The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner

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March 29, 2024

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

REQUESTED ACTION

Authorize the New Hampshire Department of Environmental Services (NHDES) to enter into a grant agreement with Robert Gibbons (VC #271932-B001) of Portsmouth, NH, for a total of $136,000 to operate the state-owned mobile pumpout boat, effective upon Governor and Council approval through June 30, 2026. 100% Federal Funds.

Funds are 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 FY2026 is contingent upon continuing appropriation and availability of funds.

	FY 2024	FY2025	FY2026
03-44-44-442010-2061-103	$34,000	$68,000	$34,000

Dept. Environmental Services, Clean Vessel Act, Contracts for Operational Services

EXPLANATION

NHDES requests approval of a contract with Robert Gibbons of Portsmouth, NH to operate the state-owned mobile pumpout boat. NHDES receives grants from the U.S. Fish and Wildlife Service under the provisions of the Clean Vessel Act (CVA) to protect the health and safety of NH's waterways, sensitive fish habitat, and shellfish beds, and ensure safe fishing and recreational areas free of pollution from recreational boats. 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.

NHDES issued a Request for Proposals on January 8, 2024, through the Bureau of Purchase and Property website. As of the closing date of February 12, 2024, only one proposal was received. The selected proposal was from Robert Gibbons who has captained the *Royal Flush* under previous contracts for 14 years. To date, nearly 245,000 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. The federal funds provide 75% of the total cost of the service. The contractor must supply a minimum of 25% contribution towards the total value of the award.

www.des.nh.gov
29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • Fax: 271-2867 TDD Access: Relay NH 1-800-735-2964

His Excellency, Governor Christopher T. Sununu
and The Honorable Council

In the event that Federal Funds become no longer available, General Funds will not be requested to support this program. We respectfully request your approval.

This agreement has been approved by the Office of the Attorney General as to form, execution, and content.

We respectfully request your approval.

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 NH Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03301	
1.3 Contractor Name Robert L. Gibbons		1.4 Contractor Address 135 Spinnaker Way Portsmouth, NH 03801	
1.5 Contractor Phone Number 603-205-0630	1.6 Account Unit and Class 03-44-44-442010-2061-103	1.7 Completion Date 6/30/2026	1.8 Price Limitation $136,000
1.9 Contracting Officer for State Agency Jake A. Reynolds - CVA Program Coordinator		1.10 State Agency Telephone Number 603-271-8803	
1.11 Contractor Signature Date: 3-7-24		1.12 Name and Title of Contractor Signatory Robert L. Gibbons	
1.13 State Agency Signature Date: 4/8/24		1.14 Name and Title of State Agency Signatory Robert R. Scott - Commissioner, NHDES	
1.15 Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)* By:		Director, On:	
1.16 Approval by the Attorney General (Form, Substance and Execution) *(if applicable)* By:		On: 4/11/2024	
1.17 Approval by the Governor and Executive Council *(if applicable)* G&C Item number:		G&C Meeting Date:	

Contractor Initials RLG
Date 3-7-24

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 RJG
Date 3-7-24

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 HJA
Date 3-7-24

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 RJG
Date 3.7.24

2024 Contract Exhibits

EXHIBIT A
SPECIAL TERMS AND CONDITIONS

1. Robert Gibbons is the "Contractor." The New Hampshire Department of Environmental Services (NHDES) is the "Department."

2. Paragraph 14 of the General Provisions shall not apply to this contract and is replaced with the following: "[1]The Contractor shall obtain and maintain continuously in force, and shall require any subcontractor or assignee to obtain and maintain in force Marine Liability insurance against all claims of bodily injury, death, or property damage in the amounts of not less than $1,000,000 per occurrence that specifically covers contracted licensed captains for the operation of a vessel owned by another entity. [2]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. [3]The Contractor shall furnish to the Contracting Officer identified in block 1.9 of the General Provisions, or their 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 their successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) 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 their successor, no less than thirty (30) days prior written notice of any cancellation or modification of the policy."

3. The Contractor and any subcontractor or assignee shall not move, operate, or otherwise have access to the *Royal Flush* until the insurance described in Section #2 of Exhibit A is obtained and certificate(s) of insurance are provided to the Contracting Officer identified in block 1.9 of the General Provisions or their successor.

4. The Contractor and any subcontractor or assignee shall not move, operate, or otherwise have access to the *Royal Flush* if the insurance described in Section #2 of Exhibit A is not obtained and/or expires without renewal, or current and valid certificate(s) of insurance have not been provided to the Contracting Officer identified in block 1.9 of the General Provisions or their successor.

5. 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

Contractor Initials RG
Date 3-7-24

(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.

6. 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.

7. Any negligent use, misuse, or abuse of the *Royal Flush* or any 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. 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.

9. 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 additional season(s), to the effective end date as listed in Exhibit C, paragraph 9.

10. 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 they designate to operate the *Royal Flush* is charged with a misdemeanor or felony boating or driving offense in or outside the state of New Hampshire, they 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.

11. By signing this Agreement, the Contractor assumes sole responsibility and liability for any individual that they choose to operate the *Royal Flush*. The Contractor will ensure that any such individual is aware of and abides by all provisions of this Agreement as they are applicable to that individual.

Contractor Initials BKG
Date 3-7-24

2024 Contract Exhibits

EXHIBIT B
SCOPE OF SERVICES

1. The Department owns a 30-foot all-welded aluminum pumpout boat fitted with a 400-gallon wastewater holding tank and associated pump system, DES-21, known as the *Royal Flush*. The boat was purchased with federal Clean Vessel Act (CVA) funds for providing mobile pumpout services for the wastewater holding tanks of recreation boats in coastal waters.

2. The Contractor will operate a mobile pumpout service in the New Castle, Portsmouth, and Great Bay area as well as Hampton Harbor and other distant locations along the NH coast. 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.

Task 1. Operation

1.1. The Contractor shall provide 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 USCG 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 within 60 days of the effective start date of the Agreement and prior to the operation of the *Royal Flush*.

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.

1.2.2. In the event of a new operator, not on the list sent to the Department at the beginning of the contract, the contact information, qualifications, and copy of current and valid license for the new operator shall be submitted to the Department prior to said individual operating the *Royal Flush*.

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 and regulations.

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 1st and the target end date is October 31th.

1.4.1. The actual start date and end date may vary depending on weather, grant funding, or other unforeseen circumstance.

Contractor Initials BJG
Date 3-7-24

1.4.2. 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.

1.5. The Contractor will staff the *Royal Flush* on a schedule agreed upon by the Department and the Contractor; which may vary depending on factors such as weather, holidays, and time of year.

1.6. 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 seven calendar days. To the greatest extent possible, boats at similar locations shall be pumped out at the same time.

1.7. 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 or call (603) 271-8803 and leave a message if necessary.

1.8. The *Royal Flush* will travel to and service vessels at coastal mooring sites, marinas, and other docking facilities.

1.9. 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.

1.9.1. The Contractor will not discharge three or more miles offshore unless in an emergency situation. If possible, the Contractor will first contact Department staff to discuss if this type of discharge is appropriate. If not possible to contact the Department before this type of discharge, the Contractor shall contact the Department as soon as possible.

1.10. The Contractor will ensure to the best of their ability that the boat owner or other authorized person of the boat signs the Coastal Mobile Pumpout Service form (form number: NHDES-W-07-074) prior to performing any service to that boat.

1.10.1. Forms will be provided by the Department and may be updated periodically.

1.10.2. Each form shall be valid at least for the rest of the season and that boat may receive subsequent pumpouts without signing an additional form.

1.10.3. The service form shall be considered invalid if any of the required information from the boat owner/operator has not been entered.

1.11. The Contractor will ensure the following information (at a minimum) is tracked for each pumpout that occurs: boat name (or hull number if boat is unnamed), length of vessel, type of vessel, date and time of service, vessel's location where the pumpout occurred, and approximate gallons pumped. These records will be transferred to the NHDES CVA staff at least once per month.

1.12. The Contractor will not charge any fees, nor collect any gratuities, for the pumpout services.

1.13. Mobile pumpout service will collect boat wastewater only. No bilge water or oily waste shall be collected.

1.14. 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.

1.15. The Contractor will abide by all applicable federal regulations including but not limited to 50CFR85.

Task 2. Maintenance

2.1 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.

2.2 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, and 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 then to an onshore facility.

2.2.1 A complete operational/safety check will be done by the Contractor before the *Royal Flush* leaves its dock for any purpose and after being used an additional check shall be done to ensure the boat is properly secured and equipment necessary to the integrity and safety of the boat is fully functioning.

2.2.2 Logs of operational/safety checks will be given to the Department at least annually.

2.3 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 potential damages.

2.4 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.

2.5 The Contractor will utilize the accounts and facilities arranged by the Department for the purchase of gas, oil, and other supplies as applicable.

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,

3.2 The Contractor will record all hours of service performed for the purpose of reimbursement or match, on a template provided by the NHDES CVA program.

Task 4. Outreach and Education

4.1 The Contractor will promote the pumpout boat program through material supplied by the NHDES CVA program that alerts boaters to the federal No Discharge Area (NDA) regulations and encourages use of the service.

4.2 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 on water quality.

4.3 The Contractor will spend approximately 1-2 hours per week within the agreed upon dates of service promoting the program and providing educational outreach.

4.4 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 the General Provisions.

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 program coordinator or other designated Department staff 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 federal or state CVA program, or the Department.

1.4 The Department will provide for legitimate maintenance, repair, and replacement equipment costs. At the discretion of NHDES, expenses above a certain value may result in the shutdown of the mobile pumpout boat program for a period of time as determined by the CVA program staff.

2024 Contract Exhibits

Task 2. Supplies

2.1 The Department will supply consumables such as logbooks, forms, 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 3.7.24

2024 Contract Exhibits

EXHIBIT C
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.
    a. The Department will notify the Contractor as soon as funding availability is determined in the case where funding is not available for a future date or is running low for a particular line item, such as repair.
2. The price limitation for the duration of this contract is set at $136,000.
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 $80 for the duration of this Agreement for up to 800 hours annually ($64,000).
5. Reimbursement of insurance costs for each approved operator is included in the price limitation, set at $4,000 annually.
6. 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.
7. 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.
    a. All required documentation (such as paid receipts) will be reviewed by Department staff and at the Department's sole discretion will be deemed acceptable or rejected.
8. 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.
9. Invoices should be submitted at least monthly and should include itemized description of purchase(s) or service, and supporting payment documentation (e.g. paid receipts, paid invoices, etc.) for each item as is applicable. Payment documentation will be required for all purchases.
    a. Invoices shall be submitted via email to CVA@des.nh.gov, by an online form approved by the Department, or by mail to the following address:

Contractor Initials RNG
Date 3-7-24

2024 Contract Exhibits

ATTN WATERSHED CVA
NH DEPARTMENT OF ENVIRONMENTAL SERVICES
29 HAZEN DRIVE PO BOX 95
CONCORD NH 03302-0095

b. All invoices shall be signed either by electronic signature or wet signature by the Contractor or authorized personnel as designated by the Contractor.

10. This Agreement shall be effective on the date it is approved by the Governor and Executive Council. This shall be a two-year agreement with an effective end date of June 30, 2026.

Contractor Initials: RJG
Date: 3-7-24

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 06/19/2023

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
Cole Harrison Insurance
27 Walker St
Kittery, ME 03904

CONTACT NAME: David Fazzina
PHONE (A/C, No, Ext): (207) 439-5981 FAX (A/C, No): (207) 439-5234
E-MAIL ADDRESS: info@coleharrison.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Atlantic Casualty Insurance Company	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Robert L. Gibbons
135 Spinnaker Way
Portsmouth, NH 03801

COVERAGES CERTIFICATE NUMBER: 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	COMMERCIAL GENERAL LIABILITY			3999000002-0	06/16/2023	06/16/2024	EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE ☑ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	☑ Marine P&I						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

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

Policy is PAID IN FULL (In the amount of $2750) for the ANNUAL TERM of 6/16/2023 - 6/16/2024
For vessel operations: 2007 30' Aluminum Silver Ships Pump Out Utility Boat "ROYAL FLUSH"
Pease Development Authority Dock facility on Market Street, Portsmouth, NH LayUp Period - 11/1/2023-5/1/2024
Contracted Pump Boat Operator For State of New Hampshire/Inland, intracoastal and coastal waters of NH

CERTIFICATE HOLDER
State of Newhampshire
Department of Environmental Services

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

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Attachment A - Budget Estimate

Budget Item	Year	CVA Grant Funding	Non-Federal Matching Funds	Description
Salaries - In-Season	2024	$64,000		800 hours*; pumpout service.
Salaries - Pre-Season	2024		$5,200.00	65 hours*; inspection, prep work, and trailer maintenance.
Salaries - Post-Season	2024		$2,560.00	32 hours*; pre-winterization work.
Salaries - Routine Maintenance	2024		$5,760.00	72 hours*; maintenance and operational/safety checks.
Salaries - promotional and education/outreach	2024		$1,600.00	20 hours*; promotion of service and education outreach.
Salaries - administration	2024		$1,920.00	24 hours*; administration.
Insurance	2024	$4,000.00		For captain and approved co-captain
Budget Item	**Year**	**CVA Grant Funding**	**Non-Federal Matching Funds**	**Description**
Salaries - In-Season	2025	$64,000.00		800 hours*; pumpout service.
Salaries - Pre-Season	2025		$5,200.00	65 hours*; inspection, prep work, and trailer maintenance.
Salaries - Post-Season	2025		$2,560.00	32 hours*; pre-winterization work.
Salaries - Routine Maintenance	2025		$5,760.00	72 hours*; maintenance and operational/safety checks.
Salaries - promotional and education/outreach	2025		$1,600.00	20 hours*; promotion of service and education outreach.
Salaries - administration	2025		$1,920.00	24 hours*; administration.
Insurance	2025	$4,000.00		For captain and approved co-captain
	TOTAL	**$136,000.00**	**$34,080**	

*Hourly rate is $80/hr.