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New Hampshire Fish and Game Department

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Glenn Normandeau
Executive Director

August 3, 2014

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

Requested Action

Authorize the New Hampshire Fish and Game Department, pursuant to RSA 21-I:79, to enter into a contract with Rowell's Sewer and Drain LLC, 25 Carr Street, Franklin, NH (Vendor Code #167877), for vault toilet pump-out services at thirteen boat access sites across New Hampshire in the amount of \$10,325.00 effective upon Governor and Council approval through December 31, 2014. Funding 100% Other (Statewide Public Boat Access Funds).

Funding is available for this service and will be expended as follows, contingent upon availability and continued appropriations for Fiscal Year 2015:

		<u>FY 2015</u>
03 75 75 753520 21170000	Facilities and Lands – Statewide Public Boat Access	
20 07500 21170000 048 500293	Contractual maintenance	\$10,325.00

Explanation

The New Hampshire Fish and Game Department manages thirteen (13) vault toilet buildings at select boat access facilities across the state. The vault toilets require periodic pump-out maintenance to provide satisfactory operation and presentation to the public. The NH Fish & Game construction crew does not have the equipment or the ability to pump-out the vault toilets.

Respectfully submitted,

Glenn Normandeau
Executive Director

Kathy Ann LaBonte, Chief
Business Division

New Hampshire Fish & Game Department

Bid Page

This service opportunity was put out to bid on two separate occasions this summer. The first bid opportunity was posted on the NH Department of Administrative Services website of current bids and proposals in June. No vendors responded to that offering. A second bid was offered through direct emailing to 23 vendors on the Department of Economic Resources and Development's 2014 Septic Pumping and Disposal Mailing List. In addition calls were made to the vendors on this list who had qualified for the top three largest number of DRED pump-out sites. Again, no vendors responded to the offering. Follow up calls were made to Rowell's Sewer and Drain and Bolen's Septic to inquire if they would be interested in this opportunity. Rowell's Septic responded and their bid for the thirteen vault toilet pump-out sites is summarized below:

Rowell's Sewer and Drain LLC

\$10,325.00

25 Carr Street
Franklin, NH 03235
603-934-4145

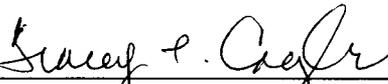
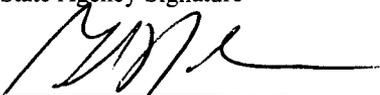
End of Bidders

Subject: Septic Pumping and Disposal Services FORM NUMBER P-37 (version 1/09)

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name <u>NH Fish and Game Department</u>		1.2 State Agency Address <u>11 Hazen Drive, Concord, NH 03301</u>	
1.3 Contractor Name <u>Rowell's Sewer and Drain LLC</u>		1.4 Contractor Address <u>25 Carr Street</u>	
1.5 Contractor Phone Number <u>(603) 934-4145</u>	1.6 Account Number <u>21170000-048-500293</u>	1.7 Completion Date <u>December 31, 2014</u>	1.8 Price Limitation <u>\$10,325.00</u>
1.9 Contracting Officer for State Agency <u>Glenn Normandeau, Executive Director</u>		1.10 State Agency Telephone Number <u>(603) 271-3511</u>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <u>Mandie Hagan</u>	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Belknap</u> On <u>7-31-14</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal] TRACEY L. ENGLER, Notary Public My Commission Expires August 10, 2016			
1.13.2 Name and Title of Notary or Justice of the Peace <u></u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>Glenn Normandeau, Executive Director</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: <u>James</u> On: <u>8-7-2014</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

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2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials
Date

The handwritten initials are "MH" and the date is "8/1/14".

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials MAH
Date 8/1/14

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

New Hampshire Fish & Game Department

Exhibit A

Scope of Services

- A. The purpose of this bid is to provide all labor, tools, transportation, materials, equipment and permits as necessary to provide the required level of services as described herein. The scope of work shall include septic pumping and disposal service for various public boat access sites.
- B. Septic pumping and disposal services shall be completed in a reasonable time frame as mutually agreed upon between agency and vendor.
- C. Vendor may bid on any one or more locations as listed within the offer section. Awards will be made for each specific location.
- D. Vendor may also make site visits to any locations they wish to bid if applicable. The act of submitting a bid shall be considered in full acknowledgement that the vendor is familiar with or had the opportunity to become familiar with, the conditions and requirements of these specifications with ascertained pertinent local conditions, such as equipment conditions, locations, accessibility and general character of the sites relating to this bid.
- E. All services performed under this Contract shall be performed between the hours of 7:30 A.M. and 4:00 P.M. unless other arrangements are made in advance with the State. Any deviation in the work hours shall be pre-approved by the Contract Officer. The State requires ten day advance knowledge of said work schedules to provide security and access to respective work areas. No premium charges will be paid for any off-hour work.
- F. The Vendor shall not commence work until a representative of NHFG has contacted them.
- G. The Vendor agrees that any damage or injury to buildings, materials, equipment or to other property during the performance of this service will be repaired at their own expense.
- H. The State shall require correction of defective work or damages to any part of the building or its appurtenances when caused by the Vendor's employees, equipment or supplies. The Vendor shall place in satisfactory condition all defective work and damages rendered thereby or any other damages incurred. Upon failure of the Vendor to proceed promptly with the necessary corrections, the State may withhold any amount necessary to correct all defective work or damages from payments to the Vendor.
- I. The work staff shall consist of qualified persons completely familiar with the products and equipment they shall use. The Contract Officer may require the Vendor to dismiss from the work such employees as deemed incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work deemed to be contrary to the public interest or inconsistent with the best interest of security.
- J. The Vendor or their personnel shall not represent themselves as employees or agents of the State.
- K. While on State property, employees shall be subject to control of the State, but under no circumstances shall such persons be deemed to be employees of the State.
- L. All personnel shall observe all regulations or special restrictions in effect at NHFG or other applicable State agencies.

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- M. The Vendor shall furnish all personnel with uniforms, which shall be neat and clean in appearance with picture identification that is visible at all times.
- N. The Vendor's personnel shall be allowed only in areas where work is being performed. The use of State telephones is prohibited.
- O. If sub-contractors are to be utilized, include information regarding the proposed sub-contractors including the name of the company, their address, contact person and three references for clients they are currently servicing.

Exhibit B

Method of Payment

Invoices shall be submitted after completion of work to NHFG. Payment shall be paid in full within thirty (30) days after receipt of invoice and acceptance of the work to the State's satisfaction.

Exhibit C

Special Provisions

Contractors bidding on Projects with estimated cost less than \$35,000 are not required to post a Bid Bond. Performance BOND and a payment BOND, will not be required for the faithful performance of the contract.

(Signature)
8/1/14

State of New Hampshire Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Rowell's Sewer & Drain, LLC is a New Hampshire limited liability company formed on December 18, 2006. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and paid the fees required by law; and that a certificate of cancellation has not been filed.



In TESTIMONY WHEREOF, I hereto
set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 31st day of July, A.D. 2014

A handwritten signature in cursive script, appearing to read "William Gardner".

William M. Gardner
Secretary of State



**Rowell's
Sewer & Drain
Franklin, NH
934-4145**

LLC Certification of Authority

I, Deborah Rowell, hereby certify that I am a Member of Rowell's Sewer: Drain LLC, a limited liability company under RSA 304-C and that Mandie Hagan is also a Member of Rowell's Sewer: Drain LLC, and that I certify that he/she is authorized to bind the LLC.

I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that I currently occupy the position indicated and that I have full authority to bind the LLC.

Signed: Deborah A. Rowell
Date: 7/31/14

Signed: [Signature]
Date: 7/31/14

State of New Hampshire, County of Belknap

On this the 31st day of July 2014, before me, _____, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she is executed the same for the purposed therein contained. In witness thereof, I hereunto set my hand and official seal.

Tracey L. Engler

**TRACEY L. ENGLER, Notary Public
My Commission Expires August 10, 2016**

8/11/14
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