

**AGREEMENT  
FOR  
MAINTENANCE AND REPAIR OF SEWER FACILITIES  
BETWEEN THE  
MAINE TURNPIKE AUTHORITY  
AND THE  
CITY OF GARDINER**

**AN AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the Maine Turnpike Authority, a quasi-municipal not-for-profit entity organized and existing under the laws of the State of Maine, located in Augusta, County of Kennebec, State of Maine, (hereinafter "MTA"), as represented by its \_\_\_\_\_, and the City of Gardiner, a municipality, organized and existing under and by virtue of the laws of the State of Maine, (hereinafter "CITY"), located in Gardiner, Maine.

**WITNESS:**

WHEREAS CITY owns and operates facilities for the collection, pumping, and transport of domestic, commercial, and industrial sewage from sewered portions of the City of Gardiner, Maine (hereinafter the "Sewer System"); and,

[WHEREAS MTA plans to construct and will own certain sewer collection and connection lines in West Gardiner (hereinafter the "MTA Facilities") that will link a planned MTA public rest area in West Gardiner to the Sewer System.]

WHEREAS MTA desires that certain maintenance and repair functions for the MTA Facilities be performed by CITY; and,

WHEREAS CITY is able and agrees to provide, under certain terms and conditions, certain services desired by MTA; and,

WHEREAS, MTA intends to indemnify and hold CITY harmless from all claims, demands, damages, actions, and causes of actions of whatsoever kind or nature arising out of the location, design, installation, operation, maintenance, repair, and replacement of the MTA Facilities, and the transfer of wastewater to the Sewer System; and,

WHEREAS the parties desire to now set forth the terms and conditions of their responsibilities, each to the other;

**NOW THEREFORE**, in consideration of the covenants and conditions contained herein, the parties agree as follows:

**SECTION A: RESPONSIBILITIES OF THE MTA.**

The MTA agrees:

- A1. ***MTA to Own Facilities:*** All sanitary sewer facilities which are located within the boundaries of MTA and within public or private rights-of-way in West Gardner shall be owned by MTA.
- A2. ***MTA to Operate Facilities:*** MTA shall retain responsibility for the location, design, installation, and startup, and for the day-to-day use, operation, maintenance planning, and effectiveness of all wastewater collection and pumping facilities necessary and adequate to receive wastewater generated by development located within the boundaries of MTA and to transport said wastewater to the point of its discharge to CITY facilities.
- A3. ***MTA to Request Services:*** As needed, MTA shall request that CITY perform the facilities maintenance and repair services desired, requesting an expected time of completion.
- A4. ***Access to Premises:*** MTA shall provide, subject to reasonable and proper regulation, free access to and permission for authorized representatives of CITY to enter upon the premises where the MTA Facilities are located, for any purpose related to obligations of CITY under this Agreement.
- A5. ***Risk Management:*** Responsibility for the prudent management of any and all risk that attends the ownership, operation, maintenance, repair, and replacement of the MTA Facilities falls to and remains with MTA.
- A6. ***Emergency Response Planning:*** MTA shall be responsible for and shall put in place procedures which allow any and all foreseeable emergencies to be quickly and effectively addressed. MTA shall provide CITY with emergency contact information for responsible MTA personnel. Emergency contact information provided will be updated as necessary by MTA on change of contact information, and no less frequently than annually.
- A7. ***Record Drawings:*** MTA shall maintain and make available to the City a complete and up-to-date set of as-built or record drawings for MTA facilities to be maintained and repaired by CITY.
- A8. ***Operations Manuals:*** MTA shall maintain and make available to the City a complete and up-to-date set of operations and maintenance manuals for MTA facilities to be maintained and repaired by CITY.

- A9. ***MTA to Pay for Services:*** MTA shall promptly pay for services performed by CITY under this Agreement, in accordance with billing provided by CITY.
- A10. ***CITY Held Harmless:*** MTA shall indemnify and hold harmless the City of Gardiner from any and all demands, claims, actions, or causes of actions for liability, damages, and costs, of whatsoever kind or nature, arising out of the maintenance, repair, and/or replacement by CITY of the MTA Facilities, including but not limited to costs incurred as a result of break(s) in, leakage from, or shutdown of the MTA Facilities, including reasonable attorneys and associated fees, and due in whole or part to negligence or breach of this Agreement on the part of MTA. MTA further waives any claims on its own behalf against the City arising in any manner out of the services to be performed by the City under this Agreement.

## **SECTION B: RESPONSIBILITIES OF THE CITY**

The City of Gardiner agrees:

- B1. ***CITY to Provide Services:*** CITY shall, insofar as time permits relative to its prior obligations to CITY facilities and operations perform the agreed-upon facilities maintenance and repair services requested by MTA.
- B2. ***City to Bill Monthly:*** CITY shall bill MTA monthly for services provided under this Agreement.
- B3. ***Timely Notice:*** In the event CITY is unable, for any reason, to perform or perform timely the services requested under this Agreement, CITY shall so notify, in a timely fashion, a designated representative of MTA.

## **SECTION C: GENERAL CONDITIONS**

Each of the entities understands and agrees as follows:

- C1. ***Priority of Response:*** it is understood by both parties to this Agreement that CITY time and resources will be provided on a time-available basis, only insofar as CITY resources are not, in the sole opinion of CITY, required to meet other responsibilities to CITY facilities and operations. It is further understood that CITY bears no responsibility or liability to MTA or any other party as a result of any failure in MTA facilities or operations that is directly or indirectly a result of CITY response or inability to respond to MTA request for maintenance or repair in a timely manner.
- C2. ***Basis of Charges:*** Charges billed by CITY to MTA for services and materials provided by CITY under this Agreement will be calculated based on actual time spent during the billing period in providing the services. Invoices for charges billed will contain information on CITY personnel and equipment time, necessary equipment and materials purchased, and any necessary outside services used.

- C3. **Rates Determined:** The rates at which charges for services and materials provided under this Agreement are billed will be calculated annually, based on CITY facilities operations data. The rates will be in the form of a single hourly charge for personnel, hourly charges for various equipment, and a charge per mile for applicable travel. The hourly charge for personnel shall be calculated at the direct wage rate current for the CITY personnel assigned. The rates shall be calculated to include a factor of 1.4 to cover CITY overhead expenses.
- C4. **Notice Provided:** Notice of the rates at which charges for services and materials provided under this Agreement are billed shall be provided to MTA annually, or as the rates may otherwise be amended from time to time, not less than fifteen (15) days prior to taking effect.
- C5. **Rates Current:** Billing for services and materials provided under this Agreement shall be made at the calculated rates then current.
- C6. **Maintenance and Repair on Request:** It is understood and agreed that action by the CITY to maintain or repair the MTA Facilities shall be based solely on MTA's request for such services. The CITY shall have no independent responsibility to inspect, maintain, repair or schedule maintenance or repair of the MTA Facilities. CITY, its employees and its City Council shall not be liable to MTA or to any other person for direct or indirect consequences of MTA's decisions concerning timing and scheduling of inspections, maintenance and repair of the MTA Facilities.
- C7. **MTA Access to CITY Records:** MTA shall, for as long as the records are maintained by CITY, have access to and the right to examine any books, documents, papers, and records of CITY involving transactions related to this Agreement.
- C8. **Effective Date and Term:** this Agreement and all of its provisions shall be effective as of the day and year first written above, and shall be a continuing agreement unless modified or terminated as provided herein.
- C9. **Agreement May be Modified:** This Agreement may be modified or amended only by an instrument in writing, duly executed by the parties and attached hereto.
- C10. **Termination:** This Agreement may be terminated by either party, for any reason, on written notice of termination to the other party. The written notice shall be provided not less than thirty (30) days prior to the effective date of termination of services under this Agreement.
- C11. **A Maine Contract:** This Agreement is to be construed as a Maine contract.
- C12. **No Private Benefit:** This Agreement shall be deemed to be for the sole and exclusive benefit of the parties hereto, and shall not be deemed to confer any right, benefit, demand, claim, action or cause of action on any other party. Nothing in this Agreement shall be deemed to waive or modify any immunity or limitation on damages of either party with respect to any demand, claim, action or cause of action of any third party.

**IN WITNESS WHEREOF**, the parties hereto have this day hereunto set their hands and seals.

MAINE TURNPIKE AUTHORITY

CITY OF GARDINER

By: \_\_\_\_\_

By: \_\_\_\_\_

Its:

Its:

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Seal of MTA:

Seal of CITY: