

**BOOTHBAY HARBOR SEWER DISTRICT
ROAD OPENING (ENCROACHMENT)
AGREEMENT**

I. PARTIES

This contract (hereinafter referred to as this "Agreement") is made and entered into on this _____ day of _____ 20__ by and between the Boothbay Harbor Sewer District (hereinafter referred to as the "District") and _____ (hereinafter referred to as "Owner/Contractor"). In consideration of the mutual promises contained herein, Contractor agrees to perform the work described in Section II below.

II. SCOPE OF WORK

Contractor has approached the District regarding a road opening project (the "Project") for which the Maine Department of Transportation ("DOT") requires the District to obtain a Highway Opening Permit. This Agreement sets forth the rights and duties between the District and Contractor with respect to the Project.

III. UTILITIES

All work performed shall be in conformance with the requirements of the appropriate utilities and the District. Contractor shall verify the locations of existing utilities with the appropriate utility companies prior to the start of construction. Conflicts must be field adjusted. Contractor shall coordinate work with the respective utility companies in a timely fashion.

IV. SUBSURFACE CONDITIONS, INCLUDING UTILITIES

The District makes no guaranties, representations or warranties either express or implied, with respect to subsurface conditions or utility locations. It is the obligation of Contractor to ascertain subsurface site conditions and utility locations from its own investigations prior to submitting a proposal. Contractor agrees, in executing this Agreement, that it waives any and all claims and causes of action against the District if, in carrying out the work, it finds that the actual conditions encountered do not conform to expected conditions.

V. BLASTING

If blasting is required, it must be conducted by a blasting contractor licensed in the State of Maine, who may be Contractor or a subcontractor. The blasting contractor shall procure a policy of liability insurance in the amount of \$1,000,000, which shall insure against any and all personal injury to any person and damage to any property caused by the blasting and shall name the District as a named insured. The blasting contractor shall be required to conduct a pre-blast survey of all buildings and structures within 500 feet of the blast area and submit a copy to the District. The blasting contractor shall be required to notify all owners of such buildings and structures of the date and approximate time of detonation of any blast.

VI. PERMITS AND LAWS

Except for the Maine DOT Highway Opening Permit, Contractor shall obtain all necessary permits and shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations.

VII. SAFETY AND SITE CONDITIONS

Contractor shall maintain the Project in a clean and orderly manner and shall maintain compliance with all federal, state and local safety regulations at all times.

VIII. DATE OF WORK COMMENCEMENT AND SUBSTANTIAL COMPLETION

Contractor will commence work on or before _____, with substantial completion by _____.

IX. WARRANTY

Contractor warrants to the District that all materials and equipment furnished by Contractor and any subcontractors under this Agreement will be new to the extent applicable, and that all work will be of good quality, free of improper workmanship and free of defective materials. Contractor shall also warranty all Contractor and subcontractor work and materials for a period of one year following substantial completion of the Project.

The Contractor will establish an escrow account in a local financial institution in the District's name. The escrow account shall be in the name of the District until the proper regulating authority has issued a notification of completion for the subject road opening project. The Contractor shall complete the Escrow Agreement attached hereto as Section XVI.

X. TERMINATION

The District may terminate this Agreement for cause after giving the other party written notice and an opportunity to cure.

XI. DISPUTE RESOLUTION

Any controversy or claim arising out of or related to this Agreement that cannot be resolved between the parties shall be submitted to the Superior Court for Lincoln County.

XII. SUBCONTRACTORS

Contractor shall be fully responsible to the District for the acts and omissions of Contractor's subcontractors and of persons both directly or indirectly employed by subcontractors, and shall hold subcontractors to the same terms and conditions as Contractor is held under this Agreement. Contractor shall inform subcontractors that the District will notify subcontractors that they may not make claims or file liens against the Project.

XIII. INSURANCE

Contractor shall purchase and maintain Workers' Compensation Insurance, General Public Liability, and Property Damage Insurance, including vehicle coverage, all with limits and terms satisfactory to the District. The District shall be named as an additional insured on the liability policy.

XIV. INDEMNIFICATION

Contractor will indemnify and hold harmless the District and its agents and employees in their public and individual capacities from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the work. Specifically, this section shall apply to all the District's obligations to Maine DOT as described in Exhibit A attached hereto.

XV. ENTIRE AGREEMENT

This Agreement represents and contains the entire agreement between the parties. Prior discussions or verbal representations by the parties that are not contained in this Agreement are not a part of this Agreement.

Date: _____

BOOTHBAY HARBOR SEWER DISTRICT

By: _____

Its: _____

Date: _____

[OWNER/CONTRACTOR]

By: _____

Its: _____

XVI. ROAD OPENING PERMIT ESCROW AGREEMENT

WHEREAS, _____ (hereinafter "Permittee"), has made application for a Road Opening Permit; and

WHEREAS, the _____ intends to issue Road Opening Permit # _____ to the Boothbay Harbor Sewer District on the Permittees behalf, and

WHEREAS, an escrow account # _____ in the amount of \$ _____ has been made with _____ (hereinafter the "Financial Institution") by _____ in the name of the Boothbay Harbor Sewer District

NOW THEREFORE, it is understood and agreed:

- I. That the Financial Institution shall hold in trust said deposit in the amount specified above until notified of completion of work by _____, (Regulating Authority).
- II. Upon satisfactory completion of work, and in accordance with the terms and conditions stipulated for the above referenced Road Opening Permit, the _____ (Regulating Authority) shall notify the Financial Institution, in writing, to specify the final amounts to be released to the _____ (Regulating Authority) and to the Permittee. Any excess monies in the form of principal and/or interest remaining in said account, over and above the amounts specified, shall be released to the Permittee.

This AGREEMENT made an executed on this _____ day of _____, in the year 20_____ by the undersigned.

Permittee

Financial Institution

Regulating Authority

Permittee Contact Information

Financial Institution Contact Information

Permittee Name

Institution Name

Permittee Representative

Institution Representative

Mailing Address

Mailing Address

City, State, Zip Code

City, State, Zip Code

Telephone

Telephone