



MUNICIPAL FACILITIES, PROPERTIES, PARKING LOTS, DRIVEWAYS, AND WALKWAYS

WINTER MAINTENANCE AGREEMENT

TOWN OF NEWFIELD, MAINE

This **AGREEMENT**, made this _____ day of _____, 20___, is between the **INHABITANTS OF THE TOWN OF NEWFIELD**, County of York and State of Maine, (hereinafter referred to as “the **TOWN**”) and _____, with a primary place of business at _____, (hereinafter referred to as “the **CONTRACTOR**”).

WITNESSETH

For mutual considerations hereinafter set forth, the **CONTRACTOR** hereby agrees to scrape and/or remove snow from, and apply salt and sand to, all **TOWN**-owned facilities and properties as hereinafter provided. The **TOWN** agrees to pay the **CONTRACTOR** for such services, as hereinafter provided.

A. SNOWPLOWING

1. The **CONTRACTOR** shall, upon the request of the **TOWN**'s Select Board, scrape or remove snow, sleet, slush, and freezing rain (hereinafter collectively referred to as “snow”) from all facilities and properties, and treat all **TOWN**-owned facilities and properties at any time the Select Board considers such areas to be hazardous or dangerous. In addition, when needed for response in emergency situations, such snow removal services may be requested by public safety officials. The **CONTRACTOR** shall continue such operation until all such facilities and properties have been cleared of snow. The facilities and properties covered by this Agreement (hereinafter referred to as the “subject facilities and properties”) are those listed in **Exhibit A** and **Exhibit B** to this Agreement.

2. The **CONTRACTOR** shall, on its own initiative and without the request of the Select Board, scrape, treat, or remove all snow from all subject facilities and properties at any time when snow has accumulated to a depth of two (2) inches at any of the subject facilities and properties in the **TOWN**, either from actual snow fall, drifting, freezing rain, and/or slush or at the end of a snow event of less than two (2) inches, and shall continue such operations until all subject facilities and properties have been cleared of snow. During periods of continuing accumulation, the **CONTRACTOR** shall plow, scrape or treat all subject facilities and properties on a continuous basis.
3. Snow shall be scraped or removed from the entire area of all subject facilities and properties in such a manner as complies with Maine Department of Transportation's regulations and standards and in such a manner as will not to create a hazard to traffic safety and the public welfare. The **CONTRACTOR** will perform the services provided for herein to the satisfaction of the **TOWN**, who shall have the right of inspection at all times and whose approval and acceptance of the said services shall be a condition precedent to payments from the **TOWN** under this Agreement. In the event of any dispute as to the amounts, nature, or scope of the services required under this Agreement, the decision and judgment of the **TOWN** shall be final and binding.

B. SANDING

4. The **CONTRACTOR** shall, upon request of the Select Board, apply sand and salt mixture to the entire surface area of all subject facilities and properties at any time the Select Board considers the situation to be hazardous and dangerous. The **CONTRACTOR** shall, on its own initiative and without the request from the Select Board, apply salt and sand mixture to the entire travel surfaces of the subject facility or properties that has been plowed.
5. The salt and sand mixture and calcium (for Town Hall) shall be provided by the **TOWN**. The **CONTRACTOR** shall be responsible for the loading of the sand and salt which shall be stored at the **TOWN'S** salt and sand facility. The **CONTRACTOR** is responsible for providing loading equipment and labor for loading sand and salt.
6. The salt and sand mixture shall be applied to the subject facilities and properties in such manner as complies with Maine Department of Transportation's regulations and standards and in such a manner as will not create a safety hazard to the public welfare. The recommendation of the Maine Department of Transportation regarding proper methods and standards of salt and sand application shall be determinative.

C. PRIORITIES

7. The **TOWN's** Select Board will set the order of priorities for the maintenance of the subject facilities and properties. Attached hereto as **Exhibit A** is an outline of the Town's order of priorities in this regard. Said priorities shall be followed by the **CONTRACTOR**. The **CONTRACTOR** shall perform all required duties for the TOWN before proceeding to work on private contracts.

D. INDEPENDENT CONTRACTOR

8. The **CONTRACTOR**, during the performance of this Agreement, shall act in an independent capacity and not as an officer or employee or agent of the **TOWN**. Any manpower needed to fulfill the obligations of this Agreement shall be employed by and paid by the **CONTRACTOR**.
9. The **CONTRACTOR** shall be solely responsible for complying with applicable state and federal laws including but not limited to worker's compensation laws, employment security laws, and minimum wage laws. The **CONTRACTOR** shall, on or before October 1st of each year of this Agreement, provide to the **TOWN** proof of worker's compensation coverage for its employees or provide a Letter of Predetermination from Maine Worker's Compensation Board.
10. The **CONTRACTOR** must equip vehicles so that messages of urgency can reach plowing or sanding vehicles within a half-hour period (proper cellular telephone and/or pager service at a minimum).
11. The **CONTRACTOR** has the right and duty to supervise and control its own employees, agents, and equipment. The **TOWN's** Select Board have the right to inspect the **CONTRACTOR's** operations, and notify the **CONTRACTOR** of any problems, errors or nonperformance. The Select Board may order that work be done in a satisfactory manner, to be determined by them.
12. The **CONTRACTOR** shall be responsible for any negligent damage to **TOWN** property by reason of snow removal operations under this Agreement if the **TOWN** officials determine that such damage could have been avoided. At no time should plow trucks be used to remove snow from egress routes. The **CONTRACTOR** must report any damage to the Select Board within 24 hours of any mishap.

E. EQUIPMENT AND MAINTENANCE

13. The **CONTRACTOR** shall acquire and/or maintain snow removal equipment consisting of at a minimum at least the following:

- (1) ¾ or 1 ton plow truck with sander
- (1) ¾ or 1 ton plow truck (for backup for breakdown)
- (1) Snowblower
- (1) Tractor/ loader to load sander

The **CONTRACTOR** shall provide crews, sufficient and adequate to operate all equipment and service the subject facilities and properties as required herein within a reasonable time.

14. Mechanical breakdowns or inability to provide adequate equipment or labor for proper snow removal and/or sanding shall not excuse the **CONTRACTOR** from performing their contractual duties.

15. All equipment provided by the **CONTRACTOR** shall remain the property of the **CONTRACTOR**. The **CONTRACTOR** shall be solely responsible for the maintenance and upkeep.

16. The **CONTRACTOR** shall, on or before October 1st of each year of this Agreement, provide the **TOWN** with proof of registration, inspection, and insurance of all equipment required by this Agreement and any and all other vehicles to be utilized by the **CONTRACTOR** in performing its obligations hereunder. Said vehicles and equipment must be registered and insured as Commercial Vehicles.

17. The **TOWN** shall not be liable for any damage to or destruction of the **CONTRACTOR**'s equipment while engaged in the performance of its obligations hereunder.

18. **CONTRACTOR** must have all equipment required by this Agreement in hand by October 1, 2024.

F. PAYMENT *

19. The **TOWN** agrees to pay to **CONTRACTOR** the sum of:

- a. \$_____ for 2024-2025
- b. \$_____ for 2025-2026
- c. \$_____ for 2026-2027
- d. \$_____ for 2027-2028 (if Agreement is extended)

for proper removal of said snow and proper application of sand/salt mixture and calcium to the facilities and properties in said **TOWN**. The **CONTRACTOR** shall ensure that all subject facilities and properties are safe and accessible. Except for the cost of salt and sand and calcium, the **CONTRACTOR** shall be responsible for all costs (including labor, equipment, materials) necessary to perform its obligations under this Agreement.

*This Agreement is for three (3) years with a fourth (4th) year option at the discretion of the Select Board with the consent of the **CONTRACTOR**. The **CONTRACTOR'S** obligations under this Agreement shall commence October 1st and end May 31st during each year of this Agreement.

Notwithstanding any other provision of this Agreement, the parties agree and understand that the Agreement price is payable from appropriation made by Town Meeting each year. In the event the Town Meeting fails to appropriate a sufficient amount to fund this Agreement for a contracted year, this Agreement may be terminated by the Select Board without further obligation of the **TOWN**. In such an event, the Select Board shall certify to the **CONTRACTOR** that sufficient funds have not been appropriated to meet the obligations of the Agreement. Such certification shall be conclusive upon both parties.

20. In the event that a **TOWN** facility or property is deleted or added to the list of subject facilities and properties, the **TOWN** reserves the right to adjust the monetary payments to the **CONTRACTOR** accordingly.

21. It is agreed that payment to the **CONTRACTOR** shall be as follows:

- Ten percent (10%) November 1st
- Fourteen percent (14%) December 1st
- Fourteen percent (14%) January 1st
- Fourteen percent (14%) February 1st
- Fourteen percent (14%) March 1st

Fourteen percent (14%) April 1st

Twenty percent (20%) April 30th (security payment)

Of each year during the term of this Agreement; satisfactory performance by the **CONTRACTOR** may result in earlier payment of the security balance (April 30th payment).

G. ASSIGNMENT/SUBCONTRACTING

22. **CONTRACTOR** shall not sub-contract, sell, assign, or in any way transfer this Agreement to any other person, entity, or corporation without the express written consent of the **TOWN's** Select Board. If the Select Board consents to any such sub-contract, sale, assignment, or transfer, the terms and conditions of this Agreement shall be binding on all successors and assigns of the parties hereto.

H. INDEMNIFICATION/INSURANCE/BONDING

23. The **CONTRACTOR** shall hold the **TOWN** and any of its officers, officials, employees, and agents (collectively referred to as the "**TOWN**"), in both their public and personal capacities, harmless from any claim for death, injury, property damage or other losses or expenses that may result from the **CONTRACTOR's** performance of services under this Agreement. In the event that such a claim is made against the **TOWN**, the **CONTRACTOR** will defend the **TOWN** and bear the costs of such a defense. The **CONTRACTOR** will also indemnify the **TOWN** for any amount for which the **TOWN** may be held liable in a legal action for such claims.

The **CONTRACTOR** and its subcontractors shall obtain and maintain throughout the term of this Agreement at no expense to the **TOWN** the following insurance coverages through an insurance carrier licensed to do business in the State of Maine:

a. **Commercial General Liability Insurance** in the amount of not less than One Million Dollars (\$1,000,000), combined single limit, to protect the **CONTRACTOR**, any subcontractor performing work covered by this Agreement, and the **TOWN** from claims and damages that may arise from operations under this Agreement, whether such operations be by the **CONTRACTOR** or by any subcontractor or by anyone directly or indirectly employed by them.

b. **Motor Vehicle Liability Insurance** in the amount of not less than Five-Hundred Thousand Dollars (\$500,000), combined single limit, to protect the **CONTRACTOR**, any

subcontractor performing work covered by this Agreement, and the **TOWN** from claims and damages that may arise from operations under this Agreement, whether such operations be by the **CONTRACTOR** or by a subcontractor or by anyone directly or indirectly employed by them.

c. **Workers' Compensation Insurance** in amounts required by Maine law and Employer's Liability Insurance, as necessary, as required by Maine law. In case any class of employees engaged in hazardous work under this Agreement is not protected under the Workers' Compensation Act, the **CONTRACTOR** shall provide for the protection of its employees not otherwise protected.

All such insurance policies shall name the **TOWN** and its officers, agents, and employees, as additional insured, except that for purposes of workers' compensation insurance, the **CONTRACTOR** and its subcontractors instead may provide a written waiver of subrogation rights against the **TOWN**. The **CONTRACTOR**, prior to commencement of any work under this Agreement, and any of its subcontractors, prior to commencement of work under any subcontract, shall deliver to the **TOWN** certificates satisfactory to the **TOWN** evidencing such insurance coverages, in which certificates shall state that the **CONTRACTOR** and its subcontractors must provide written notice to the **TOWN** at least ten (10) days prior to the cancellation, non-renewal, material modification or expiration of any policies, evidenced by return receipt of United States Certified Mail. Replacement certificates shall be delivered to the **TOWN** prior to the effective date of cancellation, termination, material modification, or expiration of any such insurance policy. The **CONTRACTOR** shall not commence work under this Agreement until it has obtained all insurance coverages required under this subparagraph and such insurance policies have been approved by the **TOWN**, nor shall the **CONTRACTOR** allow any of its subcontractors to commence work on any subcontract until all such insurance policies have been obtained by the subcontractor and approved by the **TOWN**. All such insurance policies shall have a retroactive date which is the earlier of the date of this Agreement or the **CONTRACTOR's** commencement of work thereunder.

The **CONTRACTOR** shall provide the **TOWN** (upon approval) with a list of any subcontractors who will perform services under this Agreement, along with proof of insurance (of types and in amounts as required for **CONTRACTOR** above) for each of them. The **CONTRACTOR** shall promptly notify the **TOWN** if any subcontractors are added during the term of this Agreement and shall provide with the notification proof of insurance for each subcontractor. It will be the responsibility of the **CONTRACTOR**

and subcontractors to provide updated insurance certification as they expire or change.

The **CONTRACTOR** will provide proof of workers' compensation insurance and commercial general liability insurance on or before October 1st of each year of this agreement.

I. BREACH OF CONTRACT

24. If the **CONTRACTOR** fails to perform according to the terms of this Agreement at the time and in the manner specified, that failure shall be a breach of contract. In the event of a breach, the **TOWN** (through its Select Board) shall immediately give oral notice, with a written follow-up notice, to the **CONTRACTOR**. The **CONTRACTOR** will then be required immediately to remedy the breach. In the event that the **CONTRACTOR** does not immediately remedy the breach, the **TOWN** may take any of the following action:

- a. Terminate this Contract: The **TOWN** may terminate this Agreement by sending the **CONTRACTOR** written notice, stating the reason for termination. If the **TOWN** terminates the Agreement, it shall be relieved from any further obligation to make payments to the **CONTRACTOR** as otherwise contemplated by this Agreement and **CONTRACTOR** shall be responsible for any cost losses incurred by the **TOWN** as a result of the **CONTRACTOR's** breach.
- b. Substitution: The **TOWN** may hire a substitute contractor to plow and sand the subject facilities and properties for any period of time it considers necessary and shall seek reimbursement from the **CONTRACTOR** for any additional expense it incurs in hiring a substitute **CONTRACTOR**.

The rights and remedies hereby created are cumulative and the use of one remedy shall not be taken to exclude or waive the right to use of another.

J. NOTICE AND CONTRACT

25. The following persons shall be available and authorized to accept notices (written or oral), calls and order:

For the **CONTRACTOR**: _____

Address: _____

Phone: _____

Emergency Phone: _____

For the **TOWN**: Town of Newfield, 637 Water Street, Newfield ME 04095
Town Office: (207) 793-4348
Shelly Gobeille (207) 608-1979 (c)
James McLaughlin (207) 793-4992 (c)
Sam Park (207) 651-0185 (c)

K. INTEGRATION, AMENDMENT, SEVERABILITY, JURISDICTION

26. This Agreement represents the entire agreement between the parties. No modification hereto shall be effective unless fully set forth in writing and executed by the parties hereto. If any provision of this Agreement is declared by a court of competent jurisdiction to be void or unenforceable, the rest of the Agreement shall continue to be valid and effect. This Agreement is made and shall be construed under the laws of the State of Maine without regard to conflict of law rules. The parties shall attempt to resolve any dispute arising from this Agreement first by informal negotiation and then by non-binding mediation. In the event that a dispute is not resolved through mediation, either party may pursue litigation. Except as otherwise expressly agreed by the parties in writing, exclusive venue for any civil action shall be in Maine Superior Court (York County).

27. This Agreement may be executed in counterparts, each of which shall be an original and together shall constitute one and the same instrument. The counterparts may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

IN WITNESS WHEREOF, the parties have executed this Agreement at the Town of Newfield, the day and year first above written.

WITNESS:

INHABITANTS OF THE TOWN OF NEWFIELD

By: _____
Select Board Member

By: _____
Select Board Member

By: _____
Select Board Member

By: _____
Contractor