

Massachusetts Snow & Ice Contractor's Association, Inc.

DRAFT SNOW AND ICE CONTROL AGREEMENT

2006-2008

General Conditions

As the Owner or Lessee of the equipment listed in this agreement, I hereby agree to operate said equipment for the purpose of snow and ice control and or training sessions related to snow and ice, when and so directed by the Massachusetts Highway Department (MassHighway). Compensation for such services shall be based on the conditions in this agreement and the rates shown in Attachment "A", Hourly Rental Rates and Vehicle Class Codes. This agreement shall commence on the date it is signed by the applicable District Highway Director. and terminate on or before May 31, 2008. The general conditions portion of this agreement, along with attachments B, D and E shall expire on or before May 31, 2008. Attachment A of this agreement shall expire on May 31, 2007.

All rates in this contract include the equipment, accessories, ~~qualified~~ operators and operating costs, including but not limited to, insurance, registration fees, maintenance, repairs and fuel. All equipment must arrive filled with fuel, in good working condition and all reimbursable accessories functioning properly. All equipment and accessories shall be compensated at all times while installed in all sections of all districts so long as these accessories have been approved by the District Highway Director. All equipment returning to work for MassHighway, having worked under all or part of the 2004-2005/2005-2006 contract shall have the option of returning to work at its last and usual Depot and in its last and usual capacity and any and all accessories on returning vehicles/ equipment are automatically approved. All newly hired equipment and accessories under this agreement shall be approved by the District Highway Director.

The cost of fuel will be adjusted based on the fuel adjustment factors shown in Attachment "B", Fuel Adjustment Worksheet. The fuel adjustment surcharge shall be calculated from a bench mark fuel price equal to the price of on road diesel fuel in the month of August, 2004. On October 1, 2006 the August 2004 benchmark price shall be subtracted from the on road diesel fuel price as quoted by the Energy Information Administration (EIA) of the Department of Energy, hereinafter referred to as DELTA D. The DELTA D shall be multiplied by the assumed applicable fuel consumption rate. On the first day of each month throughout the winter season a new DELTA D shall be established, based on the EIA average monthly New England Diesel Price for the previous month. All vehicles equipped with wing snow plow (s) shall use a multiplier of 1.75 to reach there final fuel adjustment figure. The base price for fuel will be set each year in September and will be equal to the average price of fuel for the month of January of the same year. The base price will remain unchanged for the entire winter season. Rates will be adjusted monthly based on the retail price of diesel fuel for the New

England region as published by the Energy Information Administration (EIA) of the Department of Energy (www.eia.doe.gov.)

All equipment owners will be paid from the time they are called to the time they are released by MassHighway. All equipment must be available for work within ~~30~~ 60 minutes from the time called otherwise compensation will be calculated from the actual time of arrival. All equipment owners shall be compensated for a minimum of four hours. When the time worked exceeds four hours the actual time worked shall be compensated. ~~Equipment owners and operators that arrive after one hour from being called, have an equipment failure during their shift or any other issue as listed in Attachment "C", will not be paid the 30 minute travel time allowance or the four hour minimum compensation. Equipment owners that repeatedly arrive after one hour may be replaced in the rotation, based on Attachment "C" and the decision of the District Highway Director.~~

MassHighway may from time to time request hired equipment to travel out of there usual assigned plowing/ deicing area. In the event that vendors are requested to travel out of area, the applicable vehicles/ equipment shall be compensated from the time originally called, until such time as the vehicle/ equipment returns to its usual assigned Depot. Travel out of a vendor's usual assigned Depot area is not mandatory.

In the event that equipment owners are requested to travel into an area where compensation is greater, the higher compensation rate shall be paid while the equipment is working in that area.

MassHighway may request that Owners or Lessees attend specific training sessions to improve MassHighway's snow and ice operations. Any contractor instructed to attend training sessions for the purposes of snow and ice shall arrive at his/her designated MassHighway Depot at an appointed time and proceed then to the training location and be compensated from the time of departure from his/her Depot until arriving back at that Depot after completing the training session. All contractors shall be compensated at the 4X4 pick up truck rate for attending these training sessions when not instructed to arrive at the training session with a piece of equipment any greater than a 4X4 pick up truck. If instructed to arrive at the training site with a vehicle larger than a 4X4 pick up truck, the pay rate of that vehicle/ equipment shall prevail. If instructed to arrive at the training site with a front end loader, grader, skid steer loader, or back hoe loader, contractor shall be compensated for trailering this equipment to and from the training site at the rate of \$100.00 per hour in addition to the compensation rate of the vehicle/ equipment requested. A four hour minimum compensation shall apply. The fuel surcharge shall apply to this compensation. Compensation for these sessions will be based on the duration of the session, plus a set allowance for travel time. No minimum payment will apply for training session.

Every two weeks on Monday throughout the snow and ice season the equipment owners must visit the appropriate depot location to review and sign a bi-weekly summary of hours worked. The summary will contain the vendor's compensation amounts (i.e. work

hours, dates, and times, etc.) and any bonuses, penalties or rate adjustments that are applicable for the previous two-week period. MassHighway will furnish a copy of the signed summary to each equipment owner. If after review by the District Snow and Ice Office, there is the need for any changes or corrections, the vendor will be furnished with a revised copy. In the event of a holiday Monday, MassHighway shall make personnel available on Tuesday of the same week for this purpose.

All bi-weekly summary of hours worked, also known as payment voucher, shall be processed in a timely manor by MassHighway. All vendors shall be paid within twenty eight (28) days of the date of signature by the vendor. In the event that payments are not furnished to the vendor within the twenty eight (28) day timeline, MassHighway shall be responsible for interest payments to the vendor on the amount (s) which would have been due within the guidelines set forth above. Said interest payments shall be made at the rate of three (3) percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston from such date to the date on which MassHighway sends the payment (s) to the vendor. MassHighway shall include the amount of the interest payment with the payment due for services.

All vehicle operators shall be allowed a 15-minute paid break every four hours and a 30-minute paid break after each 6 hours worked. These times cannot be combined to extend break periods and breaks cannot be taken at the end of a shift. ~~Idling/standby time, for more than 30 minutes, within a depot area or other MassHighway designated staging area, that occurs after an operator has completed an assignment, shall be considered meeting the requirements of a 15 minute break.~~ In some locations, during certain times of the day, break periods may need to be extended due to additional travel time to the nearest available food service location. All breaks must be requested and approved by a MassHighway supervisor prior to leaving the designated staging area. Depending on operational needs and weather conditions the approval of break requests may need to be delayed until conditions allow.

Owners or Lessees making a good faith effort to repair broken equipment shall be compensated for up to one hour to make repairs. If the equipment cannot be repaired it shall be removed from service after this time. If the hired vehicle/equipment is damaged due to imperfections within the SHLO, said equipment shall not be taken out of service so long as the vendor is making a conscious effort to repair the vehicle/equipment, once the vehicle/ equipment is repaired it shall resume its last and usual task. Once the Depot/ Gang which this vehicle/ equipment is assigned secures from the snow/ice event, said damaged equipment will be logged out of service. Each piece of equipment will only be compensated for one breakdown per 24 hour storm event. The Owner or Lessee is responsible for all costs to have the vehicle towed, if necessary. If a vehicle has been left within the State Highway Layout (SHLO), for greater than two hours, MassHighway may report the vehicle to the State Police for removal.

The Owner or Lessee will not be allowed to perform any type of maintenance, except emergency repairs, to any vehicles or equipment at any MassHighway facility or within the SHLO. If an emergency does arise and it is necessary to perform repair work, it shall

be performed in an area designated by MassHighway. The Owner or Lessee will be liable to clean up and remove any and all fluids, debris, spills, etc., that result from the repair work. If a release or spill is a reportable condition to the department of Environmental Protection (DEP), the Owner or Lessee is required to notify DEP and perform any necessary remediation to satisfy all applicable state and federal regulations, at the Owner's or Lessee's sole expense.

All owners and equipment operators are required to follow MassHighway's instructions pertaining to the operation of snow plow and spreader accessories, and only plow and apply materials along designated roadways. Failure to comply with MassHighway's instructions and conditions pertaining to snow plow and spreader accessories shall be documented and could result in suspension or termination of this Agreement. All spreader, chemical tank truck and material loader operators are required to report to their designated depot and sign in . At the end of each event they are required to return to their designated depot, spin off any unused material, if applicable, and sign out. Liquid spray tanker equipment shall be required to off load any remaining or excess material into Mass Highway holding tanks at the designated Mass Highway Depot at the end of each event prior to the departure of the equipment, and sign out. Applying excess material onto the roadway as a method of spinning off unused material is not allowed. All equipment operators are required to contact their designated MassHighway staff person to confirm their arrival. At the end of the shift all equipment will return to the location where their shift began and confirm their departure time with the designated MassHighway staff.

All trucks, except those not directly related with snow and ice operations, e.g., hauling vehicles, sweepers, vac/jet trucks, etc. are required to carry a plow at all times unless an exemption has been requested by the equipment owner and approved by the District Highway Director. All plow cutting edges shall be steel unless an exemption has been requested by the equipment owner and approved by the District Highway Director. All requests and approvals for exemptions shall be made in writing on Attachments "D" and "E". The approved forms must be kept in the vehicle during snow and ice operations.

All equipment operators are required to carry a cell phone while working for MassHighway. The operator must provide the cell phone number to the MassHighway Supervisor and inform them of any changes.

All spreaders must be equipped with automated synchronization (ground speed control) and adjustable controls in the cab of the truck. All spreaders must be capable of consistently dispensing material at 240 pounds (+/- 10 pounds) per lane mile. These devices are required to be calibrated by a MassHighway approved calibrator, ideally prior to the approval of this agreement, but no later than December 31st. Equipment that is not calibrated correctly or ceases to operate properly will not be placed in the rotation of equipment unless required due to an emergency. If found to be out of compliance at any time, the operator of the spreader shall be notified verbally and instructed to notify the owner of the equipment as soon as possible. Spreader equipment found to be out of compliance shall be repaired and recertified within 20 business days. If found to be out of compliance a second time during the duration of this agreement, said equipment shall be

~~penalized \$10.00 per hour until such time as a written report of recertification is forwarded to the applicable snow and ice engineer. This equipment will also be penalized per hour as shown on the rate sheet. This equipment will also be released first, and MassHighway will not be required to pay the four hour minimum or travel time compensation.~~ All spreader equipment will be subject to inspection by MassHighway at anytime during the duration of this Agreement.

Safety Requirements

All equipment shall be equipped with safety lighting that meets or exceeds MGL Chapter 90, Section 7E and 540 CMR, Section 22. One six-inch amber flashing light shall be mounted on the highest practical point of all vehicles. The light must be visible for a distance of 300 feet from the front, rear and both sides of the vehicle. Vehicles greater than 10,000 GVW shall have a minimum of two additional flashing red lights mounted on the rear of either side of the vehicle. These lights shall be at least six inches in diameter, no less than six feet above the roadway and shall be visible for a distance of 300 feet.

MassHighway shall supply at all liquid deicing chemical storage areas proper eye wear and hand protection for all vendors to utilize, as well as appropriate breathing apparatus at all liquid deicing chemical storage areas and storage areas for Sodium Chloride/ Calcium Chloride premix, as well as Calcium Magnesium Acetate, or CMA. MassHighway shall provide an eye wash station at all chemical storage facilities.

Where MassHighway is unable to provide any of the above safety devices, MassHighway will without fail provide MassHighway personnel to handle all of the above chemicals during loading and offloading of same.

Additionally, a material safety data sheet (MSDS) shall be made available in a conspicuous location at all MassHighway Depots which store any of the above deicing chemicals.

The Owner or Lessee is responsible to ensure that all vehicles conform to applicable OSHA regulations pertaining to reverse signal alarms. For more information please refer to 29 CFR 1926.601-602.

The Federal Highway Administration has regulations that require employers with drivers of commercial vehicles to have an alcohol and drug-testing program in place. The specific provisions of the regulations are highly detailed and legally complex. MassHighway strongly urges you to review the regulations, which are cited as 49 CFE part 382. (www.fmcsa.dot.gov/rulesregs/fmcsr/regs/382.htm).

Licenses, Registration and Insurance Requirements

The Owner or Lessee represents and warrants at the inception of this agreement that each of the vehicle operators has a valid and current operator's license, issued by the duly authorized governmental entity, for the listed equipment they are responsible to operate. ~~Any loss, revocation or suspension of license shall be a cause for material breach of this agreement resulting in termination.~~

During the term of this agreement each Owner or Lessee shall maintain a current vehicle registration for the specified equipment in this agreement. Passenger vehicle registrations are not allowed on any vehicles listed in this Agreement. Out of state registrations are allowed, but they must meet all the requirements of the Massachusetts Registry of Motor Vehicles and all other motor vehicle laws. The Owner or Lessee agrees to promptly forward a copy of any new or revised registration of listed equipment to the District Highway Director. Failure to keep listed equipment registered will terminate this agreement relative to each unregistered piece. "Repair" plates, "Dealer" plates and "Farm" plates are not allowed. "Owner Contractor" (O.C.) plates may only be used on rubber-tired backhoes, loaders and graders. All registration plates must be attached to the vehicle or equipment at all times during the snow and ice operations.

The Owner or Lessee must submit evidence of general automobile liability insurance for the minimum amounts of \$100,000/\$300,000 and property damage for the minimum amount of \$50,000 for each vehicle listed in this agreement. MassHighway must be furnished with a certificate of insurance outlining the above minimum coverage's. ~~MassHighway must be listed on the insurance certificate as the Certificate Holder. The information should be listed as follows: MassHighway, Snow and Ice Office, 10 Park Plaza, Boston, MA 02116.~~

Contract Approval

~~The Agreement and necessary attachments are required to be mailed or delivered to the District Headquarters in which the Owner or Lessee chooses to work. Each submission will be time stamped upon receipt. Agreements that are left or delivered to depot locations will be forwarded to the District office, when time allows, but will not be time stamped until they are received at the District Headquarters. MassHighway's District Highway Director will determine the equipment needs, including quantity, type and accessories at each depot location. First priority will be given to complete contract submissions received prior to November 15th that meet the equipment needs of each depot. Second priority will be given to Owners or Lessees with the greatest number of consecutive years of service at the chosen depot and third priority will be given to Owners or Lessees with the greatest number of total years worked for MassHighway.~~

New Owners or Lessees can select up to three depot locations that they choose to work at. Please review the MassHighway District Boundary Maps and District office listing (Attachment "F").

Incomplete packages will not be considered for assignment, unless approved by the District Highway Director, until all paperwork has been received at the District Headquarters. Owners or Lessees will be notified as to what information is outstanding.

A complete contract submission must include the following:

1. MassHighway's Snow and Ice Control Agreement completely filled out and signed by the Owner or Lessee. All changes from the previous year must be revised.
2. A copy of the current vehicle registration for each vehicle listed in the agreement.
3. A copy of the certificate of insurance for each vehicle listed in the contract. The insurance limits must meet or exceed the limits stated in the agreement. ~~and MassHighway must be listed on the insurance certificate as the Certificate Holder.~~
4. A minimum of two recent photographs of each piece of equipment listed in the contract. One must be taken from the rear left of the vehicle and the second from the front right of the vehicle. The photographs must show the vehicle registration number and all vehicle accessories.
5. All spreader equipment owners must submit a completed MassHighway Certificate of Spreader Calibration Form and a Spreader Body Volume Form. (Can be submitted at the time of vehicle inspection.)
6. All chemical tank trucks must submit a Certificate of Tank Volume and Two-lane Application Certificate. (Can be submitted at the time of vehicle inspection, but no later than December 31, 2006).
7. W-9 Tax Form (This is required for new vendors or returning vendors who have changed their company name, address or tax identification number.)

Upon submission of a complete Agreement package, MassHighway will contact the Owner or Lessee for an inspection of all new their equipment. Returning equipment which serviced the department during the 2004-2005/2005-2006 Equipment Rental Agreement shall provide pictures only which shall satisfy their inspection requirement. ~~In order to maintain first priority at a requested depot, equipment owners must have their equipment inspected within 30 days and not later than December 15th.~~ Equipment inspections will be performed at an agreed upon MassHighway depot location. Upon a completed vehicle inspection and approval by the District Highway Director, new Owners or Lessees will be notified of their assigned depot location.

All equipment will be issued a MassHighway equipment decal or decals. The decals must be applied in a location approved by MassHighway. The decals must remain in place for the duration of the snow and ice season. The decal shall be no larger than 36 square inches total, and shall not interfere with the safe operation of any vehicle, nor impair the vision of any vehicle or equipment operator.

Rotation

Mass Highway's District Highway Director will determine the required type and quantity of all vehicles and accessories for each depot/gang for the purposes of minimum call out, as well as full complement, the determination shall be made and posted at each Depot in a conspicuous place on or before November 1, 2006. All equipment returning to service Mass Highway under this agreement who serviced Mass Highway under the 2004-2005/2005-2006 Equipment Rental Agreement shall return to its last and usual Depot performing its last and usual task. In establishing the rotation list consideration shall be given to length of service by the returning contractor to Mass Highway, job performance, reliability, and response time. The required number shall be rotated throughout the season during non-full complement operations. In establishing the rotation list consideration will be given to the submission date of the complete contract package, response time and job performance. ~~Equipment will not be considered as part of a rotation unless all necessary contract documents are approved.~~ MassHighway will rotate equipment based on total hours worked to date, taking into consideration length of service job performance, reliability, and response time. The total number of hours shall include hours worked. If the equipment owner can not be reached, there status in the rotation shall remain unchanged. If the equipment owner is reached and refuses an assignment that shall be considered time worked for the purpose of the rotation. If an equipment owner is unable to respond due to equipment being in disrepair due to imperfections in the SHLO, said call out hours shall not be added to the equipment owner's time worked for the purpose of rotation. Hours that the equipment was requested to work, but not available the equipment owner agreed to work, but failed to report to work. ~~When Masshighway requests equipment and the equipment owner fails to respond to the call, the total hours for that event shall count towards rotation as though the equipment actually worked.~~

Should the owner of a material loader choose not to continue providing a loader and operator for a particular depot or become unable to perform the required duties during any season, MassHighway's District Highway Director shall select the next qualified loader according to the following criteria; The new material loader shall be selected from the ranks of the material spreader owners at the Depot where the vacancy exists; The next qualified loader shall be defined as a loader, with a bucket capacity of 3 2 cubic yards or greater; that has worked the greatest number of years as a roadway loader within that depot. Selection shall be based upon years of service, response time, and job performance; If there are no available loaders with a bucket capacity of 3 2 cubic yards or greater, then the next largest loader shall be selected. The equipment owner selected to operate the material loader must demonstrate the ability to provide a loader and operator within ~~30~~ 60 minutes from the time called by MassHighway. Failure to meet this requirement shall be cause for MassHighway to select the next qualified

equipment owner, ~~as show on Attachment "C"~~. Material Loaders in the Depot shall not be subject to rotation.

In the event that a spreader position becomes available at any Depot first preference shall be given to owners of Material Loaders and Spreaders currently servicing MassHighway at the Depot where the vacancy exists. Factors such as length of service, quality of work, and response time shall be considered when MassHighway is making this decision. In the event that no contractors from these two categories are available or unwilling to add additional spreader (s), then existing plow vendors from the same Depot shall be considered to fill the vacancy, once again using the criteria as outlined above.

In the event that a plowing position becomes available at any Depot first preference shall be given to owners of existing snow and ice removal equipment currently servicing MassHighway at the Depot where the vacancy exists. Factors such as length of service, quality of work, and response time shall be considered when MassHighway is making this decision.

In the event that vacancies occur, the applicable MassHighway personnel shall notify all eligible vendors in a timely fashion of the vacancy.

Dispute Resolution Process

All issues that effect an Owner or Lessee's rate of pay, hours worked, working conditions, safety issues or the behavior/performance of a MassHighway employee, should be verbally reported to MassHighway's ~~Snow and Ice Office~~ District Highway Director Office as soon as possible but within ~~24 hours~~ 3 business days after the incident and must be submitted in a written statement, signed by the Owner or Lessee, to MassHighway's ~~District Highway Director Office~~ District Highway Director Office within ~~24 hours~~ 3 business days of the completion of the storm event in which the incident occurred. Issues that occur during non-snow and ice operations must be submitted in writing within ~~24 hours~~ 3 business days of the owner being made aware of the issue.

The District Highway Director shall respond to each written statement within ~~15~~ 3 business days of receipt of written statement. A meeting ~~may~~ shall be held to discuss issues or concerns regarding the incident within 10 business days of the District Highway Director receiving a written statement from an aggrieved vendor. Any owner/ lessee shall be afforded the right to representation at any and all meetings. Issues not received within the specific 24 hour period are not subject to the 15 day response time. All decisions will be based on the information submitted by the vendor, MassHighway employees and the conditions stated in this Agreement. All decisions shall be rendered within 7 business days.

If an issue is not responded to or not resolved in a manner that is satisfactory to the Owner or Lessee, they are required to resubmit a copy of the original issue or concern to MassHighway's Chief Engineer, at the following address: Massachusetts Highway Department, State Transportation Building, Room 6340, 10 Park Plaza, Boston, MA

02116. Mass Highway's Chief Engineer shall respond to the aggrieved vendor within 10 business days with a decision on the matter. Should an issue, in the view of either involved party not be resolved, Mass Highway agrees to participate in the process of binding arbitration. At all times during any dispute resolution process, a vendor may be represented by a representative of their choice in any proceeding. A business day, for the purposes of this agreement shall be considered any day other than Saturday, Sunday or holidays, and be equal to that of a usual eight hour work day.

Global Positioning Systems (GPS)

~~MassHighway will continue utilize GPS as a way to increase safety, track vehicle location, redeploy or dispatch equipment and confirm start and ending times and locations.~~

~~MassHighway, at its discretion, may issue GPS equipment to the Owner or Lessee. Upon the issuance of said GPS Equipment, MassHighway shall further provide, under separate agreements (GPS Agreement Attachment "G"), to the Owner or Lessee the terms and conditions of the operational use a maintenance responsibility for said GPS equipment. The GPS agreement shall be incorporated and made part of this agreement.~~

~~All vehicles used during snow and ice operations, except loaders utilize within the limits of a MassHighway depot or other vehicles not directly related to snow and ice operations, e.g., hauling vehicles, sweepers, vac/jet trucks, etc., are required to operate a Masshighway GPS unit that is compatible with Masshighway's current GPS. Vehicles that operate within Districts One and Two are not required to utilize MassHighway's GPS.~~

Accident Recovery

Massachusetts State Law prohibits MassHighway from reimbursing for damage claims due to roadway defects. However, MassHighway will forward damage claims, as long as the incident/damage occurred within the limits of an active construction project. In the Event that a contractor is alleged to have been involved in the damage to private property, Mass Highway shall first notify the contractor in writing of the allegation and provide the contractor with the information relative the alleged damage including the aggrieved parties name and address. At no time shall MassHighway offer any information relative a contractor's name, address, telephone number, nor any insurance information without the expressed written permission of the contractor. Please refer to the following website link, <http://www.state.ma.us/legis/laws/mgl/81%2D18.htm> for more information. If an Owner or Lessee's vehicle is damaged and the Owner or Lessee believes it occurred within an active construction zone, please submit your written claim to the Massachusetts Highway Department, Accident Recovery Program, State Transportation Building, Ten Park Plaza, Room 7410, Boston, MA 02116. The submittal should be marked "Attention: Bruce Willins".

Spreader Damage

In the event that foreign debris is found to have damaged a spreader MassHighway shall bear the full expense of the repairs to the contractor. For the purpose of this section, foreign debris shall be defined as any object other than sand or deicing material, owned by MassHighway, and loaded onto a hired spreader at the direction of MassHighway. In the event that damage is found to have occurred to a hired spreader due to foreign debris in the material, the matter shall be brought to the attention of the appropriate MassHighway personnel.

Contract Expiration

The general conditions of this agreement, along with attachments B, D, and E shall expire May 31, 2008. Attachment A of this Agreement, known as Hourly Rental Rates and Vehicle Class Codes, shall expire on May 31, 2007. MassHighway agrees to meet with interested vendors, persons, or groups, including the Massachusetts Snow and Ice Contractors Association, Inc. prior to the issuance of any final version of any agreement, or any part of any agreement, including, but not limited to rates, attachments, exhibits, and addendums, offered to any vendors subsequent or prior to the expiration of any part of this agreement.

Future Process

It shall be the goal of MassHighway to include the comments and guidance of all snow and ice contractors statewide as the Department authors all future snow and ice equipment rental agreements. MassHighway agrees to discuss all future contract language prior to being placed in final form with any interested groups, contractors, individuals, or organizations. Additionally, MassHighway agrees to meet with representatives of the Massachusetts Snow and Ice Contractors Association, Inc. for the purposes of contract discussions prior to the issuance of any final version of any agreement.