



The State of New Hampshire
Department of Environmental Services



Thomas S. Burack, Commissioner

December 29, 2014

Theresa Walker
Rockingham Planning Commission
156 Water Street
Exeter, NH 03833

Subject: Exeter – Dagostino Rose Farm Property, Oak Street Ext.
DES Site #201203003, Project #27859

Brownfields Revolving Loan Fund – Assessment Grant

Dear Ms. Walker:

Congratulations on your successful application for an assessment grant from New Hampshire's Brownfields Revolving Loan Fund (RLF). Based upon the information presented in your application dated October 29, 2014, the Department of Environmental Services (Department) intends to award \$56,000 to the Rockingham Planning Commission for the purpose of funding environmental assessment work and cleanup planning at the Dagostino Rose Farm property located at Oak Street Extension in Exeter, New Hampshire.

In order to award the grant funds we must enter into a Grant Agreement approved by the Governor and Executive Council (G&C). Enclosed is the proposed Grant Agreement. **Please review this document carefully.** If everything is satisfactory based on your review, please submit the following:

1. **Original Grant Agreement, signed and notarized** (attached);
2. **Original Certificate of Vote/Authority, signed and notarized** (examples attached); and
3. **Certificate of Insurance.**

As soon as the required paperwork is received, the Department will proceed with requesting G&C approval. Should you have any questions, please contact me at the Department's Waste Management Division. We look forward to working with the Rockingham Planning Commission on this project.

Sincerely,

Michael McCluskey, P.E.
Brownfields Program
Hazardous Waste Remediation Bureau
Tel.: (603) 271-2183
Fax: (603) 271-2181
E-Mail: michael.mccluskey@des.nh.gov

Attachments: Grant Agreement
Certificate of Vote/Authority Examples

ec: Michael Wimsatt, P.G., Director, WMD
H. Keith DuBois, P.G., Asst. Director, WMD
John Regan, P.G., Administrator, HWRB
Rebecca Williams, P.G., Brownfields Program Manager

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(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964



Subject: Rockingham Planning Commission
Brownfields Revolving Loan Fund – Assessment Grant

GRANT AGREEMENT

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

GENERAL PROVISIONS

1.1 State Agency Name NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, NH 03302	
1.3 Grantee Name Rockingham Planning Commission		1.4 Grantee Address 156 Water Street, Exeter, NH 03833	
1.5 Effective Date Upon G&C Approval	1.6 Completion Date September 30, 2016	1.7 Audit Date N/A	1.8 Price Limitation \$56,000.00
1.9 Grant Officer for State Agency Thomas S. Burack, Commissioner NH Department of Environmental Services		1.10 State Agency. Telephone Number 603-271-3503	
1.11 Grantee Signature		1.12 Name & Title of Grantee Signor	
1.13 Acknowledgment: State of _____, County of _____			
On _____, 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			
[SEAL]			
1.13.2 Name & Title of Notary Public or Justice of the Peace			
1.14 State Agency Signature(s)		1.15 Name/Title of State Agency Signor(s)	
		Thomas S. Burack, Commissioner NH Department of Environmental Services	
1.16 Approval by Attorney General (Form, Substance and Execution)			
By:		On:	
1.17 Approval by the Governor and Council			
By:		On:	

2. **SCOPE OF WORK.** In exchange for grant funds provided by the state of New Hampshire, acting through the agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-O, the Grantee identified in block 1.3 (hereinafter referred to as "the Grantee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being referred to as "the Project").

3. **AREA COVERED.** Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the State of New Hampshire.

4. **EFFECTIVE DATE: COMPLETION OF PROJECT.**

4.1 This Agreement, and all obligations of the parties hereunder, shall become effective on the date in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (hereinafter referred to as the "Effective Date").

4.2 Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.6 (hereinafter referred to as the "Completion Date").

5. **GRANT AMOUNT: LIMITATION ON AMOUNT: PAYMENT.**

5.1 The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.

5.2 The manner of, and schedule of payment shall be as set forth in EXHIBIT B.

5.3 In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

5.4 The payment by the State of the Grant amount shall be the only, and the complete, compensation to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.

5.5 Notwithstanding anything 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 Grant limitation set forth in block 1.8 of these general provisions.

6. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.**

In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities, which shall impose any obligations, or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. **RECORDS AND ACCOUNTS.**

7.1 Between the Effective Date and the date seven (7) years after the Completion Date the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

7.2 Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Grantee normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records or personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, Cont includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general provisions.

8. **PERSONNEL.**

8.1 The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.

8.2 The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform such Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

8.3 The Grantee officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grantee Officer, and his/her decision on any dispute, shall be final.

9. **DATA: RETENTION OF DATA: ACCESS.**

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 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 Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.

9.3 No data shall be subject to copyright in the United States or any other country by anyone other than the State.

9.4 On and after the Effective Date 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, whichever shall first occur.

9.5 The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.

10. **CONDITIONAL NATURE OR AGREEMENT.**

Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those 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 Grantee notice of such termination.

11. **EVENT OF DEFAULT; REMEDIES.**

11.1 Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

11.1.1 failure to perform the Project satisfactorily or on schedule; or

11.1.2 failure to submit any report required hereunder; or

11.1.3 failure to maintain, or permit access to, the records required hereunder; or

11.1.4 failure to perform any of the other covenants and conditions of this Agreement.

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

11.2.1 give the Grantee 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 Grantee notice of termination; and

11.2.2 give the Grantee 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 Grant Amount which would otherwise accrue to the Grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and

11.2.3 set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and

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

12. **TERMINATION.**

12.1 In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the Termination Report) describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.

12.2 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.

Grantee Initials _____

Date _____

12.3 In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.

12.4 Notwithstanding anything in this Agreement to the contrary, either the State or except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.

13. **CONFLICT OF INTEREST.** No officer, member or employee of the Grantee and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. **GRANTEE'S RELATION TO THE STATE.** In the performance of this Agreement the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, or subcontractors, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

15. **ASSIGNMENT AND SUBCONTRACTS.** The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit A without the prior written consent of the State.

16. **INDEMNIFICATION.** The Grantee 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 on or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee of Subcontractor, or subgrantee or other agent of the Grantee. 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 shall survive the termination of this Agreement.

17. **INSURANCE AND BOND.**

17.1 The Grantee shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

17.1.1 statutory workmen's compensation and employees liability insurance for all employees engaged in the performance of the Project, and

17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2 The policies described in subparagraph 18.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice the of has been received by the State.

18. **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, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure or waiver 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 default on the part of the Grantee.

19. **NOTICE.** Any notice by a party hereto 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 first above given.

20. **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 Council of the State of New Hampshire.

21. **CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

22. **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.

23. **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.

Grantee Initials _____
Date _____

EXHIBIT A

STATE OF NEW HAMPSHIRE

BROWNFIELDS CLEANUP REVOLVING LOAN FUND

SCOPE OF SERVICES

The Rockingham Planning Commission intends to use the grant funds for performing Phase I and Phase II Environmental Site Assessments and cleanup planning for the Dagostino Rose Farm property located at Oak Street Extension in Exeter, New Hampshire.

EXHIBIT B

STATE OF NEW HAMPSHIRE

BROWNFIELDS CLEANUP REVOLVING LOAN FUND

BUDGET AND PAYMENT METHOD

The New Hampshire Department of Environmental Services (the “State”) agrees to grant to the Rockingham Planning Commission (the “Grantee”) the sum of \$56,000 (“Grant Amount”) to be used by Grantee only for environmental site assessment and/or cleanup planning activities.

The Grant Amount shall be payable to Grantee as reimbursement for eligible and allowable expenses incurred by Grantee based upon actual costs incurred for Project work. No reimbursement shall be made to Grantee without written approval of the Department of Environmental Services.

The Grantee may request a maximum of one reimbursement payment per month on forms provided by the State and shall include documentation of Project work completed and the eligible costs incurred by the Grantee.

EXHIBIT C

STATE OF NEW HAMPSHIRE

BROWNFIELDS CLEANUP REVOLVING LOAN FUND

SPECIAL PROVISIONS

1. **Area Covered.** The Grantee shall perform the Project on certain real property commonly referred to as the Dagostino Rose Farm property located at Oak Street Extension in Exeter, New Hampshire (the “Property”), which property is more particularly described in the Quitclaim Deed, dated August 16, 1949, recorded at Rockingham County Registry of Deeds at book 1175, page 487; Quitclaim Deed, dated October 25, 1939, recorded at Rockingham County Registry of Deeds at book 963, page 64; and Warranty Deed, dated February 9, 2009, recorded at Rockingham County Registry of Deeds at book 4980, page 48.
2. **Completion of Project.** The Grantee shall commence work on the Project within 180 days of the Effective Date and shall complete and perform all of the work by September 30, 2016 (the “Completion Date”).
3. **Project Manager.** The State shall designate an environmental project manager who shall review and approve the proposed work to be performed using grant funds. The State’s environmental project manager will review the Grantee’s environmental site assessment and cleanup planning documents to ensure that the work is being completed in accordance with all local, State, and Federal requirements.
4. **Environmental Site Assessments.**
 - 4.1 The Grantee shall perform Phase I Environmental Site Assessments in accordance with EPA’s All Appropriate Inquiries Final Rule found at 40 CFR 312 or *American Society for Testing and Materials (ASTM) E1527-13 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*. The Grantee shall submit the Phase I Environmental Site Assessment Report to the State for review and approval prior to initiating Phase II site investigation work.
 - 4.2 The Grantee shall submit a work plan for proposed Phase II site investigations to the State for review and approval prior to commencing with the work.
 - 4.3 The Grantee shall submit a Request for Project Review to the New Hampshire Division of Historical Resources prior to commencing Phase II subsurface activities.
 - 4.4 Phase II site investigations shall meet the requirements of *ASTM E1903-11 Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process* and the New Hampshire Code of Administrative Rules Env-Or 600 *Contaminated Site Management*. Upon completion of the site investigation work, the Grantee shall submit copies of the Phase II Environmental Site Assessment Report to the State for review and approval prior to initiating cleanup planning.
5. **Cleanup Planning.** If the Project includes cleanup planning, the Grantee shall prepare a Remedial Action Plan (RAP) that meets the requirements of New Hampshire Code of Administrative Rules Env-Or 600 *Contaminated Site Management*. The Grantee shall submit copies of the RAP to the State for review and approval.

BROWNFIELDS CLEANUP REVOLVING LOAN FUND

Certificate of Vote/Authority

A Certificate of Vote/Authority is a certificate that states that a grant applicant is willing to enter into a Subgrant Agreement with the NH Department of Environmental Services. The Certificate of Vote/Authority must contain the following elements:

- If the vote or unanimous consent predates the Subgrant Agreement execution, the Certificate of Vote/Authority must state that the vote or unanimous consent has not been amended or repealed as of the date of execution of the Subgrant Agreement. If the vote or unanimous consent post-dates the date of the Subgrant Agreement execution, then the organization must ratify the execution of the Subgrant Agreement.
- If the vote or unanimous consent authorizes the holder of a particular office to execute contracts (as opposed to a particular individual), the Certificate of Vote/Authority must state that the person executing the Subgrant Agreement holds that office as of the date of execution.
- For municipalities, the local ordinance or an excerpt of the minutes must be included evidencing the individual(s) executing the Subgrant Agreement have the authority to bind the municipality.
- The person authorized in the vote cannot be the same person who signs the Certificate of Vote/Authority unless the Certificate of Vote/Authority states that the person is the sole member, director or officer.
- The Certificate of Vote/Authority must be notarized.

Examples

Municipalities

Example 1A

I, Sarah Smith, Town Clerk of Ruralton, NH do hereby certify that: (1) at the meeting held March 30, 2009, the Town Meeting voted to authorize Ruralton to apply for, accept and expend money from the state, federal, or other governmental unit or a private source, which becomes available during the fiscal year, in accordance with the procedures set forth in NH (RSA 31:9-b); (2) at the meeting on June 15, 2009, the Town of Ruralton, agreed to receive a Brownfields Cleanup Revolving Loan Fund Subgrant Grant from NH Department of Environmental Services (DES) to fund the cleanup of the Old Mill Property.

Official Motion: Motion by Selectman James Johnson, “to enter into and approve a Subgrant Agreement with the DES in the amount of \$200,000.00 to Ruralton **and to authorize Town Manager, Jennifer Jones, to sign paperwork associated with such grant on behalf of the Town**”, Selectman Robert Brown seconds the motion.

Vote Unanimous:

IN WITNESS WHEREOF, I have hereunto set my hands as the town clerk of Ruralton, NH.

Town Clerk

Date

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this 15th day of June, 2009 before me, Whitney Williams, Notary Public, the undersigned officer, personally appeared, Sarah Smith, who acknowledged herself to be the Town Clerk of Ruralton, NH, and that she, as such Town Clerk, being authorized so to do, executed the foregoing instrument for the purpose therein contained.

In witness whereof, I have hereunto set my hand and official seal.

Notary Public

Commission Expires:

Example 1B

I, Sarah Smith, City Clerk for the City of Urbanton, New Hampshire do hereby certify that:

1. The City Council voted to accept funds and enter into a Subgrant Agreement with the NH Department of Environmental Services on June 15, 2009;
2. The City Council further authorized the City Manager to execute any documents which may be necessary for this Subgrant Agreement;
3. This authorization has not been revoked, annulled, or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and
4. The following person has been appointment to and now occupies the office indicated in 2. above:

James Johnson, City Manager

IN WITNESS WHEREOF, I have hereunto set my hand as the City Clerk of Urbanton, New Hampshire this 15th day of June, 2009.

City Clerk

SEAL

Non-Profit Organizations

Example 2

I, Robert Brown, Secretary of the Wide-Area Community Action Program, Inc. (WACAP), do hereby certify that: (1) I am the duly elected and acting Secretary of the WACAP, a regional non-profit organization dedicated to improving the lives and well-being of the people and communities within WACAP's service area; (2) I sign and maintain or cause to be maintained and am familiar with the minutes of the WACAP; (3) I am duly authorized to issue certificates with respect to the contents of such minutes; (4) at the regular meeting of the trustees held on June 15, 2009 the WACAP Board of Trustees voted to enter into a Subgrant Agreement with the NH Department of Environmental Services to fund the cleanup of the former Old Mill Property located in Ruralton, NH. The WACAP trustees further authorized the President to execute any documents which may be necessary to effectuate this Subgrant Agreement; (5) this authorization has not been revoked, annulled or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and (6) the following person has been appointed to and now occupies the office indicated under item (4) above:

Jennifer Jones, President

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of WACAP this 21st day of June, 2009.

Signature

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this the 21st day of June, 2009 before me, Whitney Williams, Notary Public, the undersigned officer, personally appeared Robert Brown who acknowledged himself to be the Secretary of the Wide-Area Community Action Program, Inc., being authorized so to do, executed the foregoing instrument for the purpose therein contained.

In witness whereof, I have set my hand and official seal.

Notary Public

My Commission Expires: