



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



**Thomas S. Burack, Commissioner**

March 24, 2016

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

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into an agreement with Robert Gibbons (VC#271932 B001) of Portsmouth NH, for a total of \$128,700 to operate the state-owned mobile pumpout boat, effective upon Governor and Council approval through March 31, 2018. 100% Federal Funds.

Funding is available in the following account with the ability to adjust encumbrances between State fiscal years through the Budget Office, if needed and justified. Funding for FY 2018 is contingent upon continuing appropriations and availability of funds.

|  | <u>FY2016</u> | <u>FY2017</u> | <u>FY2018</u> |
|--|---------------|---------------|---------------|
| 03-44-44-442010-2061-103-502664  | \$42,900      | \$42,900      | \$42,900      |
| Dept of Environmental Services, Clean Vessel Act, Contracts for Operational Services |               |               |               |

EXPLANATION

The Department of Environmental Services (DES) receives grants from the U.S. Fish and Wildlife Service under the provisions of the Clean Vessel Act (CVA). This funding is used in part to provide a mobile pumpout service on the New Hampshire coastline. The mobile pumpout vessel (known as the *Royal Flush*) is available to pump wastewater from the holding tanks of boats that are docked, moored, or traveling in coastal waters. The federal funds provide 75% of the total cost of the service. The contractor must supply a minimum of 25% contribution towards the total.

The DES CVA program released a Request for Proposals on January 7, 2016 through the Bureau of Purchase and Property website. Public notice was published in the Union Leader of Manchester, NH on Sunday, January 17, 2016, Monday, January 18, 2016, and Sunday, January 24, 2016. As of the closing date of February 12, 2016 one proposal was submitted from Robert Gibbons.

Robert Gibbons has captained the *Royal Flush* under the previous contractor for 6 years. To date, more than 140,000 gallons of sewage have been pumped from recreational vessels through this program. Mr. Gibbons has proven to be extremely capable in captaining the *Royal Flush* and is devoted to promoting the program and educating the public on the related regulations and water quality concerns.

In the event that federal funds become no longer available, general funds will not be requested to support this program. This agreement has been approved by the Department of Justice as to form, substance, and execution.

We respectfully request your approval.

  
Thomas S. Burack, Commissioner

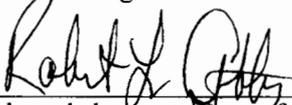
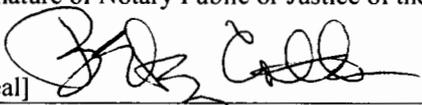
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

|   |  |  |                                   |
|---|--|--|-----------------------------------|
| 1.1 State Agency Name<br>Department of Environmental Services   |  | 1.2 State Agency Address<br>29 Hazen Drive<br>Concord, NH 03302  |                                   |
| 1.3 Contractor Name<br>Robert Gibbons   |  | 1.4 Contractor Address<br>135 Spinnaker Way<br>Portsmouth, NH 03801  |                                   |
| 1.5 Contractor Phone Number<br>603-205-1180   | 1.6 Account Number<br>03-44-44-442010-2061-103 | 1.7 Completion Date<br>March 31, 2018  | 1.8 Price Limitation<br>\$128,700 |
| 1.9 Contracting Officer for State Agency<br>Melanie Titus   |  | 1.10 State Agency Telephone Number<br>603-271-8803   |                                   |
| 1.11 Contractor Signature<br>   |  | 1.12 Name and Title of Contractor Signatory<br>Robert Gibbons  |                                   |
| 1.13 Acknowledgement: State of <u>NH</u> , County of <u>Rockingham</u><br>On <u>3-14-16</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<br><br>[Seal]  |  | <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     BETSY COTTER<br/>                     NOTARY PUBLIC<br/>                     STATE OF NEW HAMPSHIRE<br/>                     MY COMMISSION EXP. SEPT. 18, 2018                 </div> |                                   |
| 1.13.2 Name and Title of Notary or Justice of the Peace   |  |  |                                   |
| 1.14 State Agency Signature<br>   |  | 1.15 Name and Title of State Agency Signatory<br>Thomas S. Burack Commissioner   |                                   |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)<br>By: _____ Director, On: _____  |  |  |                                   |
| 1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable)<br>By:  On: <u>4/5/16</u>  |  |  |                                   |
| 1.18 Approval by the Governor and Executive Council (if applicable)<br>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.

Contractor Initials

Date

KAG  
3/10/16

**EXHIBIT A**  
**SCOPE OF SERVICES**

1. Robert Gibbons is the "Contractor". The New Hampshire Department of Environmental Services (NHDES) is the "Department".
2. This Agreement consists of the following documents: Exhibits A, B, and C and Attachment A, which are all incorporated herein by reference as if fully set forth herein.
3. The Department owns a 30-foot all welded aluminum pumpout boat fitted with a 400-gallon wastewater holding tank and associated pump system, known as the *Royal Flush*. The boat was purchased with federal Clean Vessel Act (CVA) funds for the purpose of providing mobile pumpout services for the wastewater holding tanks of recreation boats in coastal waters.
4. The Contractor will operate a mobile pumpout service in the New Castle, Portsmouth, and Great Bay area. On a limited basis, and only if directed by the DES CVA program coordinator, the *Royal Flush* will travel to Rye, Hampton Harbor, and other distant locations on a set schedule. This service will remove sewage from the holding tanks of boats as defined in 50CFR85 (Clean Vessel Act Grant Program) or as otherwise stated in federal regulations.
5. Deliverables to the NHDES Clean Vessel Act (CVA) program shall include:
  1. Invoices detailing the service provided.
  2. Paid receipts for all purchases submitted for reimbursement.
  3. Information on each pumpout performed, also known as pumpout receipts.
  4. The total approximate volume of sewage removed from the *Royal Flush*.
  5. An end-of-season summary of boat maintenance and repair.

Deliverables are described in further detail in the following tasks that the **Contractor** shall perform:

**Task 1. Operation**

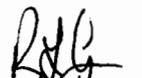
- 1.1. The Contractor shall provide a licensed captain(s) to operate the *Royal Flush*. All operators of the *Royal Flush* must have a current and valid NH Commercial Boat Operators License, its equivalent as determined by the NH Department of Safety, Marine Patrol Unit, or a higher level of marine operator's certificate such as a USGC operator's license.
- 1.2. The Contractor will provide a list of all staff, their contact information, and their qualifications to the Department. A copy of the current and valid license for each potential operator of the *Royal Flush* will be provided to the Department.

Contractor Initials RG  
Date 3/10/16

- 1.2.1. All operators shall maintain the boat license as detailed in Task 1.1 for the duration of the time where that operator is actively captaining the *Royal Flush*. Loss of license for any reason, including expiration, shall immediately preclude the operator from captaining the *Royal Flush* until the license is reinstated.
- 1.3. The Contractor will acquire all necessary state and local permits and health requirements, and abide by any and all applicable state and local codes.
- 1.4. The Contractor will begin service on a date mutually agreed upon between the Contractor and the Department. The target start date for the *Royal Flush* to be staffed and available for operation is May 1<sup>st</sup> and the target end date is November 30<sup>th</sup>.
- 1.5. The actual start date and end date may vary depending on weather, grant funding, or other unavoidable issue. Changes in start or end date must be mutually agreed upon by the Department and the Contractor in writing at least 15 days prior to the date in question.
- 1.6. The Contractor will staff the *Royal Flush* on a schedule agreed upon by the Department and the Contractor; approximately 5 days per week, 5 hours per day.
- 1.7. Pumpout service will be available in reasonable weather, at reasonable times, and by appointment. Boaters may request the pumpout service through the Contractor by phone or VHF radio. After the request is received, the Contractor will perform the pumpout within 7 days. To the greatest extent possible, boats at similar locations shall be pumped out at the same time.
- 1.8. The Contractor will notify the Department immediately if the *Royal Flush* will be out of service during a scheduled service day or has been in any sort of boating accident regardless of whether any damages were sustained. The Contractor will email [CVA@des.nh.gov](mailto:CVA@des.nh.gov) or call (603) 271-8803 and leave a message if necessary.
- 1.9. The *Royal Flush* will travel to and service vessels at coastal mooring sites, marinas, and other docking facilities in the New Castle, Portsmouth, and the Great Bay area. On a limited basis, and only if needed, the *Royal Flush* will travel to Rye, Hampton Harbor, and other distant locations with permission from and on a schedule set by the Department.
- 1.10. The Contractor will navigate the *Royal Flush* for discharge of waste to an onshore pumpout station or wastewater treatment facility that has been approved by the Department.
- 1.11. The Contractor will ensure that the boat owner/operator signs the Coastal Mobile Pumpout Service form that is provided by the Department prior to performing any service to that boat. Each boat shall have a signed and valid service form on file in order for that boat to be pumped.
  - 1.11.1. The service form shall be valid for 1 year following the date it was signed.
  - 1.11.2. The service form shall be considered invalid if any of the required information from the boat owner/operator has not been entered.
- 1.12. The Contractor will track pumpout information including, but not limited to, the pumpout service staff name(s), the pumped boat's owner/operator name, signature of boat owner or operator, boat name or bow number, approximate gallons pumped, date and time of service, and the location where the pumpout occurred.
- 1.13. The Contractor will not charge any fees for the pumpout services.

Contractor Initials

Date

  
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- 1.14. Mobile pumpout service will collect boat wastewater only. No bilge water or oily waste shall be collected.
- 1.15. The *Royal Flush* shall be available for inspection periodically by Department personnel; said inspection may include, but not be limited to, a "ride along" and interaction with pumpout service customers.
- 1.16. The Contractor will ensure compliance with the Environmental Protection Agency's Small Vessel General Permit, which includes using best management practices and conducting quarterly vessel checks. More information can be found here:  
<http://www.epa.gov/npdes/vessels-incident-discharge-permitting-4>.
- 1.17. Contractor will abide by all applicable federal regulations including but not limited to 50CFR85 (<http://www.gpo.gov/fdsys/pkg/CFR-2001-title50-vol1/pdf/CFR-2001-title50-vol1-part85.pdf>).

## Task 2. Maintenance

- 2.1 The Contractor will be responsible for transporting or arranging transport of the *Royal Flush* as needed for repair or maintenance services to an authorized service center of the Department's choosing. This Contractor shall not be responsible for hauling or launching the *Royal Flush*.
- 2.2 The Contractor will notify the CVA program coordinator of any unscheduled repair or maintenance within 24 hours of transporting or arranging transport of the *Royal Flush* to the authorized service center.
- 2.3 The Contractor will hold operational and upkeep responsibility by managing a boat/equipment safety and routine maintenance program. This will include keeping a detailed log of maintenance, operational, and safety checks. All equipment onboard used to facilitate the pumping, storage, and pumpout boat discharge to an onshore facility must be maintained in such a way as to safely move sewage from a host boat, to the *Royal Flush*, and to an onshore facility.
- 2.4 The Contractor will maintain adequate storage for the *Royal Flush* that ensures its structural integrity and longevity at all times. This shall include, but is not limited to, proper docking procedure and tie up that minimizes damages.
- 2.5 The Contractor will acquire pre-approval from the NHDES CVA program for all purchases related to the service that will be submitted for reimbursement or for match.
- 2.6 The Contractor will utilize the accounts and facilities arranged by the Department for the purchase of gas, oil, and other supplies.
- 2.7 The Contractor will deliver the *Royal Flush* to a winter storage facility of the Department's choosing.

## Task 3. Documentation

- 3.1 The Contractor will maintain a daily operational log that includes information on the running times, safety and operational checks performed, amounts of gasoline added,

Contractor Initials KJK  
Date 3/10/16

amount of oil added, and any damage, repairs, or maintenance (routine or otherwise) performed to the *Royal Flush*.

- 3.2 The Contractor will gather and record information regarding each boat pumpout event. At a minimum, the information collected must include the date and time of the pumpout, the pumpout service staff name(s), the boat name or bow number, the name of the operator or boat owner, the approximate gallons that were pumped, and the location of the service.
- 3.3 The Contractor will record all hours of service, either performed for the purpose of reimbursement or match, on a template provided by the NHDES CVA program.

**Task 4. Outreach and Education**

- 5.1 The Contractor will promote the pumpout boat program through material supplied by the NHDES CVA program that alerts boaters to the No Discharge Area regulations and encourages use of the service.
- 5.2 The Contractor will take opportunities to provide education to the general public regarding the rules and regulations of boat sewage discharge and its potential effects to water quality.
- 5.3 The Contractor will spend approximately 1-2 hours per week promoting the program and providing educational outreach.
- 5.4 The Contractor will make suggestions on how to better provide education and outreach and improve the promotion of the program.

The **Department** shall perform the following tasks:

**Task 1. Reimbursement**

- 1.1 The Department will reimburse for legitimate costs associated with the mobile pumpout service as described in this Agreement and as abides by the following conditions:
  - 1.1.1 Contractor's personnel time must adhere to the schedule of service agreed upon by the Contractor and the Department.
  - 1.1.2 Purchases are pre-approved by NHDES CVA staff and documented with paid receipts of actual cost.
  - 1.1.3 The total reimbursement does not exceed the maximum reimbursement as listed in Exhibit B.
  - 1.1.4 The total match provided in a given year is at least 25% of the total expenses for that year.
- 1.2 Invoices must be submitted to the NHDES CVA coordinator for approval prior to reimbursement.
- 1.3 The Department reserves the right to deny any invoice that does not adhere to minimum standards as set by the CVA program or NHDES.

Contractor Initials                       
Date 3/10/16

1.4 The Department will provide for legitimate maintenance, repair, and replacement equipment costs up to \$10,000 per year. At the discretion of NHDES, any expense above this amount may result in the shutdown of the mobile pumpout boat program.

**Task 2. Supplies**

2.1 The Department will supply consumables such as logbooks, receipts, promotional items, safety equipment, and other miscellaneous gear for boating as necessary.

**Task 3. Promotion**

3.1 NHDES CVA Program will promote the pumpout boat program in conjunction with the Contractor.

Contractor Initials                       
Date 3/10/16

**EXHIBIT B**  
**CONTRACT PRICE**

The contract price for the aforementioned services shall be as follows:

1. Funding is contingent upon funds appropriated by the U.S. Fish and Wildlife Service under the Clean Vessel Act (CFDA # 15.616). Reimbursement could be reduced or eliminated based on federal funding availability.
2. The price limitation for the duration of this contract is set at \$128,700.
3. The Contractor must contribute at least 25% of the total expenses and can include in-kind match as pre-approved by the Department.
4. The hourly rate for the *Royal Flush* captain is \$45.00 for the duration of this contract.
5. Funds may be reduced or denied if the Department receives three or more complaints from the public regarding the availability or inappropriate use of the *Royal Flush* or if a state employee inquiry reveals inappropriate use of the *Royal Flush* or its related equipment.
6. Invoices are subject to the approval of the CVA program staff and other NHDES staff before payment is processed. The Department reserves the right to modify, delay, or deny a reimbursement if any line item on the invoice is not eligible for reimbursement or is not supported by the required documentation as determined by Department staff.
7. Invoices for personnel time shall include the staff name, times and dates worked, a clear indication of whether the time is to be reimbursed or is provided as match, and a detailed description for each of the tasks performed.
8. Invoices should be submitted at least weekly and should include itemized description of purchase(s) or service, and supporting payment documentation (e.g. receipts, paid invoices, etc.) for each item as is applicable. Payment documentation will be required for all purchases.

The billing address shall be as follows:

Attn: Melanie Titus, CVA Coordinator  
NH Department of Environmental Services  
29 Hazen Drive, PO Box 95  
Concord, NH 03302-0095

9. This Agreement shall be effective on the date it is approved by the Governor and Executive Council. This shall be a one year agreement; with the option to renew for an additional year. The effective end date if the agreement is renewed is March 31, 2018.

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

1. Paragraph 14 of the General Provisions shall not apply to this contract and is replaced with the following; <sup>1</sup>The Contractor shall obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force Marine Liability insurance that specifically covers contracted licensed captains for the operation of a vessel owned by another entity. <sup>2</sup>This policy 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. <sup>3</sup>The Contractor shall furnish to the Contracting Officer identified in block 1.9 of the General Provisions, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement within thirty (30) days of the effective date of this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9 of the General Provisions, 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 in block 1.9 of the General Provisions, or his or her successor, no less than thirty (30) days prior written notice of any cancellation or modification of the policy.
2. The Contractor and any subcontractor or assignee shall not move, operate, or otherwise have access to the *Royal Flush* until the insurance described in paragraph 1 of Exhibit C is obtained and certificate(s) of insurance are provided to the Contracting Officer identified in block 1.9 of the General Provisions.
3. Federal funds paid under this agreement are from a grant to the state from U.S. Fish and Wildlife Service, Sport Fish Restoration and Boating Trust Fund under the Clean Vessel Act (CFDA #15.616). All applicable requirements, regulations, provisions, terms and conditions of this federal grant agreement are hereby adopted in full force and effect to the relationship between this Department and the Contractor. Additionally, the Contractor shall comply with the terms of the Federal Funding Accountability and Transparency Act (FFATA) by providing DES with their Data Universal Numbering System (DUNS) number if applicable.
4. In the event of a failure on the part of the Contractor to comply with any provision of this agreement, the Department may, at its sole discretion, without any liability to the Contractor, deny or reduce payment to the Contractor and/or immediately terminate this agreement.

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5. The Department may, at its sole discretion, without any liability to the Contractor, choose to discontinue this Agreement after one year following the Agreement effective date or choose to renew this Agreement for an additional year.
6. Failure to provide the pumpout service as described in this agreement may lead to a claim for repayment of the contract amount to the Department.
7. Any negligent use, misuse, or abuse of the *Royal Flush* or the related equipment may lead to a claim for repayment of the contract amount, payment for any damages incurred, and/or termination of this Agreement.
8. By signing this Agreement, the Contractor is hereby representing that the license of any person designated to operate the *Royal Flush* is valid and has not been subject to suspension, revocation, or administrative action of any kind. In the event the Contractor or any person he designates to operate the *Royal Flush* is charged with a misdemeanor or felony boating or driving offense in or outside the state of New Hampshire, he shall forthwith notify the Department's contracting officer who may suspend the specific operator from providing services under this Agreement and/or deem this Agreement to be null and void.
9. By signing this Agreement, the Contractor assumes sole responsibility and liability for any individual that he chooses to operate the *Royal Flush*.

Contractor Initials     *RF*      
Date     3/10/16

