

ABENAQUI PUMP STATION
DESIGN/BUILD CONTRACT

This Agreement (“Agreement” or “Contract”) is made as of _____, 2022 between The Town of Rye Sewer Commission, duly organized under the laws of the State of New Hampshire and having a principal place of business at 830 Central Road, 2nd Floor, Rye Beach, NH 03871 (hereinafter “Owner” or “Town”); and _____ a _____ and having a principal place of business at _____ hereinafter (“Contractor”) for the following Project:

Design and Build of Abenaqui Pump Station
Located at 759 Central Road, Rye Beach, NH

Recitals

WHEREAS, The Town of Rye Sewer Commission solicited a Request for Qualifications and Proposals for Design/Build Abenaqui Pump Station located at 759 Central Road, Rye Beach, NH 03871 (hereafter referred to as the “Abenaqui Pump Station” or “the Premises”).

WHEREAS _____ submitted a proposal on _____.

WHEREAS, the Town of Rye Sewer Commission selected Contractor’s proposal on _____.

WHEREAS, the Town of Rye Sewer Commission issued a Notice of Award to said contractor on _____.

WHEREAS, The Contractor warrants and represents that it is ready, willing, and able to construct and complete the Design/Build of the Abenaqui Pump Station in accordance with the terms and conditions of the Contract documents as set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this agreement, the Owner and the Contractor agree as follows:

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ARTICLE 1- GENERAL PROVISIONS

§ 1.1 Contract Documents.

The following documents are incorporated into this contract and together shall constitute the Contract Documents:

- A. This Abenaqui Pump Station Design/Build Contract.
- B. Request for Qualifications and Proposals Design/Build Abenaqui Pump Station (Exhibit A hereto).
- C. Contractor’s Response to Qualifications and Proposals (Exhibit B hereto)
- D. Notice of Award, Dated _____ (Exhibit C hereto)
- E. Certificate of Insurance (Exhibit E),
- F. Scope of Work- Contractor name - (Exhibit D hereto)

In the event of any conflict of inconsistency between any of the documents constituting the Contract Documents, the following order of precedence shall apply: (1) this Contract; (2) the Scope of Work, (3) the Contractor’s Submittal, and (4) the Request for Qualifications and Proposals Design/Build Abenaqui Pump Station. Further, in the case of a discrepancy, calculated dimensions will govern over scaled dimensions, contract drawings will govern over standard specifications, and technical specifications will govern over both contract drawings and standard specifications. In the case of a discrepancy between the Agreement and other Contract Documents, the more specific or stringent obligation or requirement to the benefit of the Owner shall take precedence.

§ 1.2 Project Team.

§ 1.2.1 Owner's representative:

<u>Lee Arthur</u>	<u>Sewer Director</u>	<u>(603) 964-6815 (Office), (603) 828-9314 (Cell)</u>
<i>Name</i>	<i>Title</i>	<i>Phone #'s</i>

The Owner's representative shall have the apparent authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, provided any changes which may require an increase in the Contract Sum shall require prior approval and authorization by Owner’s Sewer Commission.

§ 1.2.2 Contractor’s representative:

<i>Name</i>	<i>Title</i>	<i>Phone #'s</i>
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The Contractor’s representative shall have the authority to bind the Contractor with

respect to all matters requiring the Contractor's approval or authorization.

The Contractor's 24-hr emergency contact. If same as representative, please specify:
Same as above representative.

<i>Name</i>	<i>Title</i>	<i>Phone #'s</i>
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§ 1.3 Definitions.

§ 1.3.1 Contract Documents. The Contract Document shall consist of those documents identified in Section 1.1 of this Contract and all exhibits referenced therein; other documents listed in this Contract and such Modifications, specifications, drawings, shop drawings, and designs that may be prepared and approved by the Parties in accordance with this Contract.

§ 1.3.2 Modification. (1) A written amendment to the Contract signed by the parties, (2) a Change Order executed in accordance with Article 6, or (3) a Change Directive ordered in accordance with Article 6.

§ 1.3.3 The Contract. The Contractor Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification executed in accordance with this Contract.

§ 1.3.4 The Work.

The performance of all services necessary to fulfill the Contractor's obligations under the Contract Documents, including all labor, materials, equipment and services to be provided by the Contract. The Work shall constitute and include:

- a. The design of the rehabilitation and/or replacement of the Aberniqui Pump Station, inclusive of all analyses, studies, sampling, engineering, related to same;
- b. The preparation, submittal, and acquisition of all necessary permits to construct the design of the rehabilitation and/or replacement of the Aberniqui Pump Station; and
- c. The performance of all demolition, construction, and related services to rehabilitation and/or replacement of the Aberniqui Pump Station.

§ 1.3.5 The Project. The Project is the performance of the Work and constituting the design, permitting, and construction related to the total rehabilitation and replacement of the Aberniqui Pump Station to be performed under the Contract by the Contractor and/or Contractor's consultants and subcontractors, as well as all related demolition, design work, and clean-up related to same.

§ 1.3.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Contractor proposes to conform to the Contract Documents for those portions of the Work for which the Contract Documents require Submittals. Submittals include,

but are not limited to, shop drawings, drawings, designs, and specifications prepared in accordance with this Contract and approved by the Parties.

§ **1.3.7 Owner.** "Owner" means the Owner or the Owner's authorized representative.

§ **1.3.8 Contractor.** "Contractor" means the Contractor or the Contractor's authorized representative.

§ **1.3.9 Contract Time.** The period of time, including authorized adjustments, for Substantial Completion of the Work.

§ **1.3.10 Site.** That portion of the property on which the Work is to be performed or which has been otherwise designated for use by the Contractor, namely the property and improvements located at 759 Central Road, Rye Beach, NH.

§ **1.3.11 Consultant.** A Consultant is a person or entity providing professional services for the Contractor for all or a portion of the Work. Consultants who are architects, engineers, surveyors, or soils scientists shall be duly licensed by the State of New Hampshire.

§ **1.3.12 Subcontractor.** Any person(s) or legal entity with which the Contractor contracts directly for any of the Work to be performed under this Contract. Unless the context suggests otherwise, the term subcontractor shall include the Contractor and consultants.

ARTICLE 2- COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Contract Sum

The Contract Sum shall not exceed _____, inclusive of all labor, materials, services, and related administrative, operational, taxes, or overhead charges, which shall be charged and paid in installments based on the progress of the Work completed in accordance with Section 2.2.

§ 2.2 Compensation for Work Performed

§ **2.2.1** Applications for Payment shall be submitted at the end of each of the following phases. The Owner shall compensate the Contractor as follows:

Draw #1:

Draw #2:

Draw #3:

Draw #4:

Draw #5 (Substantial Completion):

Draw #6 (Final Completion): Remittance of Retainage

§2.2.2 Payments shall be made within 14 days of submittal of a complete application for payment.

§2.2.3 Substantial Completion shall be determined and shall be as defined in Section 9.4, herein. Final Completion shall be determined and as defined in Section 9.5 herein.

§2.2.4 As reflected above, Draw #6 shall constitute payment of a retainage amount, which shall be remitted upon determination that the Work is fully completed and without observable errors or defects. The retainage amount shall constitute 10% of the Contract Sum (as that Contract Sum may be amended pursuant to a Modification). Upon a determination that the Work is complete, Owner shall remit the retainage within fourteen (14) days of certification of the Work's completion by the Owner's project manager. If the Work is deemed incomplete or has defects, Owner shall notify the Contractor of said defects or unfinished work and the parties' rights and responsibilities shall be as set forth in Section 9.5 herein.

§2.2.5 Payment of any portion of the Contract Sum shall not be construed or deemed acceptance of any of the Work that is not in accordance with the requirements of the Contract Documents.

§ 2.3 Applications for Payment and Remittance

§ 2.3.1 At least fourteen (14) days before the date established for each progress payment, the Contractor shall submit to the Owner an Application for Payment for completed portions of the Work. The application shall be supported by such data substantiating the Contractor's right to payment as the Owner may require.

§ 2.3.2 Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 2.3.2 Payments shall be made within 14 days of submittal of a complete application for payment.

ARTICLE 3 - CONTRACTOR'S SERVICES AND RESPONSIBILITIES

§ 3.1 General

§ **3.1.1** The Contractor shall be responsible for the design, permitting, rehabilitation, replacement and construction of the Project and shall do or cause to be done all Work and services as required in the Contract Documents and any additional, collateral, and incidental Work and services as may be necessary in order to complete the Project in accordance with the requirements of the Contract Documents.

§ **3.1.2** The Contractor shall confirm that the information included in the Contract Documents comply with applicable laws, statutes, ordinances, codes rules, regulations, or lawful orders of public authorities. Contractor shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. Contractor shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Design Builder before commencing the Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to Owner's Representative. If any aspect of the Contract Documents conflict with any applicable laws, statutes, ordinances, codes, rules, regulations, or lawful orders of public authorities, the Contractor shall notify the Owner of the conflict, and the Owner and Contractor shall discuss any necessary modifications to the Contract Documents and/or the Work necessary to remedy said non-compliant condition.

§ **3.1.3** The Contractor shall achieve Substantial Completion of the Project by the date provided in Article 9.

§ **3.1.4** All Work Contractor and/or any subcontractor or consultant under this Contract shall be performed in accordance the Contract Documents and with those professional standards applicable to projects, building, or work of similar complexity, quality and scope and shall be performed by entities and persons qualified to do such work. All work shall be performed in a good and workmanlike manner and shall be free from all defects. All materials and equipment furnished under the Contract by the Contractor will be new and of good quality unless otherwise required or permitted by the Contract Documents. The Contractor shall supervise and direct the Work using Contractor's best skill and attention. The Contractor shall be solely responsible for and shall have control over the construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

§ **3.1.5** The Contractor shall perform the Work in compliance with all applicable laws, statutes, ordinances, codes, rules, regulations, and lawful orders of public authorities, including but not limited to all immigration, environmental and safety laws, statutes, rules, codes orders and regulations. Contractor shall further perform all Work in accordance with any permits, licenses, and/or approvals and/or any conditions related to same. If the Contractor performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Contractor shall be responsible for such Work, shall bring such work into compliance without additional

cost to Owner, and shall bear the costs attributable to correction.

§ **3.1.6** The Contractor shall have the status of and shall perform all work under this Contract as an independent contractor, maintaining control over all its consultants, sub consultants, contractors, subcontractors, and employees. The only contractual relationship created by this Contract is between Owner and Contractor. Contractor shall be responsible for paying and compensating all consultants, subconsultants, contractors and contractors, and shall further be solely responsible for paying all wages of Contractor's employees and paying and withholding all taxes for Contractor's employees.

§ **3.1.7** The Contractor shall provide owner with all plans, designs, schematics, studies, analyses, permit applications, and permits related to the Work. At the completion of the Work, Contractor shall provide Owner with a set of "as built" plans and schematics.

§ **3.1.8 Safety** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury, or loss to:

1. Employees, representatives, Consultants, and Subcontractors on the Work and other persons who may be affected thereby.
2. The Work and materials and equipment to be incorporated therein; and
3. Other property at the site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities.

Contractor shall further be responsible for the proper storage of all materials and equipment and for using reasonable efforts to secure the site at the end of each workday.

§ **3.1.9** By entering into this Contract, the Contractor represents that it has inspected in detail the Site and has become familiar with all the physical and local conditions affecting the Project and/or Site and further represents that Contractor can perform the Work in accordance with the Plans and all applicable laws, codes, rules, regulations, and ordinances.

§ **3.1.10** Contractor shall provide such assistance, certifications, and submittals as may be necessary to allow for Owner to participate and obtain the benefits of any grant, rebate, reimbursement, or incentive programs that may be offered by any governmental entity.

ARTICLE 4 - OWNER'S RESPONSIBILITIES

§ **4.1** The Owner shall render decisions in a timely manner and in accordance with the schedule agreed to by the Owner.

§ 4.2 The Owner shall cooperate with the Contractor in Contractor's efforts in securing building and other permits, licenses, and inspections.

§ 4.3 The Owner shall process payments as required by the Contract in a timely manner.

§ 4.4 The Owner shall provide reasonable access to the Site and shall respond to requests for information, or such other inquiries as may be reasonably necessary to facilitate or complete the Work.

ARTICLE 5 - PROGRESS REPORTS AND SCHEDULES

§ 5.1 Progress Reports

The Contractor shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Contractor, the Contractor shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

1. Work completed for the period;
2. Project schedule status;
3. Approved Change Orders and Change Directives;
4. Cumulative total of the Cost of the Work to date including the Contractor's compensation; and
5. Additional information as agreed to by the Owner and Contractor.

§ 5.2 Pre-Construction Meeting and Contractor's Schedules

§ 5.2.1 Prior to initiating the Work, the Owner and Contractor, together with such Consultants, Subcontractors, engineers, or design professionals as may be appropriate shall attend a pre-construction meeting to discuss the timing and sequence of the Work.

§ 5.2.2 Promptly after the Pre-Construction Meeting, the Contractor shall prepare and submit for the Owner's approval a Project Schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Contractor Documents and shall identify the work that will be subject to the Draws identified in Section 2.2. The Project Schedule shall be related to the entire Project to the extent required by the Contractor Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project, and/or Subcontractors/Consultants having knowledge of the Work. The Project Schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project,

§ 5.2.3 The Contractor shall prepare and keep current, for the Owner's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Owner

reasonable time to review submittals.

ARTICLE 6 - CHANGES IN THE WORK

§ 6.1 General

Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. None of the following shall be grounds for any increase in the Contract Sum or in the Contract Time: (a) course of conduct or dealings between the parties; (b) express or implied acceptance of alterations or additions to the Work; (c) any unjust enrichment accruing to the Owner by any alteration or addition to the Work; (d) changes necessitated by conditions of the Site or circumstances that could have been discovered through the exercise of reasonable diligence and investigation; or (e) changes necessitated by a violation or breach of the Contract Documents.

§ 6.2 Change Orders

§ 6.2.1 A Change Order is a written instrument signed by the Owner and Contractor stating their agreement upon all of the following:

1. The change in the Work;
2. The amount of the adjustment, if any, in the Contract Sum due to the change in the Work; and/or
3. The extent of the adjustment, if any, in the Contract Time.

§ 6.2.2 A Change Order fully compensates the Contractor for the change. No party may reserve a right to additional compensation or time for the change in the Work incorporated into a Change Order without the written consent of the Owner. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. If a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payment, which may be payable in accordance with the Draw Schedule set forth in Section 2.2, based on the time needed to perform the Work.

§ 6.3 Change Directives

A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract

Time being adjusted accordingly. Failure to subsequently agree upon a change in the Contract Time and/or Contract Sum shall be subject to the Dispute Resolution provisions set forth in Article 10.

ARTICLE 7 - CORRECTION OF WORK

§ 7.1 General

§ 7.1.1 The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contractor Documents, work known by the Contractor to be defective, and work damaged by such defective work and shall promptly repair or replace other property of the Owner damaged by such defective or nonconforming work. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Contractor's expense.

§ 7.1.2 If the Contractor, or its consultants, subconsultants or others directly or indirectly under their employment use or damage any portion of the Work, including mechanical, electrical, plumbing, or other building systems, machinery, equipment, or other mechanical device, the Contractor, at no expense to the Owner, shall cause such portion, system, device, or item to be restored (whether by replacement, repair, or otherwise) to the condition the item was required to be in, if such use or damage had not occurred. Nothing herein shall reduce the duty of the Contractor with respect to such item in order to obtain a final Certificate for Payment.

§ 7.1.3 For a period of 18 months from the date of Final Completion, or within a longer period if provided by a special warranty, the Contractor shall correct work under this Contract found to be defective or nonconforming and work damaged by defective or nonconforming work and any other property of the town which is damaged by defective or nonconforming work. Nothing contained in this Section shall be construed as limiting, altering, or nullifying any manufacturer's warranty associated with any materials installed or constructed as part of the Work. All manufacturer's warranties for all materials and equipment incorporated into the Work shall be issued in the name of the Owner or transferred to the Owner.

§ 7.1.4 Nothing contained in this Contract shall be construed to establish a period of limitation other than those provided by law with respect to obligations of the Contractor, nor shall any provisions of this Contract be construed to establish a period of limitation with respect to the Owner's rights and remedies in the event of the discovery of latent defects in the work under this Contract.

§ 7.2 Owner's Right to Stop Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contractor Documents or fails to perform Work in accordance with the Contractor Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, nor shall said Stop Work Order require Owner to execute a Change Order related to the Contract Sum or Time.

ARTICLE 8- INSURANCE AND INDEMNIFICATION

§ 8.1 Insurance Requirements.

The Contractor agrees that it will carry any and all insurance which will protect it, the Owner and their respective officials, agents, volunteers and employees from any and all claims and demands, costs, damages, loss of service or consortium, expenses, compensation and attorney's fees including but not limited to any and all claims for personal injury and/or death, workers' compensation injuries, and property damages which may, in any way, arise from or out of the operations of the Contractor whether such operations be performed by the Contractor itself, anyone directly or indirectly employed by it or any other persons or company retained in any way to carry on all or a portion of the operations, activities or work required by or related to the Contract.

The Contractor shall purchase and maintain, for the duration of this Contract, insurance of the limits and types specified below from an insurance company licensed to do business in the State of New Hampshire and approved by the Town of Rye Sewer Commission.

Such policies shall require 30-days advance, written notice to the Owner prior to modification, lapse, or termination.

§ 8.1.1 Additional Insured

All liability policies shall include the Town of Rye Sewer Commission and its officials, agents, volunteers, and employees as named Additional Insured. The Contractor's insurance shall be primary in the event of a loss. The Additional Insured endorsement must include language specifically stating that the Town of Rye Sewer Commission and its officials, agents, volunteers, and employees are covered for all activities performed by, or on behalf of, the Contractor.

§ 8.1.2 Evidence of Insurance

As evidence of insurance coverage, the Town of Rye Sewer Commission may, in lieu of actual

policies, accept official written statements or certificates of insurance from the insurance companies' certifying that all the insurance policies specified below are in force for the specific period. The Contractor shall submit evidence of insurance to the Town of Rye Sewer Commission at the time of execution of the Agreement. Written notice shall be given to the Town of Rye Sewer Commission at least fifteen days prior to the cancellation or non-renewal of such coverage.

§ 8.1.3 Forms of Insurance

Insurance shall be in such form as will protect the Contractor from claims and liabilities for (a) damages for bodily injury, including accidental death, and (b) property damage, which may arise from operations under this Contract whether such operation by himself or by anyone directly or indirectly employed by him. Additionally, insurance shall be in such a form as will protect Contractor related to claims of defects in design or construction and professional liability for services provided under this Contract. Contractor shall provide a certificate or certificates of insurance demonstrating the following:

- Commercial/Comprehensive General Liability: \$1,000,000 per occurrence, \$2,000,000) in the aggregate aggregated, as well as completed operations coverage applicable to the work performed under this Contract and all liabilities as set forth above. The general liability policy must also contain contractual liability coverage applicable to the contractual indemnification obligation set forth in § 8.2 below.
- Automobile and Truck Liability: Bodily injury or Property Damage - \$1,000,000 Combined Single Limit, per occurrence.
- Professional Liability: Errors and Omissions - \$ 1,000,000 per occurrence, \$2,000,000 aggregated.
- Worker's Compensation Insurance coverage for all people employed by the Contractor to perform work on this Project. This insurance shall be, at a minimum, at levels and in strict accordance with the requirements of the laws of the State of New Hampshire, as those laws may be amended.
- Builder's Risk Insurance covering the Project at its full value, as completed, which shall name the Town of Rye Sewer Commission as loss payee.

§ 8.2 Indemnification

§ 8.2.1 The Contractor releases the Town of Rye Sewer Commission from and agrees that the Town of Rye Sewer Commission shall not be liable for any liabilities, claims, costs, and expenses that are or may be asserted against the Town, arising directly or indirectly, in whole or in part, from the negligence of the Town with regard to the maintenance and/or condition of the Site.

§ 8.2.2 The Contractor hereby agrees to indemnify, defend, and hold harmless the Town of Rye Sewer Commission, its officials, employees, agents, attorneys, and assigns ("Indemnified Parties") against any claims, causes of action, suits, demands, judgments, liabilities, damages, expenses, penalties, interest, equitable relief and/or any other remedies,

obligations, and costs related thereto (including but not limited to reasonable attorney's fees) asserted against Indemnified Parties", arising directly or indirectly in whole or in part, out of the negligence or fault of the Indemnified Parties, and/or the negligence, willful misconduct, or violation of this Contract or other applicable contract by Contractor, its Consultants, Subcontractors, agents, or anyone who is directly employed or contracted in connection with (a) this Contract or (b) the Project, including the construction of the Project and the maintenance, repair and replacement of any improvements which the Contractor is required to undertake pursuant to this Contract or any permit or approval. This indemnification obligation shall not apply to any actions or claims brought as a result of Indemnified Parties' material breach of this Contract by the Owner or the willful misconduct or gross negligence of the Owner.

§ **8.2.3** In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving Indemnified Parties in respect of which indemnity may be sought hereunder, the person seeking indemnity promptly shall give notice of that action or proceeding to the Contractor, and the Contractor upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding.

§ **8.2.4** In addition, and regardless of respective fault, Contractor shall defend, indemnify and hold harmless the Indemnified Parties against any claims, causes of action, demands, judgments, liabilities, and/or other obligations, and costs related thereto (including attorney's fees) asserted by the Contractor, its employees, Consultants, Subcontractors, or any other third-party arising out of a claim, charge or determination that Contractor's officers, employees, contractors, Subcontractors, Consultants, or agents are employees of the Indemnified Parties, including but not limited to claims or charges for benefits, wages, fees, penalties, withholdings, damages or taxes brought in connection with laws governing the payment of wages and overtime, discrimination, leave entitlements, workers compensation, unemployment compensation, social security, Medicare, state or federal taxation, and/or any other similar obligation associated with an employment relationship.

§ **8.2.5** The Contractor's obligations to defend, indemnify and hold harmless the Indemnified Parties hereafter shall survive the term of this Contract.

§ **8.2.6** Owner shall not be required to defend or indemnify the Contractor, any subcontractor, or any professional service provider.

ARTICLE 9 - CONTRACT TIME AND COMPLETION OF WORK

§ 9.1 Notice to Proceed.

The Contractor shall not commence work pursuant to the Contract until the Owner has issued a Notice to Proceed. The Notice to Proceed will not be issued until (1) this Contract is signed, and all certificates of insurance are in place; and (2) the Pre-Construction meeting is held, and

a construction schedule is agreed upon by the Parties.

§ 9.2 Progress and Completion

§ 9.2.1 Substantial Completion is to be achieved by _____. Time is of the essence. By executing the Contract, Contractor confirms that _____ is a reasonable date for Substantial Completion to be achieved.

§ 9.2.2 The Contractor shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance required by this Contract and the provision of the items identified in Section 9.1. The Contract Time shall not be adjusted as a result of the Contractor's failure to obtain insurance required under this Contract.

§ 9.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion by _____.

§ 9.3 Delays and Extensions of Time

§ 9.3.1 Except as provided, if the Contractor is delayed at any time in the commencement or progress of the Work by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's reasonable control; or by delay authorized by the Owner pending any dispute resolution process; or by other causes that the Owner determines may justify delay, then the Contract Time may be extended by Change Order for such reasonable time as the Owner and Contractor may determine.

§ 9.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 10.

§ 9.3.3 The sole remedy for delay shall be an extension of Contract Time by Change Order. The Contractor shall not be entitled to monetary damages for delay.

§ 9.4 Substantial Completion

§ 9.4.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contractor Documents, including testing, approval by any applicable regulatory authority, and receipt of all the certificates of occupancy and other permits, approvals, licenses, and other documents from all governmental authorities that are necessary for the beneficial occupancy and use of the portion to be occupied or utilized such that the Work and the Project are functionally and legally usable by Owner for the purpose for which they are intended. The date of Substantial Completion is the date certified by the Owner in accordance with this Section.

§ 9.4.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the

Owner a comprehensive list of items to be completed or corrected prior to disbursement of the retainage. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contractor Documents.

§ 9.5 Final Completion and Final Payment

§ 9.5.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. Within fourteen (14) days of the Owner's determination that the Work acceptable under the Contractor Documents and the Contract fully performed, the Owner will issue a final Certificate for Payment and remit all retainage, subject to such adjustments as may be authorized in accordance with Section 2.3 and Section 9.5.2 below.

§ 9.5.2 Punch List

If the final inspection determines that there is still work to be complete or defective work to be corrected, the Owner may establish a punch list of such work items and may withhold from final payment an amount necessary to assure that the Contractor will complete the punch list forthwith.

§ 9.5.3 Certification of Payments.

Prior to final payment, the Contractor shall provide certification, in a form acceptable to Owner, that all subcontractors, vendors, material people, and other parties who provided labor, work, services, equipment, supplies or materials for the Work have been paid.

ARTICLE 10- CLAIMS AND DISPUTE RESOLUTION

§ 10.1 Definition

A Claim is a demand or assertion by the Owner or by the Contractor seeking interpretation of Contract terms, impasses regarding any Change Order, or payment of money under the Contract or adjustments to applications for payment. A claim shall not include any Claims made regarding defects in the Work or claims under any warranty made after the completion of the Work. The burden of proof for establishing a claim lies with the party making the claim.

§ 10.2 Time Limit

A claim must be made in writing within 14 days after occurrence of the event giving rise to the claim or within 14 days after the party making the claim first recognized the condition from which the Claim arises, whichever is later.

§ 10.3 Continuing Performance

Pending final resolution of a Claim made by the Contractor the Contractor shall proceed diligently with the performance of the Contract. Pending final resolution of a Claim made by the Owner the Owner shall continue to make payments on all undisputed amounts, and perform its other obligations as set forth in the Contract.

§ 10.4 Claims for Additional Expense

If the Contractor wishes to make a Claim for an increase in the Contract Sum pursuant to Article 6, 10 days written shall be given to the Owner's agent prior to proceeding with the work from which the claim arises.

§ 10.5 Claims for Additional Time

§ 10.5.1 If the Contractor wishes to make a Claim for an increase in the Contract time, written notice shall be given to the Owner within 10 days of the event from which the Claim arises. The Claim shall include an explanation of the basis for the delay claim and an estimate of the probable effect of delay on progress of the Work.

§ 10.5.2 If adverse weather is the basis for a Claim for Additional time, the Contractor shall provide data substantiating that weather conditions were abnormal for the time of year, could not have been reasonably anticipated and had an adverse effect on the construction schedule.

§ 10.5.3 The sole remedy for a Claim for Additional Time shall be an extension of the Contract time. The Contractor shall not receive monetary damages or compensation for a Claim for Additional Time, regardless of whether material or labor costs have increased as a result of said delay.

§ 10.6 Procedure for Resolving Claims.

§ 10.6.1 Within 10 days of receipt of a written claim the party against whom the claim is made shall respond to the claim by one of the following actions: (1) requesting additional supporting information from the claimant; (2) reject the claim in whole or in part, with a statement of the reasons for doing so; (3) suggest a compromise; or (4) grant the claim and, in the context of a defect, proceed to remedy said defect accordingly.

§ 10.6.2 If additional information is requested, the party making the Claim shall furnish the additional information within 10 days of receipt of a request to do so or shall state that no additional information will be provided. Upon receipt of the response, the party against whom the Claim is made shall either approve or deny the claim, in whole or in part. Disapproval in whole or in part shall be accompanied by a written explanation.

§ 10.6.3. If the Claim is not resolved, either in whole or in part, following the process set forth in Sections 10.6.1 and 10.6.2, either party may proceed to mediation with a retired Superior or Supreme Court Justice or an attorney in good standing in the State of New Hampshire. The party

seeking to mediate the Claim shall initiate the mediation process by providing the other party with an Intent to Mediate within 10 days of a Disapproval of the Claim. Such Intent to Mediate shall include a list of no less than 3 proposed mediators. Within 5 days of that Intent to Mediate, the other party shall respond to the Intent to Mediate, either agreeing to mediators identified in the Intent to Mediate or proposing a list of three alternative mediators. If the parties are unable to agree to mediator, each party shall choose one mediator and those mediators shall then chose a third mediator, and the third mediator so chosen shall mediate the Claim. The parties shall work in good faith to mediate the dispute as expeditiously as possible.

§ 10.6.4 Judicial Relief.

Should the matter remain unresolved after the process set forth in Section 10.6.1, 10.6.2, and 10.6.3, the Owner or the Contractor may seek all remedies available at law for claims which have been denied in whole or in part and which remain unresolved after mediation.

§ 10.7 Limitation of Damages.

By executing this Contract, the Owner and the Contractor hereby waive claims for Consequential, Incidental, Indirect, Special, or Punitive Damages, or for losses of Business Profits or Business Interruption.

ARTICLE 11- DEFAULT AND TERMINATION

§ 11.1 Default by Contractor.

The following shall constitute Event of Default by the Contractor.

§ 11.1.1 Failure to perform any of the Work required under the Contract Documents and accordance with the Contract Documents and/or within the time required.

§ 11.1.2 Failure to begin the Project or Work within the time specified in the Contract without a change in the Contract Time.

§ 11.1.3 Failure to perform the Work with sufficient workers or subcontractors and sufficient equipment or with sufficient materials to ensure completion of the Project within the Contract Time.

§ 11.1.4 Failure to perform the work in a timely manner as indicated by the Schedules provided by the Contractor.

§ 11.1.5 Failure to correct defective work or damaged work as required by Article 7.

§ 11.1.6 Discontinuing the prosecution of the Work for reasons other than issuance of a stop work order or other reasons allowed by the Contract.

§ **11.1.7** Failure to comply with any of the terms of the Contract in any material respect.

§ **11.1.8** Becoming insolvent, filing for bankruptcy, having a petition of bankruptcy filed against Contractor, having an appointment of a receivership or conservatorship, or making an assignment for the benefit of creditors.

§ **11.2 Owners Remedy for Default by Contractor**

§ **11.2.1** If the Contractor does not proceed to remedy the Event of Default within 14 days of receiving written notice from the Owner, the Owner may terminate this Contract by giving written notice of Termination to the Contractor. The written notice of default shall be sent to the Contractor's surety. A written notice under this section shall act as a Notice of Claim under Section 10.6.1. Upon the commencement of any remedy, the Contractor shall diligently pursue the completion of that remedy.

§ **11.2.2** If the Contractor does not cure the default within 20 days of receiving written notice from the owner, the Owner may terminate this Contract by giving written notice of Termination to the Contractor. This provision does not preclude the Owner from extending the 20-day time period for curing the default.

§ **11.2.3** In no event shall the time period for remedying or curing a default constitute an extension of the Contract Time for Substantial Completion.

§ **11.2.4** If the Contract is terminated by the Owner, the Owner may call upon the surety to complete the Work or the Project or may take over the Work or the Project, including any or all materials and equipment on the site as may be used to complete the Work or the Project, or may enter into a new Contract for completion of the Work or the Project, or may use such other methods as may be required to complete the Work or the Project.

§ **11.2.5** All costs and expenses incurred by the Owner as the result of an uncured default, together with the cost of completing the Work or the Project shall be deducted from any monies due, or which may become due to the Contractor under the Contract. In case the expense is greater than the sum which would have been due and payable under this Contract, the Contractor and its surety shall be liable to the Owner in addition to such other rights or remedies that may be due to the Owner under law or equity.

§ **11.2.6** The Owner may use all available remedies at law to recover costs, expenses and damages resulting from the Contractor's default subject to the limitation of damages set forth in this Contract.

§ **11.3 Default by Owner.**

The following shall constitute default by the Owner:

§ **11.3.1** Failure to make a payment due the Contractor as required herein.

§ 11.3.2 Failure to perform any material obligation required by this Contract in a reasonably timely manner.

§ 11.4 Contractor's Remedy for Default by Owner.

§ 11.4.1 If the Owner does not proceed to remedy the default within 10 days of receiving written notice from the Contractor, the Contractor may terminate this Contract by giving written notice of Termination to the Owner.

§ 11.4.2 If the Owner does not proceed to cure the default within 20 days of receiving written notice from the Contractor, the Contractor may terminate this Contract by giving written notice of Termination to the Owner. This provision does not preclude the Contractor from extending the 20-day time period for curing the default.

§ 11.4.3 If the Contract is terminated by the Contractor, the Owner shall pay the Contractor for all services and work completed as of the date of termination and for all materials and supplies on the site as of the date of termination, unless the Contractor chooses to remove such materials and supplies from the site.

§ 11.4.4 The Contractor may use all available remedies at law to recover damages resulting from the Owner's default such to the limitation of damages set forth in this Contract.

ARTICLE 12 - MISCELLANEOUS PROVISIONS

§ 12.1 Governing Law

This contract is governed by the law of the State of New Hampshire.

§ 12.2 Successors and Assigns

The Contractor shall not assign the Contract without written consent of the Owner.

§ 12.3 Written Notice.

Written notice required by the Contract shall be deemed sufficient if delivered in hand to the Designate Representative of the party receiving notice or if mailed, Certified Mail, Return Receipt Required, to the party receiving notice at its last known address. If the Contractor changes its address from the address stated on the first page of this Contract, it shall so notify the Owner of the new address or email.

IN WITNESS 'WHEREOF, the parties hereto have caused this instrument to be duly executed the day

and year first above written:

(1) CONTRACTOR

DATE SIGNED:

Name

Title

**(2) OWNER- TOWN OF RYE SEWER COMMISSION
BY ITS DULY AUTHORIZED SEWER DIRECTOR**

DATE SIGNED:

Name

Title

DRAFT