

Attachment A – Sample Agreement

The Town of Seabrook, a municipal corporation, 99 Lafayette Road, Seabrook, New Hampshire 03874 and **Contractor**, the “Vendor”, a **State** corporation, **Address, Town, StateZip**, who on this ____ day of _____, 2019, for valuable consideration agree as follows (the “Agreement”):

1. **Purpose** - This Agreement refers to and incorporates the provisions of a Request for Proposal (RFP) # B2019-SWR-05 entitled “Design and Construction for Blackwater River Bridge Sewer Outfall Pipe Replacement Project” issued by the Town of Seabrook.
2. **Agreement Documents** – The Agreement shall include and consist of the following documents:
 - a. Agreement
 - b. RFP #B2019-SWR-05, as completed by Vendor
 - c. Reply of Vendor
3. **Scope of Services** - The Vendor shall perform all work specified and required by the Agreement Documents listed in Section 2 above. Should there be inconsistencies between the terms of any of the Agreement Documents, precedence shall be as follows:
 - 1) The Agreement; 2) the terms of RFP #B2019-SWR-05; and 3) response of the Vendor.
4. **Changes in the Cost of the Work and the Scope of Services** - Changes to the cost of the work and the Scope of Services shall be made in writing by mutual agreement prior to the performance of the work.
5. **Term** - The Vendor shall commence work upon the execution of this Agreement and issuance of a Purchase Order by the Town of Seabrook. All services to be performed under this Agreement shall become effective upon the signing of the Agreement and to be completed as directed by the Town of Seabrook, or its representatives.
6. **Cost and Payment**- The Town of Seabrook shall pay the Vendor an amount not to exceed _____ DOLLARS for services within the Scope of Services. The Town of Seabrook shall pay the Vendor within thirty (30) days upon performance and presentation of an invoice supplied by the Vendor detailing the work performed.
7. **Insurance & Performance Bond**
 - a. The Vendor shall secure and maintain for the duration of this Agreement a General Liability Insurance policy or policies at no cost to the Town of Seabrook. The coverage of said insurance policy shall be in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. An insurance certificate shall be supplied to the Town of Seabrook by the Vendor. The Town of Seabrook shall be named as an additional insured on the Vendor’s general liability insurance policy, which coverage shall apply on a primary and noncontributory basis, and, subject to the dollar amounts specified above, cover the Town of Seabrook with the same scope of coverage provided to the Vendor under the general liability policy without subjecting the Town of Seabrook to any different or additional terms, conditions, limitation or exclusions. A condition of the insurance coverage shall be thirty (30) days’ notice to the Town of Seabrook upon cancellation of the policy. The Vendor shall also provide the Town of Seabrook certificates of renewal for any applicable insurance policy no later than ten (10) business days prior to the expiration of said policy.

- b. The Vendor shall secure and maintain for the duration of this Agreement Automobile Liability Insurance covering the operation of all motor vehicles, including those hired and borrowed, used by the Vendor in connection with this Agreement at no cost to the Town of Seabrook. The coverage of said insurance policy shall be in the amount of not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total limit of at least One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one accident or occurrence. An insurance certificate shall be supplied to the Town of Seabrook by the Vendor. The Vendor shall also provide the Town of Seabrook certificates of renewal for any applicable insurance policy no later than ten (10) business days prior to the expiration of said policy.
 - c. By signing this Agreement, the Vendor agrees, certifies, and warrants that the Vendor is in compliance with, or exempt from, the requirements of New Hampshire RSA Chapter 281-A, regarding workers' compensation insurance. The Vendor shall maintain statutory workers' compensation insurance coverage for all of its employees as required by said law.
 - d. Within ten days of this Agreement, the Vendor shall provide the Town of Seabrook with a Payment/Performance Bond drawn on a responsible bank or trust company authorized to do business in New Hampshire, equaling 100% of the contract value and made payable to the Town of Seabrook.
8. **Indemnification** - To the fullest extent permitted by law, the Vendor agrees to defend (with counsel acceptable to the Town), indemnify, and hold harmless the Town of Seabrook from and against any claims, losses, damages or expense (including reasonable attorneys' fees) arising out of the death or, injuries, or damages to any person, or damage or destruction of any property, in connection with the Vendor's services, in whole or in part, under this Agreement to the extent caused by, and/or alleging, the negligent acts, errors, or omissions of the Vendor or its officers, directors, employees, agents or independent professional associates, or any of them. This covenant shall survive the termination of this Agreement.
9. **Warranty** - The Vendor shall perform the work within the Scope of Services commensurate with the standard of the trade/industry involved in the performance of this Agreement. In connection with the performance of the Scope of Services, the Vendor shall comply with all statutes, laws, regulations, and applicable orders, whether federal, state, or local.
10. **Ownership of Documents** - The Town of Seabrook shall retain ownership of the documents and designs, if any, prepared for the Town of Seabrook by the Vendor pursuant to the provisions of this Agreement to the extent the Vendor has been paid for the services to prepare the documents and designs.
11. **Dispute Resolution**- Both parties are entitled to all available legal and equitable remedies within the jurisdiction of the courts of the State of New Hampshire. Venue shall be Rockingham County.
12. **Termination** - The Town of Seabrook may terminate this Agreement without cause upon thirty (30) days written notice subject to an obligation to pay for services satisfactorily rendered. Warranties shall not be subject to termination.

13. **Binding**- This Agreement shall be binding upon all parties, their heirs, executors, administrators, successors and assigns.
14. **Waiver of Breach** - No failure by the Town of Seabrook to enforce any provisions of this Agreement shall be deemed a waiver of its rights under this Agreement.
15. **Applicable Law** - This Agreement shall be deemed to have been entered into in the State of New Hampshire and shall be construed in accordance with the laws of the State of New Hampshire.
16. **Third Parties** - Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the Town of Seabrook and the Vendor any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof, and all covenants, conditions, promises and agreements in this Agreement contained by or on behalf of the Town of Seabrook or the Vendor shall be for the sole and exclusive benefit of the Town of Seabrook and the Vendor.
17. **Review** - The parties to this Agreement acknowledge that they enter into this Agreement voluntarily and have had the opportunity to review this Agreement with legal counsel prior to signing.
18. **Personnel** - The Vendor shall at its own expense provide all personnel necessary to perform the work under this Agreement. The Vendor warrants that all personnel shall be qualified to perform the work under the Scope of Services and shall be properly licensed and otherwise authorized to do so under all applicable laws.
19. **Assignment/Delegation/Subcontracts**- The Vendor shall not assign, or otherwise transfer, any interest in this Agreement without the prior written consent of the Town of Seabrook. None of the services shall be subcontracted by the Vendor without the prior written consent of the Town of Seabrook.
20. **Contractor's Relation to the Town of Seabrook** - In the performance of this Agreement the Vendor is in all respects an independent contractor and is neither an agent nor an employee of the Town of Seabrook. Corporations must be in good standing with the Secretary of State's Office in the state of incorporation and registered to conduct business in the State of New Hampshire.
21. **Confidentiality** - New Hampshire RSA Chapter 91-A shall govern the confidentiality of information/data held by the Town of Seabrook under this Agreement.
22. **Amendment** - This Agreement may be amended, waived, or discharged only by an instrument in writing signed by the parties hereto.
23. **Construction and Headings** - 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. The headings throughout this Agreement are for reference purposes only, and the words contained therein shall in no way be used to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

24. **Notice** - Any notice by a party hereto to the other party to this Agreement shall be provided as follows:

To Town of Seabrook
William M. Manzi, III, Town Manager
99 Lafayette Road
Seabrook, NH 03874

To Contractor

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 shall remain in full force and effect. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid, enforceable provision that comes as close as possible to the intention of the stricken provision.
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 relating hereto.

Signatures to Follow

CONTRACTOR

Contractor Name
Duly Authorized

Date

TOWN OF SEABROOK

William M. Manzi, III, Town Manager

Date