

Town of Effingham

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Effingham, New Hampshire 03882
(603) 539-7770 (603) 539-7799 fax



EFFINGHAM WINTER ROAD AGREEMENT

TOWN OF EFFINGHAM CONTRACT FOR HIGHWAY WINTER ROAD MAINTENANCE

This Contract is entered into on August 28, 2023, by and between the **Town of Effingham** (hereinafter “Town”) and **Edwards Concrete & Excavation**, with a principal place of business at 1461 Province Lake Road, Effingham, NH 03882, (hereinafter “Contractor”) for the Multi-Year Winter Road Maintenance of the public highways of the Town of Effingham. Town and Contractor are referred to collectively as “parties.”

In consideration of the mutual covenants and agreements as hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1: CONTRACT DOCUMENTS

This Contract and Addendum A, attached, shall constitute the entire agreement between the parties on the subject matters. All prior agreements, representations, statements, negotiations, and understandings shall have no effect. There shall be no modifications or amendments to this Contract or to the Addendums unless said changes, modifications, or amendments are in writing duly executed by the parties.

ARTICLE 2: TERM

The term of this Contract shall be from November 1, 2023 to May 1, 2026. The term of the Contract may be renegotiated and extended only by mutual written agreement of the parties.

ARTICLE 3: SCOPE OF SERVICES

The scope of services to be provided and compensation to be paid under this Contract are detailed in Appendix A.

Contractor shall perform and complete in good and workmanlike manner all work required in connection with the Contract. Town has the right to inspect and may reject any services provided by Contractor under this Contract that, in Town’s determination, were not completed in a good workmanlike manner or that otherwise failed to satisfy the established specifications or performance standards. In the event of default, the Contractor will be liable to the Town for the cost of contract completion.

ARTICLE 4: INDEPENDENT CONTRACTOR

The Contractor further acknowledges and agrees that it is an independent contractor and that nothing herein shall be construed to create the relationship of employer and employee between Town and Contractor. No employee-related withholdings or deductions shall be made from payments due Contractor. Contractor shall not be entitled to receive any benefits from Town and shall not be eligible for workers' compensation or unemployment benefits.

ARTICLE 5: ASSIGNMENT AND SUBCONTRACTING

This Contract is binding upon and inures to the benefit of the heirs, successors, and assigns of the parties hereto. Neither party hereto may assign its rights or obligations under the Contract without the prior written consent of the other party. This Contract shall be governed by the laws of the State of New Hampshire.

Contractor shall not enter into any subcontract for performance of any services contemplated under this Contract nor assign any interest in the Contract without the prior written approval of Town and subject to such conditions and provisions as Town may deem necessary or desirable in its sole discretion. If Town permits the use of subcontractors, no subcontractor may perform any work under this Contract without first providing Town certificates of insurance showing all of the coverages required in Article 13 of this Contract. Contractor shall be responsible for the performance of all subcontractors. Before paying a claim that involves the use of materials or labor supplied by someone other than the Contractor, Town may require Contractor to supply proof of payment for such materials or labor.

ARTICLE 6: EQUIPMENT AND MATERIALS

Contractor warrants that it has the necessary equipment to provide the services required by this Contract. All materials used or supplied under this Contract shall be of first quality and meet the specifications established by Town, if any. Contractor will be solely responsible for supplying, storing, maintaining, and replacing any and all equipment that is necessary for implementing the services under this Contract. Town will not supply, nor will it pay for any repairs, maintenance or replacement of, or new equipment expenses, or temporary work related to signs, cones, or other traffic controlling equipment.

The Town reserves the right to inspect the Contractor's equipment before awarding the Contract and at any time during the term of the contract.

The Contractor agrees to provide proof, upon request, of current vehicle registrations and applicable inspection information, on all equipment to be used in the course of the Contractor's performance for the term of this contract.

ARTICLE 7: PERSONNEL

Contractor is responsible for compliance with all applicable State and Federal laws. Contractor will manage his/her own personnel without general oversight by the Town and shall oversee and coordinate sub-contractors that are approved by Town. All drivers and equipment operators will be properly trained and have all certifications and valid licensing required to operate said equipment. All drivers operating a commercial motor vehicle on behalf of the Town will comply with Federal Motor Carrier Safety Administration (FMCSA) requirements.

The Contractor, upon request, will supply the Town with a list of all employees that will be working with Contractor including a copy of applicable licenses, if they are using equipment on Municipal roads.

The Contractor alone shall be responsible for ensuring compliance with all applicable regulatory requirements including but not limited to those from: Federal Motor Carrier Safety Administration (FMCSA) and Occupational Safety and Health Administration (OSHA).

Contractor further agrees to include this provision in all subcontracts.

ARTICLE 8: CONTACT INFORMATION AND COMMUNICATION

The Contractor agrees to provide the following lists to the Town at the execution of this contract:

- a. A list of contact name(s) and phone numbers (home phone, cell phone, work phone) of the Contractor which will be used when the need for communication arises.
- b. A list of those employees who will be authorized by the Contractor to sign for materials that will be directly billed to the Town of Effingham.

- c. The Contractor agrees to meet with the Town Board of Selectmen upon request through the term of the contract to discuss status report(s) on the condition of roads.

The Town agrees to provide the Contractor with Town representative(s) contact information similar to (a.) above.

ARTICLE 9: SAFETY AND TRAFFIC CONTROL

The Contractor alone shall be responsible for the safety and security when working in or adjacent to public highways. Contractor is solely responsible for traffic control, which practices shall comply with the Manual on Uniform Traffic Control Devices, latest edition.

ARTICLE 10: INDEMNIFICATION

Contractor shall indemnify and hold harmless Town, and Town's agents and employees, from and against all losses and all claims, demands, payments, suits, actions, recoveries, claims of outstanding indebtedness, attorneys' fees, liens, and judgments of every nature and description brought or recovered against them by reasons of any act or omission of the said Contractor, its agents, employees, or sub-contractors, in the execution of the work or in guarding the same. The Contractor shall defend the Town and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Contractor or of any agent or subcontractor of the Contractor. The Town shall notify the Contractor in the event of any such claim or suit, and the Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

Contractor shall assume full responsibility for the protection of all buildings, structures, and utilities (both public and private). All damage, injury, or loss to any public or private property, by the Contractor, or any sub-contractor, shall be replaced or restored to at least the original condition to the satisfaction of the Town at the Contractor's expense.

Nothing in this Contract shall constitute a waiver by the Town of any statutory limits or immunities from liability.

ARTICLE 11: INSURANCE

At least 15-days prior to beginning work on this Contract, the Contractor must provide certificates of insurance to show that the following minimum coverages are in effect. Contractor agrees that it will provide and maintain during the entire term of this Contract the following insurances with at least the indicated amounts of coverage and provide Town a certificate of insurance showing such coverages before providing any services under this Contract: (1) Commercial General Liability insurance coverage with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 in aggregate; (2) Business Automobile Liability coverage with total liability limits of at least \$1,000,000; and (3) Statutory Workers' Compensation insurance.

Contractor will maintain a performance bond for the duration of this multi-year contract.

The Contractors policies shall name the Town of Effingham as an additional insured throughout the duration of the contract period.

ARTICLE 12: NON-APPROPRIATION

If this Contract extends into more than one fiscal year of the Town and if appropriations are insufficient to support this Contract, the Town may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority.

ARTICLE 13: DEFAULT AND TERMINATION

Town may terminate this Contract, with or without cause, upon 15 days written notice. In addition, the occurrence of any of the following shall constitute default by Contractor and, if not corrected within 10 days of Town providing Contractor written notice of the default, shall allow Town to terminate this Contract:

- (1) failure to adequately perform or deliver the required services;
- (2) if applicable, failure to provide the required bonds or other security acceptable to Town before starting any work;
- (3) declaration of bankruptcy by Contractor;
- (4) making a material misrepresentation to Town;

- (5) persistently disregarding laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
- (6) failure to perform any other material provision of this Contract.

Upon default of this Contract by Contractor, Town may withhold any payment due Contractor for purposes of set-off until such time as the exact amount of damages due is determined. Such withholding shall not constitute default or failure to perform on the part of Town.

Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to any of the following uncontrollable circumstances unless the act or occurrence could have been foreseen and reasonable action could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of God, acts of public authorities, or delays or defaults caused by public carriers; provided the non-performing party gives notice as soon as possible to the other party of the inability to perform. The Town and the Contractor agree to attempt to resolve quickly all matters related to uncontrollable circumstances and use all reasonable effort to mitigate its effects.

In addition to the above, in the event of a State or Federal Disaster Declaration, Town reserves the right to suspend certain provisions of this Contract to conform with FEMA or New Hampshire Emergency Management regulations and directives.

Upon completion of the work or upon termination of the Contract, the Contractor shall remove from the vicinity of the work all equipment and all temporary structures, waste materials, and rubbish resulting from its operations, leaving the premises in a neat and presentable condition. In the event of failure to do so, the same may be done by the Town at the expense of the Contractor.

The Contractor shall have the right to terminate this contract upon non-payment by the Town of any scheduled payment, unless withheld for good cause or in accordance with Article 3: Scope of Services and/or Article 13: Default and Termination. The Contractor agrees that the Town shall have a fifteen (15) day grace period in making any payments.

ARTICLE 14: REMEDIES

Default or breach of this Contract by Contractor shall entitle Town to seek remedies under law and as provided by this Contract. In the event this Contract is terminated by reason of default by Contractor, Town may recover the necessary costs of termination, including but not limited to, administrative, attorneys' fees and legal costs, from Contractor. Except when caused by uncontrollable circumstances, if Contractor fails to meet any performance deadlines established by this Contract, or fails to perform in accordance with the specification, terms, and conditions of this Contract, Town shall have the right to purchase the services and materials from other sources on the open market or to purchase those items necessary to continue functioning until delivery from Contractor is complete. Town may deduct as damages from any money due or coming due to Contractor the differences between Contractor's price and the higher price or the costs of temporary items. Town may require Contractor, at Contractor's sole expense, to re-perform any items of work provided for in this Contract that do not meet the established specifications, standards, or Town directives.

Any remedies available to Town are cumulative and not exclusive. The seeking or exercising by Town of a remedy does not waive its right to seek or exercise any other remedy available to it at law, in equity, by statute, or under this Contract.

ARTICLE 15: WAIVER

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

ARTICLE 16: AMENDMENTS TO THE AGREEMENT

There shall be no amendment to the parties' agreement or these road specifications, unless such amendment is in writing, dated and signed by both parties.

ARTICLE 17: SEVERABILITY

The provisions of this Contract are severable and if a court of competent jurisdiction holds any portion of this Contract unconstitutional or invalid, the remainder of this Contract shall not be affected and shall remain in full force and effect.

ARTICLE 18: COMPENSAION

Contractor will be compensated for the contracted services at a fixed rate. The Contractor and the Town do hereby agree that the Town agrees to pay the Contractor the amount of \$_____ for the 2026-2027 Winter season,\$_____ for the 2027-2028 Winter season and \$_____ for the 2028-2029 Winter season. The Contractor agrees to receive payment of the contract price from the Town in six (6) equal payments starting December 1st and the first of each month after that until the following May 1st. Payments will be made the 1st of the month following receipt of the contractor invoice.

IN WITNESS WHEREOF, the parties do hereby execute this Contract on the day and year first written above.

TOWN: By the members of Effingham Board of Selectmen:

Leo Racine

Christopher Seamans

Rosemarie Wissenbach

CONTRACTOR:

By: _____,
duly authorized representative of Contractor

In the presence of:

Witness as to Both Parties' Signatures to the Contract

Addendum A
SCOPE OF SERVICES AND COMPENSATION -
FOR WINTER ROAD MAINTENANCE SERVICES

- I. The Contractor agrees to plow and sand/salt all 42 (+/-) miles of Town roadways listed in part A and B of this section. The Contractor also agrees to plow and sand/salt all of the municipal properties listed in part C and D of this section.

A. All roadways that will be plowed etc. in the entirety are:

Bailey Road	Nutter Road
Champion Hill Road	Old Pound Road
Clough Road (to Ossipee Line)	Pine River Road (to Route 16)
Colcord Hill Road	Plantation Road (to Maine line)
Comer Road	Pratt Road (to Maine line)
Drake Road	Ryefield Road (to Route 25)
Elm Street	School Street
Granite Road	Snow Road
Green Mountain Road	Stillings Lane (no salt)
Huntress Bridge Road	Storage Road
Iron Works Road	Townhouse Road
Jones Road	Winter Road
	Stevens Road

B. Roadways that are not maintained in their entirety in the winter months:

Bonnyman Road (Wakefield Line to driveway M418 L6)
Clough Road (to driveway M416 L3 I)
Highwatch Road (Class V section)
Hobbs Road (Class V section)
Huckins Pond Road (to bridge) (aka Hutchins, Hutchens)
Jack Russell Road (Class V section)
Libby Road (Class V section)
Molly Philbrick Road (Granit Road to driveway M416 L17)
Moody Road (Class V section)
Rumney Hill Road (Class V section)
Simon Hill Road (Ossipee line to driveway M418 L2)
West Range Road (Class V section)
Wilkinson Swamp Road (Jones Road to driveway M412 L56)

C. All municipal properties including driveways and parking lots need to be cleared and maintained prior to and during regular business hours.

Town Hall/Library	Fire Station #1
Municipal Offices	Fire Station #2
Transfer Station	

D. All dry hydrants and water supplies must be accessible.

Elm Street @ Pine River Bridge
Hobbs Road
Snow Road near bridge
Boat Landing Ramp @ Ossipee River, Route 25 & Route 153
Stevens Road at bridge

E. The Contactor will communicate with the Governor Wentworth Regional School District's (GWRSD) Transportation Director by 5:00 AM on inclement or anticipated inclement weather days. The Contractor also will be aware of the event of school district is to release early to ensure school bus routes are cleared to the best of the Contractor's ability.

- F. The Contract will monitor and remove snow, ice, and or water "ponding" areas throughout town during the spring thaw.
- II. The Contractor shall use the **New Hampshire Department of Transportation Winter Maintenance Snow Removal and Ice Control Policy** as a guide in performing the duties described in this contract.
- III. The Contractor agrees to plow all areas as stated above in section I, to their maximum width- up to the ditch line on both sides of the roadway. This pertains to both paved and unpaved roadways, and includes winging. This also pertains to all intersections, fire stations and town parking areas. When determined by the Town and/or Contractor, the removal of snow from certain areas may be necessary at no additional cost.
- IV. All Town roadways and municipal properties shall be sanded and/or salted to ensure safe passage. At the discretion of the Board of Selectmen, more frequent sanding and/or salting and "winging" shall be performed.
- V. The Town agrees to grant permission for the Contractor to use the Town's Salt Shed and surrounding land owned by the Town, located on Storage Road, for storage of vehicles to be used for Town road maintenance and Town road supplies and also an area to be determined by the Town at the Towns Transfer Station for the purpose of storing sand/salt for the time period from November 1st to May 1st. Furthermore, the Town agrees to allow the contract to connect to the power supply to power his/her vehicles block heaters.
- VI. The Board of Selectmen, in the event that the roadways are not maintained as set forth in this agreement, has the right to take **any** action deemed necessary, including termination of the contract, to correct the problem areas to their satisfaction and deduct the cost from the Contractor's scheduled payments.

Appendix B

Vehicle and Equipment Requirements

The minimum required equipment listed below (or agreed upon equivalent) is to be available at all times, for use during snow and ice removal and treating operations.

- a. **Three** (3) large trucks (6-wheel and/or 10-wheel) or equivalent with front end plows, wing plows and sand/salt spreaders, one of which shall be an all-wheel-drive vehicle.
- b. **Two** (2) 1-ton four-wheel drive trucks equipped with snowplow and a 3+ cubic yard sand/salt spreader.
- c. **One** (1) $\frac{3}{4}$ -ton four-wheel drive truck equipped with plow.
- d. **Two** (2) Loaders of sufficient size to load sand or salt into sand spreaders at the Town Salt Shed and at a second site. One shall be a wheeled loader equipped and registered to operate on the highway and be used for snow removal on Town roads and Town properties.

Alternative comparable equipment, that exceeds the above minimum requirements, may be substituted for the above specified equipment. A list of any substitute equipment shall be provided to the Effingham Selectmen's Office. Equipment will be deployed as needed to meet the conditions of the Contract.