

Lake View Estates Homeowners Association Road Maintenance Agreement

This **AGREEMENT**, by and between the Lake View Estates Homeowners Association, hereinafter called "LEHA" and **Paul Jackman, Excavation & Trucking**, hereinafter called the "CONTRACTOR".

WITNESSETH: for the consideration hereinafter set forth, the parties hereby agree as follows:

DESCRIPTION OF SERVICES

This agreement is an **ON-CALL** service contract between the Contractor and LEHA. It is **UNDERSTOOD** that this is **NOT** an **EXCLUSIVE** contract. LEHA may engage the services of alternate contractors to assure that conditions that may present a safety matter are addressed in the most expeditious manner.

Timeframe for services:

This contract is for a period of **two years**, commencing on **October 1, 2023** and ending on **September 30, 2025**. Renewal and/or extension of the contract will be at the discretion of LEHA via written amendment to this contract, as agreed to by both parties.

Road Maintenance:

1. Road maintenance shall include all work required to maintain Shore Road and Basin Road in safe conditions for travel access and parking (the latter as allowed by the LEHA bylaws). The work shall include, but shall not be limited to:
 - a. Maintaining the gravel road surfaces to afford smooth travel surfaces, generally by filling in and/or re-grading ruts, potholes and depressions in excess of 1";
 - b. Grading and/or reshaping the road surface to provide for proper runoff and drainage into existing ditches – conducted in such a manner so as to minimize the movement of fines and small particles into drainage channels and ditches;
 - c. Fortifying roadway edges to guard against erosion or falling off of roadway edges so as to create a hazardous condition. This work could include the placement of boulders and/or providing and installing guardrails, if needed – the latter at added cost to the contract, as agreed to by both parties;
 - d. Providing appropriate materials to accomplish the above goals and requirements;
 - e. Monitoring and evaluating roadway conditions following significant storm events;
 - f. Preparing all roadway surfaces and drainage features for the winter seasons to facilitate snow plowing and sanding measures.
2. All work shall be done using appropriate equipment and materials, in coordination with and at the request of LEHA's authorized representatives:

• John Richardson	jrlogan154@gmail.com	617-816-3418
• Joe Longtin	jllongtin@gmail.com	207-293-9313
• Tom Jenkins	tdenbyjenkins@outlook.com	617-697-8597

PERFORMANCE OF SERVICES

All work shall be performed by the contractor promptly following the request by LEHA's authorized representative(s) and in a good workmanlike manner. The contractor is in control of the manner and methods by which the work under this agreement will be performed, with the exception that the contractor agrees to minimize the amount of road surface material being plowed into roadside ditches. The contractor also understands that LEHA will rely on him/her to work as many hours as may be necessary to fulfill the contractor's obligations under this agreement. Breach of this agreement by the contractor shall, at LEHA's option, result in immediate termination of this agreement upon written notice to the contractor.

COMPENSATION

LEHA agrees to compensate the Contractor, as follows:

- For the **Contractor, when operating equipment** - At the **hourly rates** of:

Skid Steer Loader.....	\$125.00	Add for power rake	\$25.00
Excavator	\$125.00		
Tri - axle Dump Truck	\$125.00		
Vibratory Roller	\$125.00		
Tractor	\$80.00	Add for power rake	\$20.00
- For **materials or specialty equipment** - At the invoiced cost. Invoices shall be furnished to LEHA to confirm the costs incurred by the Contractor.

All payments shall be made within ten days following completion of the work. Except as described below, the payments shall be full compensation for providing all equipment and labor and for performing all work needed to accomplish the goals, objectives and requirements of this contract.

Upon termination of this agreement, payments under this paragraph shall cease, provided that the contractor shall be entitled to payments for periods, or pro-rated payments for partial periods, that occurred prior to the date of termination and for which the contractor, as follows:

Payment for satisfactory work during the period prior to termination shall be the sole remedy of the contractor under this agreement for termination of this agreement prior to the expiration of its stated timeframe of engagement. This agreement may be renewed upon mutual consent between LEHA and the contractor.

ADDITIONAL WORK AND PAYMENT

LEHA may request additional services for the Contractor to perform, such as furnishing and installing guardrails and/or removal of large trees resulting from insect damage or storm events that could not be foreseen and for which the cost may create an undue hardship to the Contractor, within the bid amounts. Compensation for additional and/or unforeseeable work needed to accomplish roadway maintenance as described herein shall be negotiated between the Contractor and LEHA. Payments for such separate work shall be made within 10 days of the satisfactory completion of the work.

RELATIONSHIP OF PARTIES

The parties understand and agree that contractor is an independent contractor with respect to LEHA, and not an employee of LEHA. LEHA will not provide fringe benefits, including but not limited to, health insurance benefits, paid vacation, or any other benefits. The contractor shall be solely and entirely responsible for any Workmen's Compensation Insurance, withholding taxes, and any other employer obligations of the contractor which may arise during the contractor's performance of the work.

Payments will be made in **seven equal installments** on before the last day of the month. Upon termination of this agreement, payments under this paragraph shall cease, provided that the contractor shall be entitled to payments for periods, or pro-rated payments for partial periods, that occurred prior to the date of termination and for which the contractor has not yet been paid and during which the contractor performed the work required under this Agreement. Payment for satisfactory work during the period prior to termination shall be the sole remedy of the contractor under this agreement for termination of this agreement prior to the expiration of its stated timeframe of engagement. This agreement may be renewed upon mutual consent between LEHA and the contractor.

EXPENSES

The only payments by LEHA to be made to the contractor shall be the payments specified above. The contractor shall pay all "out of pocket" expenses necessary for performance of this agreement, and shall not be entitled to reimbursement from LEHA for such expenses.

RELATIONSHIP OF PARTIES

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INSURANCE AND INJURIES

The contractor acknowledges his/her obligation to obtain appropriate insurance at a minimum of \$1,000,000 of total liability coverage for the benefit of the contractor (and the contractor's employees or sub-contractors, if any) and which acknowledges LEHA as an additional named insured – for the full timeframe of this agreement. The contractor waives any rights to recovery from LEHA for any injuries that contractor (or any employee or sub-contractor) may sustain while performing services under this agreement or that are a result of the negligence of contractor or his/her employees or sub-contractors. The contractor will provide proof of insurance coverage to LEHA prior to the first plowing of within the stated timeframe for commencement. Upon request, the contractor shall also provide the actual insurance policy to LEHA.

INDEMNIFICATION

The contractor agrees to indemnify, defend, and hold LEHA harmless from all claims, losses, expenses, fees (including attorney's fees), costs, and judgments that may be asserted against LEHA arising from the alleged acts or omissions of the contractor, the contractor's employees, or, if any, the contractor's agents or sub-contractors.

ASSIGNMENT

The contractor's obligations under this agreement may not be assigned or transferred to any other person, firm, or corporation without the written consent of LEHA. If the contractor decides to subcontract out any of the work to be performed under this Agreement, any such subcontractor must be approved in advance by LEHA, in LEHA's sole discretion, and must provide LEHA with satisfactory proof of insurance.

AMENDMENTS

This agreement may be modified or amended only if made in writing and signed by both parties.

INSURANCE AND INJURIES

The contractor acknowledges his/her obligation to obtain appropriate insurance at a minimum of \$1,000,000 of total liability coverage for the benefit of the contractor (and the contractor's employees or sub-contractors, if any) and which acknowledges LEHA as an additional named insured – for the full timeframe of this agreement. The contractor waives any rights to recovery from LEHA for any injuries that contractor (or any employee or sub-contractor) may sustain while performing services under this agreement or that are a result of the negligence of contractor or his/her employees or sub-contractors. The contractor will provide proof of insurance coverage to LEHA prior to the first engagement within the stated timeframe for commencement. Upon request, the contractor shall also provide the actual insurance policy to LEHA.

INDEMNIFICATION

The contractor agrees to indemnify, defend, and hold LEHA harmless from all claims, losses, expenses, fees (including attorney's fees), costs, and judgments that may be asserted against LEHA arising from the alleged acts or omissions of the contractor, the contractor's employees, or, if any, the contractor's agents or sub-contractors.

ASSIGNMENT

The contractor's obligations under this agreement may not be assigned or transferred to any other person, firm, or corporation without the written consent of LEHA. If the contractor decides to subcontract out any of the work to be performed under this Agreement, any such subcontractor must be approved in advance by LEHA, in LEHA's sole discretion, and must provide LEHA with satisfactory proof of insurance.

NOTICES

All notices required or permitted under this agreement shall be in writing and shall be deemed in person or deposited in the United States mail, postage prepaid, addressed as follows:

Lake View Estates Homeowners Association:

Thomas D. Jenkins, President
16 Hawthorne Street
Wakefield, MA 01880
617-697-8597
tdenbyjenkins@outlook.com

Commercial Registered Agent:

John P. McVeigh
PretiFlaherty
One City Center
P.O. Box 9546
Portland, ME 04112-9546

Please note: John McVeigh is now retired, but PretiFlaherty still represents LEHA as Registered Agent. (T. Jenkins 5-20-2024)

Contractor:

Name: **Paul Jackman, Excavation & Trucking**

Contact: Paul R. Jackman

Address: 419 East Road, Fayette, ME 04349

Tel: (207) 897-6067

Email: ptdiesel@myfairpoint.net

Such addresses may be changed from time to time by either party by providing written notice to the other in a manner set forth above.

ENTIRE AGREEMENT

This document contains the entire agreement of the parties and there are no promises or conditions in any other agreement, whether oral or written. This agreement supersedes and takes precedence over any prior written or oral agreements between the parties.

AMENDMENTS

This agreement may be modified or amended only if made in writing and signed by both parties.

SEVERABILITY

If any provision of this agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this agreement.

BINDING ARBITRATION

Both parties agree to settle any dispute that may result from this document by submitting the dispute to an independent arbitrator and abiding by the judgment of said arbitrator. The parties may agree on an arbitrator, who shall be an attorney practicing in Maine. If the parties cannot agree on an arbitrator, each party shall forthwith each name their own arbitrator, who may or may not be an attorney. The sole function of those two arbitrators shall be to meet forthwith to choose a third arbitrator, who shall be an attorney practicing in Maine. The third arbitrator shall become the sole arbiter of the dispute. The arbitrator shall have the discretion to provide rules for the parties for the conduct of the arbitration, and shall have the discretion to award both monetary and injunctive relief, provided, however, that the arbitrator may not reinstate this agreement, even if the arbitrator finds that a termination of this agreement by LEHA was mistaken or wrongful. The arbitrator's decision shall be final and may be enforced by a court of competent jurisdiction. In the event the above procedures for choice of an arbitrator do not result in the choice of an arbitrator within 2 weeks of a demand for arbitration by either party, either party may apply to a court of competent jurisdiction for the appointment of an arbitrator to resolve the dispute. The arbitration is to be conducted with an eye towards a speedy and inexpensive resolution of the dispute. The arbitrator shall have the discretion, but not the obligation, to award the prevailing party its attorney's fees and costs.

APPLICABLE LAW

This agreement shall be governed by the laws of the State of Maine without regard to any rules of conflicts of law.

INTERPRETATION

This agreement is to be interpreted neutrally, without regard to any rules of interpretation of contracts concerning the drafter of the language in this agreement.

Agreed to this 7 day of October, 2023

By: 

Thomas D. Jenkins, LEHA President

and: 

Deirdre Richardson, LEHA Treasurer

By: 

Paul R. Jackman, Contractor