

The State of New Hampshire
Department of Environmental Services

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Robert R. Scott, Commissioner

April 9, 2020

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

REQUESTED ACTION

Authorize the Department of Environmental Services (NHDES) to enter into an agreement with Robert Gibbons (VC#271932-B001) of Portsmouth, NH, for a total of \$117,000 to operate the state-owned mobile pumpout boat, effective upon Governor and Council approval through May 31, 2022. 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 fiscal year 2022 is contingent upon continuing appropriations and availability of funds.

	<u>FY2020</u>	<u>FY2021</u>	<u>FY2022</u>
03-44-44-442010-2061-103-502664	\$39,000	\$39,000	\$39,000

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

EXPLANATION

The NHDES receives grant funds 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 NHDES CVA program released a Request for Proposals on February 3, 2020 through the Bureau of Purchase and Property website. As of the closing date on March 6, 2020, two proposals were received.

The selected proposal was from Robert Gibbons; Gibbons captained the *Royal Flush* under the previous contractor for 10 years. To date, nearly 200,000 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 he is devoted to promoting the program and educating the public on the related regulations and water quality concerns.

Weighted awarding criteria were included in the Request for Proposals and were used to score both proposals. The selected proposal scored 94% while the proposal that was not selected scored 79%. The proposal that was not selected was submitted by 603-Pump-Out LLC, which was more expensive and had less experience than the selected proposal.

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 Office of the Attorney General as to form, content, and execution.

We respectfully request your approval of this item.



Robert R. Scott, Commissioner

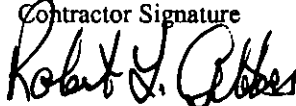


Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive Concord, NH 03302	
1.3 Contractor Name Robert Gibbons		1.4 Contractor Address 135 SPINNAKER WAY PORTSMOUTH, NH 03801	
1.5 Contractor Phone Number 603-205-0630	1.6 Account Number 03-44-44-442010-2061-103	1.7 Completion Date May 31, 2022	1.8 Price Limitation \$117,000
1.9 Contracting Officer for State Agency Melanie Cofrin		1.10 State Agency Telephone Number 603-271-8803	
1.11 Contractor Signature  Date: 3-25-20		1.12 Name and Title of Contractor Signatory ROBERT L. GIBBONS Council	
1.13 State Agency Signature  Date: 4-15-20		1.14 Name and Title of State Agency Signatory Robert R. Scott, Commissioner New Hampshire Dept of Env Services	
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: 4/15/2020			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

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 as indicated in block 1.17, 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. 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 affected 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. 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 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 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 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. 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 race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3. 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 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 cured, 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 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.

8.3. 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.

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) 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) 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 B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 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.

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 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.

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 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, 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.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. 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.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. 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 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 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 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 ten (10) days prior to the expiration date of each insurance policy. 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 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. **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.

17. **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.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and 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. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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 or modifying provisions set forth in the attached EXHIBIT A 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 with respect to the subject matter hereof.

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EXHIBIT A
SPECIAL TERMS AND CONDITIONS

1. Paragraph 14 of the General Provisions shall not apply to this contract and is replaced with the following: “¹The 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. ²This 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. ³The 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 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 their 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 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.
3. The Contractor and any subcontractor or assignee shall not move, operate, or otherwise have access to the *Royal Flush* if the insurance described in paragraph 1 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.
4. The Department owns a 21-foot fiberglass pumpout boat fitted with a 300-gallon wastewater holding tank and associated pump system that is known as DES-16. 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 recreational boats. This boat is available to be used for this service in place of the *Royal Flush* when the *Royal Flush* is unavailable for use. If DES-16 is used,

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all provisions in this Agreement listed for the *Royal Flush* shall apply to DES-16 unless deemed not applicable by the Department.

- a. Contractor shall not move, operate, or otherwise access DES-16 until obtaining authorization by the Department.
 - b. Contractor shall work with Department staff to create a schedule for DES-16 use, including but not limited to, the dates of operation, maintenance work, safety checks, wastewater offloading, and docking.
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 (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. 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 season, to the effective end date as listed in Exhibit C, paragraph 9.
 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. Any negligent use, misuse, or abuse of the *Royal Flush*, DES-16, 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.
 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

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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 KYG
Date 3-28-20

2020 Contract Exhibits

EXHIBIT B
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, 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.
4. 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 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 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*.

Contractor Initials


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- 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.
 - 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 7 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 3 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 for 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.

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- 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 bow number if boat is unnamed, length of vessel, type of vessel, date and time of service, vessel's current location where the pumpout occurred, and approximate gallons pumped.
- 1.12. The Contractor will not charge any fees 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 (<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 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, 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.
 - 2.2.1 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 with each invoice. Reimbursement for boat operation will be denied if logs are not provided.
- 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.

Contractor Initials RYG
Date 3-25-20

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- 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.

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, amount of oil added, and any damage, repairs, or maintenance (routine or otherwise) performed to the *Royal Flush*.
- 3.2 The Contractor will ensure the following information (at a minimum) is recorded for each pumpout that occurs: boat name or bow number if boat is unnamed, length of vessel, type of vessel, date and time of service, vessel's current location where the pumpout occurred, and approximate gallons pumped. These records will be transferred to the NHDES CVA staff at least once per month.
- 3.3 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 No Discharge Area 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:

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RyG
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- 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 C.
- 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.

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.

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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 \$117,000.
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 \$50 for labor in 2020 and \$51.50 for labor in 2021.
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.
 - 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.
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 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:
Attn: Watershed, CVA
NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095

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

- 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 May 31, 2022.

Contractor Initials *RLG*
Date 3-25-20

ORIGINAL

Issued at: Boston, MA
On: 04/29/2019

Policy No: MASILBN00045419-10196
Security: *Starr Indemnity & Liability Company*-A.M. Best
financial strength rating (FSR) of A (Excellent) (Financial Size
Category) XIV & an issuer credit rating (ICR) of "a".



Starr Indemnity & Liability Company

One International Place, 13th Floor, Boston, MA 02110

DECLARATIONS PAGE

Named Assured: Robert Gibbons
Address of Assured: 135 Spinnaker Way
Portsmouth, NH 03801

Policy Period: May 5, 2019, 12:01 AM to May 4, 2020, 12:01 AM EST

Deductible: A deductible of \$500 shall apply to each accident hereunder.

Limit of Liability: As Declared any one occurrence (except as noted herein), Combined Single Limit - All Sections.

Section	Limit Type	Limit Amount
Maritime Officers Liability	Per Occurrence	1,000,000
Pollution Civil Fines & Penalties Limit	part of the Per Occurrence limit	25,000
Seaman's Manslaughter and certain Environmental Defense Costs	part of the Per Occurrence limit	250,000

Premium: \$1,000.00 Flat

Coverage Type	Premium Amount
Maritime Officers Liability	999.00
TRIA MOLI	1.00
State Surcharge	0.00
Total Premium	1,000.00

Commission: 20.00%
Commission Amount: 200.00

Covering: Maritime Officers Liability Insurance

Conditions of Insurances/Additional Conditions:
Maritime Officer's Liability Insurance Form MOLI_4/16 - As Declared

Attachment A - Budget Estimate

Budget Item	Year	CVA Grant Funding	Non-Federal Matching Funds	Description
Salaries - In-Season	2020	\$50,000.00		1000 hours*; pumpout service.
Salaries - Pre-Season	2020		\$4,000.00	80 hours*; inspection, prep work, and trailer maintenance.
Salaries - Post-Season	2020		\$2,000.00	40 hours*; pre-winterization work.
Routine Maintenance	2020		\$4,000.00	80 hours*; maintenance and operational/safety checks.
Supplies - Routine Maintenance	2020	\$3,000.00		
Supplies - Office	2020		\$50.00	
Salaries - promotional and education/outreach	2020		\$2,000.00	40 hours*; promotion of service and education outreach.
	2020		\$1,200.00	24 hours*; administration.
Mileage	2020		\$116.00	200 miles
Supplies - Safety Equipment	2020	\$500.00		
Insurance	2020	\$1,500.00		
Winterization & Storage	2020	\$3,000.00		
Summer Docking	2020		\$6,000.00	
Salaries - In-Season	2021	\$51,500.00		1000 hours**; pumpout service.
Salaries - Pre-Season	2021		\$4,120.00	80 hours**; inspection, prep work, and trailer maintenance.
Salaries - Post-Season	2021		\$2,060.00	40 hours**; pre-winterization work.
Routine Maintenance	2021		\$4,120.00	80 hours**; maintenance and operational/safety checks.
Supplies - Routine Maintenance	2021	\$2,500.00		
Supplies - Office	2021		\$50.00	
Salaries - promotional and education/outreach	2021		\$2,060.00	40 hours**; promotion of service and education outreach.
	2021		\$1,236.00	24 hours**; administration.
Mileage	2021		\$116.00	200 miles
Supplies - Safety Equipment	2021	\$500.00		
Insurance	2021	\$1,500.00		
Winterization & Storage	2021	\$3,000.00		
Summer Docking	2021		\$6,000.00	

TOTAL \$117,000.00 \$39,128.00

*salary is \$50/hour **salary is \$51.50/hour

Contractor Initials 
Date 3-25-20

Attachment B
Grant Scoring Matrix

Awarding Criteria from the Request for Proposals	603-Pump-Out	Robert Gibbons
1. Applicants must demonstrate marine business experience and past performance measures. References of past business associates must be included. [20%]	16%	20%
2. Applicants must include a cost proposal. This should take into account annual increases in operating costs. [20%]	13%	18%
3. Applicants must indicate the means to provide at least 25 percent of the total project cost with non-federal money, volunteer time, and/or other qualifying match. Activities that are not submitted for reimbursement may be applied to this 25 percent match (e.g. time spent on outreach, winterization of the boat, boat transport, boat storage, and approved supply purchases). [15%]	13%	15%
4. Applicants must provide a clear and concise description of how coastal mobile pumpout services will be implemented including, but not limited to: a. Proposed schedule of operation. b. Personnel associated with vessel operation and maintenance. c. Plan for tracking services provided. [20%]	18%	18%
5. Applicants must include a description of public education and outreach including, but not limited to, the publicity of the service, regulation for boaters with on-board plumbing, and the effects of sewage on water quality. [15%]	12%	14%
6. Overall professionalism of the proposal. [10%]	7%	9%
TOTAL	79%	94%

Review Team Members:

- Ted Diers, Watershed Management Bureau Administrator: 23 years of environmental planning and grants management experience.
- Dave Neils, Jody Connor Limnology Center Director: 20 years of experience as an aquatic biologist including on-water duties using and maintaining motorized watercraft.
- Melanie Cofrin, Clean Vessel Act Program Coordinator: 6 years experience with the Clean Vessel Act Program and grants management.

Scoring Summary:

Two proposals were received for this contract and were scored based on the weighted awarding criteria that was listed in the request for proposals. The Review Team provided input on each proposal and the scores are the consensus from the Review Team. The major difference between the two proposals in scoring was experience and cost. Robert Gibbon's proposal was less expensive and Robert Gibbons has more experience directly related to this contract.