (BFA) in the amount of \$130,000.00 to assist the Drinking Water, Clean Water, Brownfields Revolving Loan Fund, and Drinking Water and Groundwater Trust Fund programs with underwriting and legal services for loans to private borrowers effective July 1, 2017 through June 30, 2019.

WHEREAS the State of New Hampshire wishes to extend the contract completion date from June 30, 2019 to June 30, 2021 to continue underwriting services for private loans.

NOW THEREFORE, amend the original contract between DES and the BFA as approved by Governor and Council on June 7, 2017, as Item #93 and amended on June 6, 2018, as Item #125A in the following manner:

Change section 1.7 (Completion Date) in the General Provisions of the Agreement to read: June 30, 2021.

Change section 1.8 (Price Limitation) in the General Provisions of the Agreement to read: \$130,000.

Change Exhibit B to read:

**FUNDING**

Account #03-44-44-441018-4718-102-500731 (DWSRF): \$30,000

Account #03-44-44-444018-4788-102-500731 (CWSRF): \$10,000

Account #03-44-44-444010-2018-102-500731 (RLF): \$15,000

Account #03-44-44-442010-3904-102-500731 (DWGTF): \$10,000

The total cost for the work completed under this contract shall not exceed \$65,000 (\$30,000 for DWSRF, \$10,000 for CWSRF, \$15,000 for RLF, and \$10,000 for DWGTF) per year.

<b>Task Number/Description</b>	<b>Underwriting &amp; Legal Services</b>
1. FY2020	\$65,000
2. FY2021	\$65,000
<b>TOTAL</b>	<b>\$130,000</b>

Hourly Rates:

Consulting Lawyer: \$275.00

Executive Director: \$127.76


Senior Credit Officer: \$103.46

Administrative Assistant: \$63.17

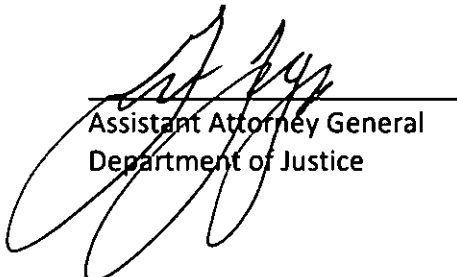
All other conditions outlined in the contract shall remain in effect.

  
\_\_\_\_\_  
Robert R. Scott, Commissioner  
Department of Environmental Services

4-30-19  
Date

  
\_\_\_\_\_  
James Key-Wallace  
Executive Director  
Business Finance Authority

4-15-19  
Date

  
\_\_\_\_\_  
Assistant Attorney General  
Department of Justice

5/2/19  
Date

**Exhibit A**  
**SCOPE OF SERVICES**

**SCOPE OF SERVICES**

The NH Department of Environmental Services (NHDES) requires the assistance of the Business Finance Authority (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 Drinking Water and Clean Water State Revolving Loan Funds (SRF), the Brownfields Revolving Loan Fund (RLF) and the Drinking Water and Groundwater Trust Fund (DWGTF).

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. Loans for the SRF and DWGTF programs will be reviewed using the Loan Policy shown in Attachment A.
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. Comply with all applicable regulations regarding the SRF, RLF and DWGTF programs.

**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, 2021, unless terminated earlier by either party, or extended in writing by subsequent agreement of the parties and acceptance by Governor and Council.

**EXHIBIT B**  
**BUDGET & PAYMENT METHOD**

**FUNDING**

Accept and use funds from NHDES for financial services provided. The NHDES will provide funding reimbursement to BFA from the following accounts:

Account #03-44-44-441018-4718-102-500731 (DWSRF): \$30,000

Account #03-44-44-444018-4788-102-500731 (CWSRF): \$10,000

Account #03-44-44-444010-2018-102-500731 (RLF): \$15,000

Account #03-44-44-442010-3904-102-500731 (DWGTF): \$10,000

The total cost for the work completed under this contract shall not exceed \$65,000 (\$30,000 for DWSRF, \$10,000 for CWSRF, \$15,000 for RLF, and \$10,000 for DWGTF) per year.

All services shall be performed to the satisfaction of the NHDES before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of associated invoices. The Contract budget is as follows:

Task Number/Description	Underwriting & Legal Services
1. FY2020	\$65,000
2. FY2021	\$65,000
<b>TOTAL</b>	<b>\$130,000</b>

Hourly Rates:

Consulting Lawyer: \$275.00

Executive Director: \$127.76

Senior Credit Officer: \$103.46

Administrative Assistant: \$63.17

**INVOICING**

The BFA will submit invoices to NHDES based upon direct costs and overhead mark-up as shown above and will maintain adequate documentation to substantiate all SRF, RLF and DWGTF Program related costs. Legal services provided through the BFA are reimbursed without markup from BFA. Currently the BFA utilizes the services of David M. Howe Esquire for the SRF, RLF and DWGTF programs. All services are billed at hourly rates on a monthly basis.

**EXHIBIT C**  
**SPECIAL PROVISIONS**

No special provisions.

A RESOLUTION RELATING TO THE APPROVAL OF A MEMORANDUM  
OF AGREEMENT FOR THE DRINKING WATER AND CLEAN WATER STATE  
REVOLVING FUND AND BROWNFIELDS CLEANUP REVOLVING LOAN FUND

WHEREAS, the Department of Environmental Services (DES) has requested that the Business Finance Authority (BFA) review loan applications from privately owned public water systems and make financial recommendations to DES regarding the advisability of granting a loan; and,

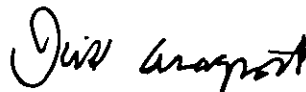
WHEREAS, DES and the BFA have developed a Memorandum of Agreement which outlines the duties and responsibilities of both DES and the BFA with respect to administration of the Drinking Water and Clean Water State Revolving Fund Program and the Brownfields Cleanup Revolving Loan Fund.

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: April 15, 2019

Attest:



\_\_\_\_\_  
Dick Anagnost, Chairman

# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BUSINESS FINANCE AUTHORITY a New Hampshire State Chartered (Legislative) formed to transact business in New Hampshire on July 14, 1955. I further certify that it has paid the fees required by law and has not dissolved.

Business ID: 67088

Certificate Number : 0004460292



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 18th day of March A.D. 2019.

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/13/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER E & S Insurance Services LLC 21 Meadowbrook Lane P O Box 7425 Gilford NH 03247-7425	CONTACT NAME: Eleanor Spinazzola	
	PHONE (A/C, No, Ext): (603) 293-2781 FAX (A/C, No): (603) 293-7188 E-MAIL ADDRESS: pat@esinsurance.net	
INSURED NH Business Finance Authority 2 Pillsbury St Ste 201 Concord NH 03301	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Hartford Casualty Insurance Co	29424
	INSURER B: Twin City Fire Insurance Co	29459
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES CERTIFICATE NUMBER: 2019 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL	SUBR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			04SBAUQ7220	05/14/2019	05/14/2020	EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						MED EXP (Any one person) \$ 10,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PERSONAL & ADV INJURY \$ 2,000,000
	OTHER:						GENERAL AGGREGATE \$ 4,000,000
	AUTOMOBILE LIABILITY						PRODUCTS - COMP/OP AGG \$ 4,000,000
	<input type="checkbox"/> ANY AUTO						Hired Auto \$ 2,000,000
	<input type="checkbox"/> OWNED AUTOS ONLY		<input type="checkbox"/> SCHEDULED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY		<input type="checkbox"/> NON-OWNED AUTOS ONLY				BODILY INJURY (Per person) \$
	<input type="checkbox"/> UMBRELLA LIAB		<input type="checkbox"/> OCCUR				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> EXCESS LIAB		<input type="checkbox"/> CLAIMS-MADE				PROPERTY DAMAGE (Per accident) \$
	DED		RETENTION \$				\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			04WECNY8674	05/14/2019	05/14/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y / N					E.L. EACH ACCIDENT \$ 100,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N	N/A				E.L. DISEASE - EA EMPLOYEE \$ 100,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER NH Department of Environmental Services Drinking Water & Groundwater B 29 Hazen Drive, PO Box 95 Concord NH 03302-0095	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Fairley Kennedy</i>
---	---

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## ATTACHMENT A

### NH DRINKING WATER & CLEAN WATER STATE REVOLVING FUND NH DRINKING WATER AND GROUNDWATER TRUST FUND

#### LOAN POLICY

The purpose of this document is to outline the policy for making loans from the NH Drinking Water and Clean Water State Revolving Fund (SRF) and the Drinking Water and Groundwater Trust Fund (DWGTF). This policy is designed to assist privately-owned public water and/or wastewater systems in making necessary system improvements while maximizing the return of SRF and DWGTF funds.

- Review the legal structure of the applicant (corporation, partnership, limited liability partnership or sole proprietor), its ownership and its Board of Directors if applicable; business name, location, principal owners/stockholders, type of business and products/services, date established; and the adequacy, timeliness and completeness of the applicant's financial statements (audited or un-audited).
- Review the applicant's financial overview; the historical financial condition of the applicant and its comparison to industry norms; the applicant's record of earnings and cash flow; the applicant's history of borrowing and adherence to the terms and conditions; the applicant's equity and collateral; and the applicant's ability to repay the loan.

**Uses:** The SRF or DWGTF may make loans for project planning, design and construction, property acquisition, and/or to purchase or refinance existing debt as described in the applicable annual SRF Intended Use Plan (IUP) and DWGTF guidelines.

**Terms:** Loans will be made for terms of up to 20 years (30 years for disadvantaged entities, and up to 40 years for DWGTF loans) or the design life of improvements, whichever is less. Interest rates will be set based on Env-Dw 1100 and/or Env-Wq 500 and/or RSA 485-F as applicable. Loan amortization must begin within one year of project completion.

**Loan Repayment:** Each borrower from the SRF or DWGTF must demonstrate, based upon either historical cashflow or from dedicated new revenue, that it can service the proposed debt and maintain a debt service ratio of at least a 1.1:1, except in the case of Public Utilities Commission regulated systems, which shall require only a 1:1 debt service coverage ratio.

**Collateral:** Private, for-profit borrowers may be required to provide the SRF or DWGTF with security interest in any assets purchased with SRF or DWGTF funds, and pledge user fees, accounts receivable, or, if necessary, provide a guarantee in an amount sufficient to insure repayment of the loan. Private, non-profit borrowers will only be required to provide a security interest in any purchased assets and pledge fees and accounts receivable to the extent they are not already pledged.



The State of New Hampshire  
Department of Environmental Services

Robert R. Scott, Commissioner

*Johnna McKenna*



May 17, 2018

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

APPROVED G & C

DATE 6/6/18

ITEM # 125A

REQUESTED ACTION

Authorize the Department of Environmental Services (NHDES) to amend the **SOLE SOURCE** contract (PO# 1056972) with the Business Finance Authority, Concord, NH (VC# 170393 B001) by increasing the contract amount by \$10,000 to \$130,000 from \$120,000 to assist the Drinking Water and Groundwater Trust Fund loan program with underwriting and legal services for loans to private borrowers, effective as of July 1, 2018 through June 30, 2019, upon Governor and Council approval. The original agreement was June 7, 2017, Item #93. 100% Drinking Water/Groundwater Trust Funds.

Funding is available in the account as follows:

03-44-44-442010-3904-102-500731

Dept Environmental Services, DWGW Trust, Contracts for Program Services

FY2019  
\$10,000

EXPLANATION

NHDES is requesting approval of this amendment to a **SOLE SOURCE** agreement with the Businesses Finance Authority (BFA) in order to provide additional funding for a contract to provide financial advice and guidance on lending funds to private individuals and corporations including review of credit worthiness, advisability on issuing loans, and preparation of loan agreements and associated legal documents for the new Drinking Water and Groundwater Trust Fund loan program. This agreement is sole source because the BFA is knowledgeable in the financial aspects of other loan programs at NHDES such as the Drinking Water and Clean Water State Revolving Fund and Brownfields Loan Fund programs and they perform an essential governmental function in carrying out the provisions of RSA 162-A.

Individual consultants typically charge more than BFA, are not as familiar with the SRF and BLF programs and may require an annual retainer to cover the cost of being available to perform the requested services. BFA only charges for actual services rendered.

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

We respectfully request your approval.

for  
Robert R. Scott  
Commissioner

DES Website: [www.des.nh.gov](http://www.des.nh.gov)

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-2513 • Fax: (603) 271-5171 • TDD Access: Relay NH 1-800-735-2964

**AMENDMENT No. 1  
TO CONTRACT BETWEEN  
N.H. DEPARTMENT OF ENVIRONMENTAL SERVICES  
AND  
N.H. BUSINESS FINANCE AUTHORITY**

**AGREEMENT FOR UNDERWRITING AND LEGAL SERVICES**

WHEREAS the State of New Hampshire has entered into a contract with the N.H. Business Finance Authority (BFA) in the amount of \$120,000.00 to assist the Drinking Water, Clean Water and Brownfields Revolving Loan Fund programs with underwriting and legal services for loans to private borrowers effective July 1, 2017 through June 30, 2019.

WHEREAS the State of New Hampshire wishes to increase the amount of the contract from \$120,000 to \$130,000, an increase of \$10,000 for FY 2019, to continue underwriting and legal services for private loans.

NOW THEREFORE, amend the original contract between DES and the BFA as approved by Governor and Council on June 7, 2017, as Item #93 in the following manner:

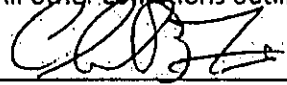
Change section 1.8 (Price Limitation) in the General Provisions of the Agreement to read: \$130,000.

Exhibit A to the Agreement is modified to include services for the Drinking Water and Groundwater Trust Fund Loan Program.


Exhibit B to the Agreement is modified to reflect the additional funding source of \$10,000 for FY2019, as follows:

Dept. of Environmental Services Account No. 03-44-44	Original Totals	Totals of Amendment No. 1	Revised Totals
441018-4718-102-500731 Drinking Water State Revolving Fund	\$30,000.00	\$0	\$30,000.00
444018-4788-102-500731 Clean Water State Revolving Fund	\$10,000.00	\$0	\$10,000.00
444010-2016-102-500731 Brownfields Revolving Fund	\$20,000.00	\$0	\$20,000.00
442010-3904-102-500731 Drinking Water and Groundwater Trust Fund	\$0	\$10,000.00	\$10,000.00
<b>Totals:</b>	<b>\$60,000.00</b>	<b>\$10,000.00</b>	<b>\$70,000.00</b>

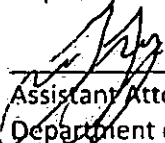
All other conditions outlined in the contract shall remain in effect.

for   
Robert R. Scott, Commissioner  
Department of Environmental Services

5/22/18  
Date

  
James Key-Wallace  
Executive Director  
Business Finance Authority

5-8-2018  
Date

  
Assistant Attorney General  
Department of Justice

5/23/18  
Date

**Exhibit A**  
**SCOPE OF SERVICES**

**SCOPE OF SERVICES**

The NH Department of Environmental Services (NHDES) requires the assistance of the Business Finance Authority (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 Drinking Water and Clean Water State Revolving Loan Funds (SRF), the Brownfields Revolving Loan Fund (RLF) and the Drinking Water and Groundwater Trust Fund (DWGTF).

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. Loans for the SRF and DWGTF programs will be reviewed using the Loan Policy shown in Attachment A.
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. Comply with all applicable regulations regarding the SRF, RLF and DWGTF programs.


**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, 2019, unless terminated earlier by either party, or extended in writing by subsequent agreement of the parties and acceptance by Governor and Council.

**EXHIBIT B**  
**BUDGET & PAYMENT METHOD**

  
5-8-2018

**FUNDING**

Accept and use funds from NHDES for financial services provided. The NHDES will provide funding reimbursement to BFA from the following accounts:

- Account #03-44-44-441018-4718-102-500731 (DWSRF)
- Account #03-44-44-444018-4788-102-500731 (CWSRF)
- Account #03-44-44-444010-2016-102-500731 (RLF)
- Account #03-44-44-442010-3904-102-500731 (DWGTF)

The total cost for the work completed under this contract shall not exceed \$70,000 (\$30,000 for DWSRF, \$10,000 for CWSRF, \$20,000 for RLF, and \$10,000 for DWGTF) per year.

All services shall be performed to the satisfaction of the NHDES before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of associated invoices. The Contract budget is as follows:

Task Number/Description	Underwriting & Legal Services
1. FY2018	\$60,000
2. FY2019	\$70,000
<b>TOTAL</b>	<b>\$130,000</b>

Hourly Rates:

- David Howe: \$275.00 – consulting lawyer
- James Key-Wallace: \$127.76
- Michael Donahue: \$92.17
- Brenda Pelletier: \$61.04

**INVOICING**

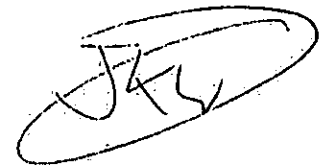
The BFA will submit invoices to NHDES based upon direct costs and overhead mark-up as shown above and will maintain adequate documentation to substantiate all SRF, RLF and DWGTF Program related costs.

Legal services provided through the BFA are reimbursed without markup from BFA. Currently the BFA utilizes the services of David M. Howe Esquire for the SRF, RLF and DWGTF programs.

All services are billed at hourly rates on a monthly basis.

**EXHIBIT C**  
**SPECIAL PROVISIONS**

No special provisions.



5-8-2018

## ATTACHMENT A

### NH DRINKING WATER & CLEAN WATER STATE REVOLVING FUND NH DRINKING WATER AND GROUNDWATER TRUST FUND

#### LOAN POLICY

The purpose of this document is to outline the policy for making loans from the NH Drinking Water and Clean Water State Revolving Fund (SRF) and the Drinking Water and Groundwater Trust Fund (DWGTF). This policy is designed to assist privately-owned public water and/or wastewater systems in making necessary system improvements while maximizing the return of SRF and DWGTF funds.

- Review the legal structure of the applicant (corporation, partnership, limited liability partnership or sole proprietor), its ownership and its Board of Directors if applicable; business name, location, principal owners/stockholders, type of business and products/services, date established; and the adequacy, timeliness and completeness of the applicant's financial statements (audited or un-audited).
- Review the applicant's financial overview; the historical financial condition of the applicant and its comparison to industry norms; the applicant's record of earnings and cash flow; the applicant's history of borrowing and adherence to the terms and conditions; the applicant's equity and collateral; and the applicant's ability to repay the loan.

**Uses:** The SRF or DWGTF may make loans for project planning, design and construction, property acquisition, and/or to purchase or refinance existing debt as described in the applicable annual SRF Intended Use Plan (IUP) and DWGTF guidelines.

**Terms:** Loans will be made for terms of up to 20 years (30 years for disadvantaged entities, and up to 40 years for DWGTF loans) or the design life of improvements, whichever is less. Interest rates will be set based on Env-Dw 1100 and/or Env-Wq 500 and/or RSA 485-F as applicable. Loan amortization must begin within one year of project completion.

**Loan Repayment:** Each borrower from the SRF or DWGTF must demonstrate, based upon either historical cashflow or from dedicated new revenue, that it can service the proposed debt and maintain a debt service ratio of at least a 1.1:1, except in the case of Public Utilities Commission regulated systems, which shall require only a 1:1 debt service coverage ratio.

**Collateral:** Private, for-profit borrowers may be required to provide the SRF or DWGTF with security interest in any assets purchased with SRF or DWGTF funds, and pledge user fees, accounts receivable, or, if necessary, provide a guarantee in an amount sufficient to insure repayment of the loan. Private, non-profit borrowers will only be required to provide a security interest in any purchased assets and pledge fees and accounts receivable to the extent they are not already pledged.

SKW

5-8-2018

A RESOLUTION RELATING TO THE APPROVAL OF AN AMENDMENT TO THE  
MEMORANDUM OF AGREEMENT FOR THE DRINKING WATER REVOLVING LOAN  
FUND PROGRAM AND BROWNFIELD CLEANUP REVOLVING LOAN FUND

WHEREAS, the Department of Environmental Services (DES) has requested that the Business Finance Authority (BFA) review loan applications from privately owned public water systems and make financial recommendations to DES regarding the advisability of granting a loan; 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 Drinking Water State Revolving Fund Program and the Brownfields Cleanup Revolving Loan Fund.

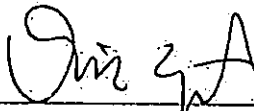
The Amendment to the contract will include providing the same services to the Drinking Water and Groundwater Trust Fund Loan Program.

IT IS HEREBY RESOLVED THAT:

The Executive Director is hereby authorized to sign the Memorandum of Agreement and any Amendments to that agreement on behalf of the Business Finance Authority.

Date: 5/14/2018

Attest:

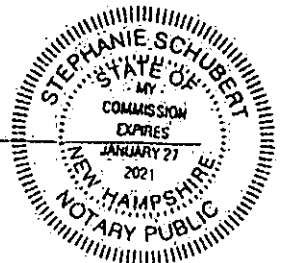
  
Dick Anagnost, Chairman

STATE OF NEW HAMPSHIRE  
COUNTY OF Hillsborough

On this the 14<sup>th</sup> day of May, 2018, before me, personally appeared Dick Anagnost as duly authorized Chairman of the BUSINESS FINANCE AUTHORITY, and executed the foregoing instrument for the purpose therein contained.

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

  
Notary Public





# State of New Hampshire

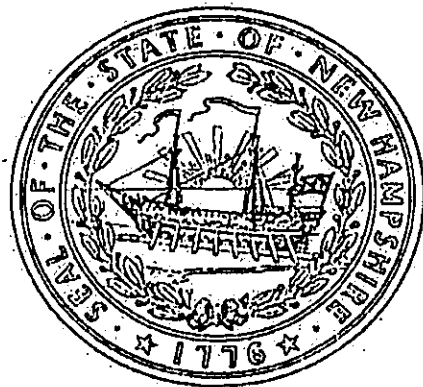
## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BUSINESS FINANCE AUTHORITY a New Hampshire State Chartered (Legislative) formed to transact business in New Hampshire on July 14, 1955. I further certify that it has paid the fees required by law and has not dissolved.

Business ID: 67088

Certificate Number : 0004095934



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 10th day of May A.D. 2018.

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

William M. Gardner  
Secretary of State



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
05/15/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

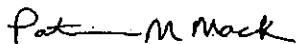
<b>PRODUCER</b> E & S Insurance Services LLC 21 Meadowbrook Lane P O Box 7425 Gilford NH 03247-7425		<b>CONTACT NAME:</b> Pat Mack <b>PHONE (A/C, No, Ext):</b> (603)293-2791 <b>FAX (A/C, No):</b> (603)293-7188 <b>E-MAIL ADDRESS:</b> pat@esinsurance.net	
<b>INSURED</b> New Hampshire Business Finance Authority 2 Pillsbury Street, Suite 201 Concord NH 03301		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Hartford Casualty Insurance Co NAIC # 29424 <b>INSURER B:</b> Twin City Fire Insurance Co 29459 <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	

COVERAGES CERTIFICATE NUMBER: 2018 Cert REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

MSR CTR	TYPE OF INSURANCE	ADDL INSR	SUBR WYP	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			04SBAUQ7220	05/14/2018	05/14/2019	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence): \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 Hired Auto \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			04WECNY6674	05/14/2018	05/14/2019	<input checked="" type="checkbox"/> PER-STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b> NH Department of Environmental Services Drinking Water & Groundwater B 29 Hazen Drive, PO Box 95 Concord NH 03302-0095	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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The State of New Hampshire  
Department of Environmental Services

Clark B. Freise, Assistant Commissioner

*John W. McKenna*



May 9, 2017

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

APPROVED G & C

DATE 6/7/17

ITEM # 93

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into a sole source contract with the Business Finance Authority (VC# 170393 B001), Concord, NH in the amount of \$120,000 to assist the Drinking Water, Clean Water and Brownfields Revolving Loan Fund programs with underwriting and legal services for loans to private borrowers, effective as of July 1, 2017 through June 30, 2019, upon Governor and Council approval. 100% Federal Funds.

Funding is available in the accounts as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified. Funding for FY18-19 is contingent upon continuing appropriations and availability of funds.

	<u>FY 2018</u>	<u>FY2019</u>
03-44-44-441018-4718-102-500731 Dept Environmental Services, DWSRF Administration, Contracts for Program Services	\$30,000	\$30,000
03-44-44-441018-4788-102-500731 Dept Environmental Services, DWSRF Administration, Contracts for Program Services	\$10,000	\$10,000
03-44-44-444010-2016-102-500731 Dept Environmental Services, Brownfields RLF, Contracts for Program Services	\$20,000	\$20,000

EXPLANATION

This is a sole source request to enter into a contract with the Businesses Finance Authority (BFA) to provide financial advice and guidance on lending funds to private individuals and corporations including review of credit worthiness, advisability on issuing loans, and preparation of loan agreements and associated legal documents. For almost twenty years, DES has utilized the BFA as financial and legal advisors when lending to private borrowers. In 2011, DES solicited proposals for these services, with BFA as the only respondent to the Request for Proposals.

The 1996 Amendments to the Safe Drinking Water Act, 1987 amendments to the Clean Water Act and RSA 486:14 established a State Revolving Loan Fund (SRF) to assist drinking water and wastewater utilities, communities, non-profits and other local government entities in financing the cost of drinking water and wastewater infrastructure improvements with the ultimate goal of protecting public health.

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, established the Brownfields Revolving Loan Fund (RLF) 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 being carried out under RSA 147-F:20 and statutes and regulations of the United States Environmental Protection Agency.

The BFA is knowledgeable in the financial aspects of both the SRF and RLF programs and they perform an essential governmental function in carrying out the provisions of RSA 162-A. Individual consultants typically charge more than BFA, are not as familiar with the SRF and RLF programs and may require a minimal annual retainer to cover the cost of being available to perform the requested services. BFA only charges for actual services rendered.

This agreement establishes the terms and conditions for providing financial advice and guidance to DES. This agreement has been approved by the Attorney General's office as to form, substance and execution. In the event that the Federal funds become no longer available General funds will not be requested to support this program.

We respectfully request your approval.

  
For Clark B. Freise  
Assistant Commissioner

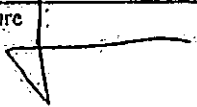
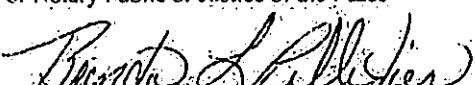


**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**I. IDENTIFICATION.**

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03302	
1.3 Contractor Name Business Finance Authority		1.4 Contractor Address 2 Pillsbury Street, Suite 201 Concord, NH 03301	
1.5 Contractor Phone Number 603-451-0191	1.6 Account Number 03-44-44-441018-4718-102 03-44-44-441018-4788-102 03-44-44-444010-2016-102	1.7 Completion Date June 30, 2019	1.8 Price Limitation \$120,000
1.9 Contracting Officer for State Agency Johnna McKenna		1.10 State Agency Telephone Number 603-271-7017	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory James Key-Wallace Executive Director	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>MERRIMACK</u> On <u>18 APR 2017</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace 			
1.13.2 Name and Title of Notary or Justice of the Peace BRENDA L. PELLETIER Notary Public - New Hampshire Commission Expires December 6, 2017			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Sarah Yulus King, Administrator NH Dept. of Environmental Services	
1.16 Approval by the State Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>5/15/17</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

#### 8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

#### 9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

#### 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.



Exhibit A  
SCOPE OF SERVICES

**SCOPE OF SERVICES**

The NH Department of Environmental Services (NHDES) requires the assistance of the Business Finance Authority (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 Drinking Water and Clean Water State Revolving Loan Funds (SRF) and the Brownfields Revolving Loan Fund (RLF).

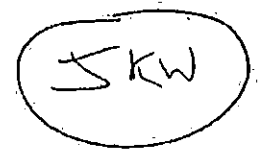
1. Assist NHDES in developing/implementing prudent lending practices including determination of the types of loans to be made, underwriting principles, and loan servicing.
2. Provide credit risk analyses and underwriting services for loan applications from private borrowers based on information provided by NHDES and prospective borrowers. Loans for the SRF programs will be reviewed using the Loan Policy shown in Attachment A.
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. Comply with all applicable federal regulations regarding the SRF and RLF programs.

**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, 2019, unless terminated earlier by either party, or extended in writing by subsequent agreement of the parties and acceptance by Governor and Council.

5-10-17  


**EXHIBIT B**  
**BUDGET & PAYMENT METHOD**

**FUNDING**

Accept and use funds from NHDES for financial services provided. The NHDES will provide funding reimbursement from Account #03-44-44-441018-4718-102-500731 (DWSRF), Account #03-44-44-444018-4788-102-500731 (CWSRF) or Account #03-44-44-444010-2016-102-500731 (RLF) to the BFA. The total cost for the work completed under this contract shall not exceed \$60,000 (\$30,000 for DWSRF, \$10,000 for CWSRF and \$20,000 for RLF) per year.

All services shall be performed to the satisfaction of the NHDES before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of associated invoices.

The Contract budget is as follows:

Task Number/Description	Underwriting & Legal Services
1. FY2018	\$60,000
2. FY2019	\$60,000
<b>TOTAL</b>	<b>\$120,000</b>

Hourly Rates:

David Howe: \$275.00 – consulting lawyer  
James Key-Wallace: \$127.76  
Michael Donahue: \$92.17  
Brenda Pelletier: \$61.04

**INVOICING**

The BFA will submit invoices to NHDES based upon direct costs and overhead mark-up as shown above and will maintain adequate documentation to substantiate all RLF & SRF Program related costs.


Legal services provided through the BFA are reimbursed without markup from BFA. Currently the BFA utilizes the services of David M. Howe Esquire for the SRF and RLF programs.

All services are billed at hourly rates on a monthly basis.

**EXHIBIT C**  
**SPECIAL PROVISIONS**

No special provisions.

5-10-17

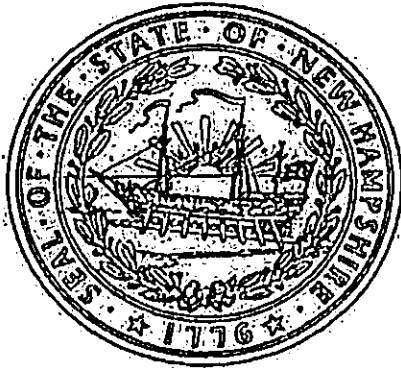


State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BUSINESS FINANCE AUTHORITY a New Hampshire State Chartered (Legislative) formed to transact business in New Hampshire on July 14, 1955. I further certify that it has paid the fees required by law and has not dissolved.

Business ID: 67088



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 4th day of April A.D. 2017.

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State

A RESOLUTION RELATING TO THE APPROVAL OF A MEMORANDUM  
OF AGREEMENT FOR THE DRINKING WATER REVOLVING LOAN FUND PROGRAM  
AND BROWNFIELD CLEANUP REVOLVING LOAN FUND

WHEREAS, the Department of Environmental Services (DES) has requested that the Business Finance Authority (BFA) review loan applications from privately owned public water systems and make financial recommendations to DES regarding the advisability of granting a loan; and,

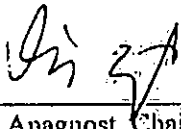
WHEREAS, DES and the BFA have developed a Memorandum of Agreement which outlines the duties and responsibilities of both DES and the BFA with respect to administration of the Drinking Water State Revolving Fund Program and the Brownfields Cleanup Revolving Loan Fund.

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: April 17, 2017

Attest: \_\_\_\_\_

  
Dick Anagnost, Chairman

Business Finance Authority  
April 17, 2017  
Concord, New Hampshire

The meeting of the Board of Directors of the Business Finance Authority ("BFA") was called to order at 3:00 p.m. at 2 Pillsbury Street, Pillsbury Meeting Room, Concord, New Hampshire. The following Directors were present: Dick Anagnost, Bill Dwyer, Jeffrey Hayes, Catherine Provencher, Matthew Benson, Daniel Henderson, Guy Santagate, Jeremy Hitchcock, Charles Withee and Representative Kermit Williams. Absent were Director Stephen Duprey, Senator Gary Daniels, Senator Bob Giuda, and Representative Laurie Sanborn. Also present were: James Key-Wallace, Executive Director and Clerk; William Rushforth, Chief Financial Officer; Michael Donahue, Senior Credit Officer; and Liz Gray, Director of Entrepreneurship, "Live Free and Start".

Chairman Protem Anagnost announced the meeting was open to the public and welcomed all present.

The Chairman Protem asked for approval of the minutes for March 20, 2017 Board Meeting.

Representative Williams requested that because the Senators and Representatives are duly appointed Board Members, to include them with the listing of Directors present or absent.

Upon motion made by Director Dwyer and seconded by Director Provencher to approve the minutes, the following action was unanimously approved:

VOTED: To accept the minutes of the March 20, 2017 Board Meeting.

The following named directors voted:

Aye: Dick Anagnost, Bill Dwyer, Jeffrey Hayes, Catherine Provencher, Matthew Benson, Daniel Henderson, Guy Santagate, Jeremy Hitchcock, and Charles Withee. Nay: None. Abstain: None.

Whereupon the Chairman Protem declared said resolution adopted.

The Chairman Protem asked the Board to consider approving the Memorandum of Agreement/contract between NH Business Finance Authority and the NH Department of Environmental Services – Drinking Water & Clean Water State Revolving Loan Fund and Brownfields Cleanup Revolving Loan Fund and to authorize James Key-Wallace, Executive Director, to execute any documents related to this matter.

Mr. Key-Wallace explained that the BFA reviews loan applications for the DES programs and provides a brief loan write-up.

Upon motion made by Director Provencher and seconded by Director Hayes, the following action was voted on:

VOTE: To approve the Memorandum of Agreement/contract between NH Business Finance Authority and the NH Department of Environmental Services – Drinking Water & Clean Water State Revolving Loan Fund and Brownfields Cleanup Revolving Loan Fund and to authorize James Key-Wallace, Executive Director, to execute documents. (See attached Exhibit 1-a)

The following named directors voted:

Aye: Dick Anagnost, Bill Dwyer, Jeffrey Hayes, Catherine Provencher, Matthew Benson, Daniel Henderson, Guy Santagate, Jeremy Hitchcock, and Charles Withee. Nay: None. Abstain: None.

Whereupon the Chairman Protem declared said resolution adopted.

The Chairman Protem asked Mr. Rushforth to review the monthly financial report.

The Chairman Protem asked Mr. Donahue to review the Lending Reports.

The Chairman Protem asked the Board to consider a request from Salem Cooperative Bank and Granite State Gymnastics & Fitness, LLC or Entity to be Named for an 80% guarantee of an \$825,000 commercial mortgage loan under the Guarantee Asset Program (GAP).

Mr. Donahue explained that the proposed loan would be part of a \$1,100,000 project to purchase real estate located in Hooksett, NH and make improvements to the property.

Director Dwyer made a recommendation to offer a 75% percent guarantee on the loan.

Upon motion made by Director Withee and seconded by Director Santagate, the following action was voted on:

VOTE: To approve the request Salem Cooperative Bank and Granite State Gymnastics & Fitness, LLC or Entity to be Named for a 75% guarantee of an \$825,000 000 commercial mortgage loan under the Guarantee Asset Program (GAP).

After due consideration of said resolution by the Board, the Chairman Protem put the question on the motion and upon the roll being called, the following named Directors voted:

Aye: Dick Anagnost, Bill Dwyer, Jeffrey Hayes, Catherine Provencher, Daniel Henderson, Guy Santagate, Jeremy Hitchcock, and Charles Withee. Nay: None. Abstain: Matthew Benson.

Whereupon the Chairman Protem declared said resolution adopted.

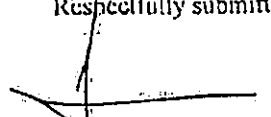
The Chairman asked Mr. Key-Wallace to review the Director's Report.

There has been no activity recently with respect to SB 30, we are still waiting on the bank to perform their analysis on the project and submit an application to our office.

There is no change since the last meeting with regard to the Office of Inspector General Audit. The BFA will have the opportunity to respond to the audit findings before they are made final.

There being no further business and upon motion made and seconded, the meeting was adjourned at 3:45 p.m.

Respectfully submitted:



James Key-Wallace  
Clerk



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/28/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> E & S Insurance Services LLC 21 Meadowbrook Lane P O Box 7425 Gilford NH 03247-7425		<b>CONTACT NAME:</b> Pat Mack <b>PHONE (AG, Ho, Ext):</b> (603) 293-2791 <b>FAX (AG, Ho):</b> (603) 293-7188 <b>EMAIL ADDRESS:</b> pat@esinsurance.com	
<b>INSURED</b> Nh Business Finance Authority 2 Pillsbury St Ste 201 Concord NH 03301		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Hartford Casualty Insurance Co <b>NAIC #:</b> 29424 <b>INSURER B:</b> Hartford Ins. Co. of the Midwest <b>37478</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	

COVERAGES      CERTIFICATE NUMBER: CL1732611018      REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSTR. LTR.	TYPE OF INSURANCE	ADDITIONAL INFO	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXPI. DATE (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN. AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		046BAUQ7220	5/14/2017	5/14/2018	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/PROP AGO \$ 4,000,000 Hired Auto \$ 2,000,000 COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> RENTED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS  <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED. <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROFESSIONAL/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below.	Y/N    N/A	04WECNY6674	5/14/2017	5/14/2018	PER STATUTE    DTH-BH E.I. EACH ACCIDENT \$ 100,000 E.I. DISEASE - EA EMPLOYEE \$ 100,000 E.I. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER:</b> NH Department of Environmental Services Drinking Water & Groundwater Bureau 29 Hazen Drive, PO Box 95 Concord, NH 03302-0095	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE Pat Mack/PAT <i>Pat Mack</i>
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## ATTACHMENT A

### NH DRINKING WATER & CLEAN WATER STATE REVOLVING FUND

#### LOAN POLICY

The purpose of this document is to outline the policy for making loans from the NH Drinking Water and Clean Water State Revolving Fund (SRF). This policy is designed to assist privately-owned public water and/or wastewater systems in making necessary system improvements while maximizing the return of SRF funds.

- Review the legal structure of the applicant (corporation, partnership, limited liability partnership or sole proprietor), its ownership and its Board of Directors if applicable; business name, location, principal owners/stockholders, type of business and products/services, date established; and the adequacy, timeliness and completeness of the applicant's financial statements (audited or un-audited).
- Review the applicant's financial overview; the historical financial condition of the applicant and its comparison to industry norms; the applicant's record of earnings and cash flow; the applicant's history of borrowing and adherence to the terms and conditions; the applicant's equity and collateral; and the applicant's ability to repay the loan.

**Uses:** The SRF may make loans for project planning, design and construction, property acquisition, and/or to purchase or refinance existing debt as described in the applicable annual Intended Use Plan (IUP).

**Terms:** Loans will be made for terms of up to 20 years (30 years for disadvantaged entities) or the design life of improvements, whichever is less. Interest rates will be set based on Env-Dw 1100 and/or Env-Wq 500 as applicable. See the applicable annual IUP for current rates. Loan amortization must begin within one year of project completion.

**Loan Repayment:** Each borrower from the SRF must demonstrate, based upon either historical cashflow or from dedicated new revenue, that it can service the proposed debt and maintain a debt service ratio of at least a 1.1:1, except in the case of Public Utilities Commission regulated systems, which shall require only a 1:1 debt service coverage ratio.

**Collateral:** Private, for-profit borrowers may be required to provide the SRF with security interest in any assets purchased with SRF funds, and pledge user fees, accounts receivable, or, if necessary, provide a guarantee in an amount sufficient to insure repayment of the loan. Private, non-profit borrowers will only be required to provide a security interest in any purchased assets and pledge fees and accounts receivable to the extent they are not already pledged.