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The State of New Hampshire
# Department of Environmental Services

Robert R. Scott, Commissioner

127A

May 3, 2023

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

## REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into a **SOLE SOURCE** contract with the Business Finance Authority (VC# 170393 B001) Concord, NH in the amount of $150,000 to assist various loan programs with underwriting and legal services for loans to private borrowers, effective as of July 1, 2023 through June 30, 2025 upon Governor and Council approval. 40% Federal Funds; 60% Other 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 fiscal years 2024-2025 is contingent upon continuing appropriations and availability of funds.

| Dept. of Environmental Services<br>Account No. 03-44-44 | FY 2024 | FY 2025 | TOTAL |
|---|---|---|---|
| 441018-5564-102-500731<br>DWSRF BIL Administration, Contracts for Program Services | $30,000 | $30,000 | $60,000 |
| 441018-4788-102-500731<br>CWSRF Loan Management, Contracts for Program Services | $10,000 | $10,000 | $20,000 |
| 444010-2018-102-500731<br>Brownfields RLF Repayments, Contracts for Program Services | $15,000 | $15,000 | $30,000 |
| 444010-7428-102-500731<br>Drinking Water/Groundwater Trust Fund, Contracts for Program Services | $10,000 | $10,000 | $20,000 |
| 444010-8873-102-550731<br>Emerging Contaminants, Contracts for Program Services | $10,000 | $10,000 | $20,000 |
| TOTALS: | $75,000 | $75,000 | $150,000 |

## EXPLANATION

This is a **sole source** request to enter into a contract with the Business 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. BFA has successfully provided these services to NHDES for over twenty-two years. 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 an annual retainer to cover the cost of being available to perform the requested services. BFA only charges for actual services rendered.

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 (Brownfields 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 Groundwater 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 Per- and Polyfluoroalkyl Substances Remediation Loan Fund (PFAS RLF), established under RSA 485-H, provides for up to $50 million in low interest loans for public water systems and wastewater facilities to address per- and polyfluoroalkyl substances (PFAS) maximum contaminant level (MCL) violations that may occur as a result of the PFAS standards.

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.

We respectfully request your approval of this item.

Robert R. Scott
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**

**1. IDENTIFICATION.**

| | | | |
|---|---|---|---|
| 1.1 State Agency Name<br>NH Department of Environmental Services | | 1.2 State Agency Address<br>29 Hazen Drive<br>Concord, NH 03302 | |
| 1.3 Contractor Name<br>Business Finance Authority | | 1.4 Contractor Address<br>135 North State Street<br>Concord, NH 03301 | |
| 1.5 Contractor Phone Number<br>603-451-0191 | 1.6 Account Unit and Class<br>03-44-44-441018-[illegible]102-500731 (DWSRF)<br>03-44-44-444018-4788-102-500731 (CWSRF)<br>03-44-44-444010-2018-102-500731 (BRLF)<br>03-44-44-442010-7428-102-500731 (DWGTF)<br>03-44-44-444010-8873-102-550731 (PFASRLF) | 1.7 Completion Date<br>June 30, 2025 | 1.8 Price Limitation<br>$150,000 |
| 1.9 Contracting Officer for State Agency<br>Johnna McKenna, NHDES<br>Drinking Water & Groundwater Bureau | | 1.10 State Agency Telephone Number<br>603-271-7017 | |
| 1.11 Contractor Signature<br>Date: 4-18-23 | | 1.12 Name and Title of Contractor Signatory<br>JAMES KEY-Wallace<br>Executive Director, NHBFA | |
| 1.13 State Agency Signature<br>Date: 5/4/23 | | 1.14 Name and Title of State Agency Signatory<br>Robert R. Scott, Commissioner<br>NH Department of Environmental Services | |
| 1.15 Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)*<br>By: | | Director, On: | |
| 1.16 Approval by the Attorney General (Form, Substance and Execution) *(if applicable)*<br>By: | | On: 5/30/2023 | |
| 1.17 Approval by the Governor and Executive Council *(if applicable)*<br>G&C Item number: | | G&C Meeting Date: | |



Contractor Initials JKW
Date 4/18/23

**2. 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 B 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, 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 1.13 ("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.

3.3 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. 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 by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C which is incorporated herein by reference.

5.2 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. 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.

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 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

**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 applicable 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 employment opportunity laws and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. The Contractor 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 this Agreement and all rules, regulations and orders pertaining to 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 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.



Contractor Initials JM
Date 4/18/23

**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) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar 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. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

**10. PROPERTY OWNERSHIP/DISCLOSURE.**

10.1 As used in this Agreement, the word "Property" shall mean all data, 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.

10.2 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.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

**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.**

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.



Contractor Initials JK

Date 4/18/23

**14. INSURANCE.**
14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:
14.1.1 commercial 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 or excess; and
14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 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 any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**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. The Contractor shall furnish the Contracting Officer identified in block 1.9, or any 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.** A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

**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. CHOICE OF LAW AND FORUM.**
19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.
19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

**20. CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

**21. THIRD PARTIES.** This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

**22. 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.

**23. SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

**24. FURTHER ASSURANCES.** The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

**25. 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.

**26. 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 with respect to the subject matter hereof.



Contractor Initials SKJ
Date 4/14/23

## EXHIBIT A
## SPECIAL TERMS & CONDITIONS

No special provisions.

## EXHIBIT B
## 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 Per- and Polyfluoroalkyl Substances Remediation Loan Fund (PFAS RLF), Brownfields Revolving Loan Fund (Brownfields 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, PFAS RLF 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, PFAS RLF, 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, 2025, unless terminated earlier by either party, or extended in writing by subsequent agreement of the parties and acceptance by Governor and Council.



Contractor Initials SKW
Date 4/19/23

**EXHIBIT C**
**PRICE & PAYMENTS**

**FUNDING**

Accept and use funds from NHDES for financial services provided. The NHDES will provide funding reimbursement to BFA from the accounts as listed in Section 1.6 of the contract.

The total cost for the work completed under this contract shall not exceed $75,000 ($30,000 for DWSRF, $10,000 for CWSRF, $15,000 for Brownfields RLF, $10,000 for DWGTF, and $10,000 for PFAS 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. FY2024 | $75,000 |
| 2. FY2025 | $75,000 |
| **TOTAL** | **$150,000** |

Hourly Rates:

| | |
|---|---|
| Consulting Lawyer: | $300.00 |
| 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, PFAS RLF, 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, PFAS RLF, Brownfields RLF and DWGTF programs. All services are billed at hourly rates on a monthly basis.



Contractor Initials JKW
Date 4/18/23

## ATTACHMENT A

## NH DRINKING WATER & CLEAN WATER STATE REVOLVING FUND
## NH DRINKING WATER AND GROUNDWATER TRUST FUND
## PER- AND POLYFLUOROALKYL SUBSTANCES REMEDIATION LOAN 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), the Drinking Water and Groundwater Trust Fund (DWGTF) and the Per- and Polyfluoroalkyl Substances Remediation Loan Fund (PFAS RLF). 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, DWGTF and PFASRLF 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, DWGTF or PFASRLF 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 and PFASRLF 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-Wq 500, Env-Wq-600, Env-Dw 1100, Env-Dw 1300 and/or Env-Dw 1400 as applicable. Loan amortization must begin within one year of project completion.

**Loan Repayment**: Each borrower from the SRF, DWGTF or PFASRLF 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, DWGTF or PFASRLF with security interest in any assets purchased with SRF, DWGTF or PFASRLF 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.

nhBFA
New Hampshire Business Finance Authority

A RESOLUTION RELATING TO THE APPROVAL OF A CONTRACT FOR THE DRINKING WATER AND CLEAN WATER STATE REVOLVING LOAN FUNDS (SRF), THE PER- AND POLYFLUOROALKYL SUBSTANCES REMEDIATION LOAN FUND (PRASRLF), BROWNFIELD REVOLVING LOAN FUND (RLF) AND THE DRINKING WATER AND GROUNDWATER TRUST FUND (DWGTF)

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 Contract which outlines the duties and responsibilities of both DES and BFA with respect to administration of the Drinking Water and Clean Water State Revolving Loan Funds (SRF), the Per- and Polyfluoroalkyl Substances Remediation Loan Fund (PFASRLF), Brownfield Revolving Loan Fund (RLF) and the Drinking Water and Groundwater Trust Fund (DWGTF).

IT IS HEREBY RESOLVED THAT:

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

Passed: April 17, 2023

Attest: _____
Dick Anagnost, Chairman

# April BFA Board Meeting

**BUSINESS FINANCE AUTHORITY NOTICE AND AGENDA**

The regular meeting of the Board of Directors is scheduled for

**Monday, April 17, 2023, at 2:00PM, 135 N. State St, Concord, New Hampshire.**

1. Introduction of Board Members.
2. Approval of Board of Director Minutes for the Meeting of March 20, 2023.
3. Nonpublic Session for Consideration of Loan and Credits, as applicable.
4. Approval of Items and associated Resolutions from Nonpublic Session, as applicable.
5. To consider approving the underwriting services agreement between NH BFA and the NH Department of Environmental Services and to authorize the Executive Director to execute said agreement.
6. To consider approving transferring $30,000,000 in Private Activity Bond Volume Cap for the calendar year 2023 to New Hampshire Health and Education Facilities Authority and adopting the resolution hereto.
7. Financial Reports– Chris Kreidermacher.
8. Month End March2023
9. Lending Reports – Jeremy Stanizzi.
10. CAP Monthly – March 2023
11. CAP Statistics/Demographics – March 2023
12. Capacity Report – March 2023
13. Executive Director's Report.
14. Other Business.

**BFA BOARD OF DIRECTORS MINUTES** – Business Finance Authority April 17, 2023 Concord, New Hampshire

The meeting of the Board of Directors of the Business Finance Authority ("BFA") was called to order at 2:02 P.M. at 135 N. State Street, Concord, New Hampshire. The following Directors were present:

Dick Anagnost, Matthew Benson, Stephen Duprey, Daniel Henderson, Nancy Merrill, Catherine Provencher, Jason Syversen (arrived at 2:08 p.m.), Jeff Hayes Also present were: James Key-Wallace, Executive Director and Clerk; Jeremy Stanizzi, Senior Credit Officer; Chris Kreidermacher, Chief Financial Officer; Jeff Cook, Credit Analyst; John Stoker, National Finance Authority; Kris Moussette, Hinkley Allen; and Representative Michael Edgar.

Absent were: Representative Laurie Sanborn, Director Monica Mezzapelle and Director Charles Withee.

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

The Chairman asked for approval of the minutes for the March 20, 2023, Board Meeting.

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

**VOTED:** To accept the minutes of the March 20, 2023, Board Meeting.

The following named Directors voted:

Aye: Dick Anagnost, Matthew Benson, Stephen Duprey, Nancy Merrill, Catherine Provencher, and Jeff Hayes.

Nay: None

Abstain: Director Henderson

Whereupon the Chairman declared said resolution adopted.

At 2:03 p.m., the Chairman asked the Board to consider a nonpublic session. The purpose of the nonpublic session was for the following reason:

Consideration of applications by the Business Finance Authority under RSA 162-A:7-10 and RSA 162-A:13, where consideration of confidential, commercial, or financial information that is exempt from public disclosure; and matters which if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself.

Upon motion to go into nonpublic session made by Director Duprey and seconded by Director Henderson, the following roll call vote was taken to enter:

Aye: Dick Anagnost, Matthew Benson, Stephen Duprey, Nancy Merrill, Catherine Provencher, and Jeff Hayes.

Nay: None

Abstain: None.

Following a vote of the Board to enter into a nonpublic session, the minutes of the nonpublic session are hereby recorded.

At 2:50 p.m. the Chairman asked for a motion to return to the public meeting of the Board of Directors and seal the nonpublic minutes.

Upon motion made by Director Duprey, seconded by Director Provencher.

**VOTED:** To return to the public meeting and seal the nonpublic minutes.

The following named Directors voted:

Aye: Dick Anagnost, Stephen Duprey, Nancy Merrill, Catherine Provencher, Jason Syversen, Matthew Benson and Jeff Hayes.

Nay: None

Abstain: None.

GAP GUARANTEES:

The Chairman stated that the GAP Guarantees discussed in nonpublic were revised.

Upon motion made by Director Duprey and seconded by Director Henderson, the following action was voted on:

**VOTED:** To approve a 75% Guarantee on up to a $3,037,500 commercial mortgage for Rustic Crust, Inc. & Subsidiaries from Walden Mutual Bank.

**VOTED:** To approve a 75% Guarantee on up to a $1,093,862.50 equipment/term loan for Rustic Crust, Inc. & Subsidiaries from Walden Mutual Bank. In addition, incorporated a reduction in loan term from the originally proposed ten years to five years.

The following named Directors voted:

Aye: Dick Anagnost, Stephen Duprey, Daniel Henderson, Nancy Merrill, Catherine Provencher, Jason Syversen, and Jeff Hayes.

Nay: None

Abstain: Director Benson.

Whereupon the Chairman declared said resolution adopted.

The Chairman asked for approval of a $750,000 SSBCI LOC under RSA 162-A for Belknap Economic Development Corporation and to take all necessary action in relation thereto.

Upon motion made by Director Duprey and seconded by Director Henderson, the following action was voted on:

**VOTED:** To approve the issue of a $750,000 SSBCI LOC under RSA 162-A for Belknap Economic Development Corporation and to take all necessary action in relation thereto.

The following named Directors voted:

Aye: Dick Anagnost, Stephen Duprey, Nancy Merrill, Catherine Provencher, Jason Syversen, Matthew Benson and Daniel Henderson.

Nay: None

Abstain: Director Hayes.

The Chairman asked for approval for the underwriting services agreement between NH BFA and the NH Department of Environmental Services and to authorize the Executive Director to execute said agreement and for approval for the resolution to approve the memorandum of agreement for the drinking water and clean water state revolving loan funds (SRF), the per- and polyfluoroalkyl Substances remediation loan fund (PRASRLF), the Brownfield Revolving Loan Fund (RLF) and the Drinking Water and Groundwater Trust Fund (DWGTF) and to have the Executive Director sign the agreement on behalf of the Business Finance Authority

Upon motion made by Director Henderson and seconded by Director Duprey, the following action was voted on:

**VOTED:** To approve the underwriting services agreement between NH BFA and the NH Department of Environmental Services and to authorize the Executive Director to execute said agreement and for approval for the resolution to approve the memorandum of agreement for the drinking water and clean water state revolving loan funds (SRF), the per- and polyfluoroalkyl Substances remediation

loan fund (PRASRLF), the Brownfield Revolving Loan Fund (RLF) and the Drinking Water and Groundwater Trust Fund (DWGTF) and to have the Executive Director sign the agreement on behalf of the Business Finance Authority.

The following named Directors voted:

Aye: Dick Anagnost, Stephen Duprey, Nancy Merrill, Catherine Provencher, Jason Syversen, Matthew Benson, Daniel Henderson and Jeff Hayes

Nay: None

Abstain: None.

The Chairman asked for approval to transferring $30,000,000 in Private Activity Bond Volume Cap for the calendar year 2023 to New Hampshire Health and Education Facilities Authority and adopting the resolution hereto.

Upon motion made by Director Duprey and seconded by Director Henderson, the following action was voted on:

**VOTED:** To transfer $30,000,000 in Private Activity Bond Volume Cap for the calendar year 2023 to New Hampshire Health and Education Facilities Authority and adopt the resolution hereto.

The following named Directors voted:

Aye: Dick Anagnost, Stephen Duprey, Nancy Merrill, Catherine Provencher, Jason Syversen, Matthew Benson, Daniel Henderson and Jeff Hayes

Nay: None

Abstain: None.

The Chairman asked Mr. Kreidermacher to review the month end Financial Reports.

The Chairman asked Mr. Stanizzi to review the Lending Reports.

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

There being no further business and upon motion made by Director Duprey and seconded by

Director Henderson, the meeting was adjourned at 3:27 p.m.

Respectfully submitted:

James Key-Wallace

Clerk

# Details

## Location

# State of New Hampshire

# Department of State

CERTIFICATE

I, David M. Scanlan, 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: **0006214632**

IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 24th day of April A.D. 2023.

David M. Scanlan

Secretary of State

ACORD®

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 04/24/2023

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) 293-2791 FAX (A/C, No): (603) 293-7188
E-MAIL ADDRESS: Eleanorspinazzola@esinsurance.net

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A: Hartford Casualty Insurance Co | 29424 |
| INSURER B: Twin City Fire Insuance Co | 29459 |
| INSURER C: | |
| INSURER D: | |
| INSURER E: | |
| INSURER F: | |

INSURED
NH Business Finance Authority
135 N State St
Concord NH 03301

COVERAGES CERTIFICATE NUMBER: 23 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 | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | [X] COMMERCIAL GENERAL LIABILITY<br>[ ] CLAIMS-MADE [X] OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>[ ] POLICY [ ] PRO-JECT [ ] LOC<br>[ ] OTHER: | | | 04SBAUQ7220 | 05/14/2023 | 05/14/2024 | 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 |
| | | | | | | | | $ |
| | AUTOMOBILE LIABILITY<br>[ ] ANY AUTO<br>[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS<br>[ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY | | | | | | COMBINED SINGLE LIMIT (Ea accident) | $ |
| | | | | | | | BODILY INJURY (Per person) | $ |
| | | | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| | [ ] UMBRELLA LIAB [ ] OCCUR<br>[ ] EXCESS LIAB [ ] CLAIMS-MADE<br>[ ] DED [ ] RETENTION $ | | | | | | EACH OCCURRENCE | $ |
| | | | | | | | AGGREGATE | $ |
| | | | | | | | | $ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N]<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | 04WECNY6674 | 05/14/2023 | 05/14/2024 | [X] PER STATUTE [ ] OTH-ER | |
| | | | | | | | 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)

CERTIFICATE HOLDER

NH Department of Environmental Services Drinking
Water & Groundwater Bureau
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

Tailby Kennedy

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