



## SNOW AND ICE CONTROL AGREEMENT

2008 – 2010

### General Conditions

As the Owner or Lessee, hereafter "Contractor", of the equipment listed in this agreement, I hereby agree to operate said equipment for the purpose of snow and ice control when and so directed by the Massachusetts Highway Department (MassHighway). Compensation for such services shall be based on the conditions in this agreement and each of the following listed Attachments:

Attachment A, 2008-2009 Hourly rental rates and vehicle codes  
Attachment B, 2009-2010 Hourly rental rates and vehicle codes  
Attachment C, Fuel adjustment worksheet  
Attachment D, Plow Exemption Request Form  
Attachment E, Steel Cutting Edge Exemption Request Form  
Attachment F, GPS Handset Agreement  
Attachment G, Contractor License Certification  
Attachment H, Executive Order 481-Contractor Certification  
Attachment I, Calibration Certification

It is MassHighway's objective to conduct Snow and Ice Operations in conformance with the terms of this Agreement. However, no terms contained herein shall be construed to limit the ability to respond in emergency situations and ensure the safety of the traveling public.

This Agreement shall commence on the date the Agreement has been executed by both the Contractor and MassHighway's District Highway Director. This Agreement shall terminate on May 31, 2010, unless this date is amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended upon prior written notice to the Contractor. MassHighway may terminate or suspend this Agreement without penalty, if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by this Agreement.

The Contractor shall comply with all applicable federal and state laws, rules and regulations. If any provision of this Agreement is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of this Agreement, or portions thereof, shall be enforced to the fullest extent permitted by law.

The Contractor may not subcontract any portion of this Contract. The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under this Agreement, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to this Agreement in accordance with M.G.L. C. 106, §9-318.

Where written notice is required, it shall be deemed delivered and received when submitted in writing, in person or when delivered by any other appropriate method evidencing actual receipt by MassHighway or the Contractor. The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall maintain documents and records as specified by the Agreement.

MassHighway will strive to accommodate work location requests from Contractors who meet the specified deadlines for submission of all required documents and vehicle inspection/calibration. If MassHighway's equipment requirements have been met at a particular location, MassHighway will offer Contractors, who have met the specified deadlines for submission and vehicle inspection/calibration, an alternate work location where equipment is needed.

All Contractors and equipment operators are required to follow MassHighway's instructions pertaining to snow and ice operations and only plow and apply materials along designated roadways. Failure to comply with MassHighway's instructions and conditions 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. Applying excess material onto the roadway as a method of spinning off unused material is not allowed. All other equipment is required to report to their designated location. Upon arrival at the location, 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 Contractors are required to provide their equipment operators with a cellular phone while working for MassHighway. The Contractor or operator must provide the phone number to MassHighway's Timekeeper or Supervisor and inform them of any changes.

All equipment will be issued a MassHighway equipment decal. The decal must be applied on the rear of the equipment in a location approved by MassHighway. The decals must remain in place for the duration of the snow and ice season.

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. All spreaders are required to be calibrated by a MassHighway approved calibrator prior to the deadline (see page 6). Contractors that are notified that their equipment is not calibrated correctly will be allowed to finish their work shift, but will not be allowed to return until their equipment has been repaired and inspected by MassHighway. Contractors that are requested to work prior to making repairs will be penalized per hour equal to the compensation rate of the applicable Spreader Code as shown on Attachments A and B. When requested to work this equipment will also be released first and MassHighway will not be required to pay the four-hour minimum or travel allowance compensation. All spreader equipment will be subject to inspection by MassHighway at anytime during the Winter season. All Contractors are required to have a copy of their approved Certificate of Calibration in their vehicle at all times while employed by MassHighway.

### **Compensation**

Contractors shall only be compensated for performance delivered in accordance with the specific terms and conditions and the payment mechanism described in this Agreement. Overpayments, or the Contractor's failure to return equipment, shall be reimbursed by the Contractor or may be offset by MassHighway from future payments in accordance with state finance law.

All rates in this Agreement include the equipment, accessories, licensed 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 with all reimbursable accessories functioning properly. MassHighway reserves the right to increase rates based on changed conditions. All approved accessories will be compensated at all times while the vehicle is working for MassHighway, unless designated on Attachment A or B.

Contractors that meet the specified deadlines for submission of all required documents and vehicle inspection/calibration (see page 6, Agreement Submission Deadlines and Requirements) will be paid a Sign-up Bonus. In addition, Contractors that meet the submission deadlines and are requested to work prior to December 1st and after March 31st will be paid an Extended Season Bonus. Material loaders and Vehicle Codes 300000-380000 are not eligible for the Extended Season Bonus. However, Material Loaders are eligible for the Sign-up Bonus. Bonus amounts are shown in Attachments A and B.

The cost of fuel will be adjusted based on the monthly cost of fuel and the base rate (August 2004) as shown in Attachment C, Fuel Adjustment Worksheet. 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](http://www.eia.doe.gov)). The base rate will remain unchanged for the duration of this Agreement.

Contractors shall be compensated for a minimum of four hours. When the time worked exceeds four hours, the actual time worked shall be compensated. All Contractors will be paid from the time that an operator and required equipment arrives at a MassHighway designated location to the time they are released by MassHighway. Contractors that arrive within 45 minutes of being called shall be paid a travel allowance equal to 30 minutes. Contractors that arrive after 75 minutes from being called will not be guaranteed the four-hour minimum compensation, unless additional travel time has been approved by the District Highway Director. Contractors that repeatedly arrive after 75 minutes may be replaced in the rotation based on the decision of the District Highway Director. Increased travel times may be allowed with the approval of the District Highway Director depending on traffic, weather and other conditions beyond the control of drivers and owners. Also, in the event that MassHighway has a surplus of equipment at a particular location and an alternate work location is offered to an Owner that is a significant distance away from the original location, the District Highway Director may approve increased travel times. In all cases the 30-minute travel allowance compensation will remain fixed.

Contractors that are requested to provide equipment for post storm clean-up or other scheduled work where MassHighway sets the required arrival time, other than Loaders scheduled to load material, the Contractor shall be paid a travel allowance equal to 30 minutes as long as the Contractor arrives prior to or at the scheduled time. Contractors that are late three or more times will not be called for additional scheduled work. All requests by MassHighway for scheduled work shall be made at least four hours prior to the scheduled start time.

If MassHighway requests a Contractor to travel beyond the limits of their assigned depot, the Contractor shall be compensated from the time they leave until the time they return back to the location they left from. If a Contractor is requested to travel into an area where the compensation rate is higher, the higher compensation rate shall apply while the equipment works in that area. Travel beyond the limits of the Contractor's assigned depot is voluntary. The hours worked by a Contractor beyond the limits of their assigned depot shall not be credited towards their rotation hours at their assigned depot.

All vehicle operators shall be allowed a 15-minute paid break every four hours and a 30-minute paid break every eight hours, for a total of 45 minutes every eight hours. These times cannot be combined to extend break periods and breaks cannot be taken at the end of a shift. Standby time for more than 45 minutes within a depot area or other MassHighway designated staging area, that occurs after an operator has completed an assignment, may 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 staff member 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.

MassHighway may conduct specific training sessions to improve snow and ice operations. 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 sessions. All training sessions are voluntary.

Every two weeks throughout the snow and ice season the Contractor must visit the appropriate depot location to review and sign a bi-weekly summary of hours worked. The summary will contain the Contractor'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 Contractor. If after review by MassHighway there is the need for any changes or corrections, the Contractor will be furnished with a revised copy. MassHighway shall process all hourly summaries in a timely manner.

### **Equipment Breakdowns and Repairs**

Contractors making a good faith effort to repair broken equipment during a work shift 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. Each piece of equipment will only be compensated for one breakdown per 24-hour storm event. 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 Contractor is responsible for all costs to have the vehicle towed, if necessary. Contractors 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. No repairs shall be made along roadways in locations that impact traffic flow or are determined to be unsafe by MassHighway or the State Police. These vehicles shall be removed as soon as possible.

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

### **Safety Requirements**

Any Contractor or Operator who must exit their vehicle for an emergency repair, or any other reason, along the SHLO is required to wear a reflectorized ANSI Class II safety vest and a protective hardhat while outside of their vehicle.

All vehicles and equipment utilized through this Agreement shall be equipped with the following safety equipment:

- One six-inch amber flashing light, mounted on the highest practical point of each vehicle. The light(s) must be visible for a distance of 300 feet, during day light hours, from the front, rear and both sides of the vehicle. Vehicles that have a body or attachment that extends above the rear of the cab, must mount the lighting on a bracket or other device to extend the lighting above the body or attachment. Additional installations may be accepted but the lighting must be visible from any position 360 degrees around the vehicle. All installations must be approved by MassHighway.
- One strip of continuous retroreflective sheeting applied to the rear of all equipment and vehicles, placed as horizontally as possible in an alternating white and red pattern. The sheeting shall be a minimum of 2 inches wide by 60 inches long and meet the requirements of DOT-C2 grade sheeting. DOT-C3 and DOT-C4 grade sheeting shall be allowed. The sheeting shall be placed in a continuous strip across the rear bumper, tailgate or other MassHighway approved location.

All vehicles and equipment utilized through this Agreement having a 40000-120000 Vehicle Class Code, or a GVW greater than or equal to 16,001 lbs, shall be equipped with the following additional safety equipment:

- A minimum of two additional flashing amber lights mounted on the rear of either side of the vehicle. These lights shall be at least six inches in one dimension along the lens width or length, mounted no less than six feet above the roadway and visible for a distance of 300 feet during daylight hours.
- One additional strip of continuous retroreflective sheeting applied to the rear of all equipment and vehicles, placed as horizontally as possible in an alternating white and red pattern. The sheeting shall be a minimum of 2 inches wide by 60 inches long and meet the requirements of DOT-C2 grade sheeting. DOT-C3 and DOT-C4 grade sheeting shall be allowed. One strip of sheeting shall be placed continuous across the rear bumper, lower tailgate or other MassHighway approved location. The additional strip of sheeting shall be placed at or near the top of the tailgate or other element approved by MassHighway.

The Contractor 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. All equipment shall be equipped with safety lighting in conformance with MGL Chapter 90, Section 7E as well as 540 CMR, Section 22.06 and the following:

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 CFR part 382. ([www.fmcsa.dot.gov/rulesregs/fmcsr/regs/382.htm](http://www.fmcsa.dot.gov/rulesregs/fmcsr/regs/382.htm)).

At all locations where anti-icing and deicing chemicals are stored, MassHighway shall provide a material safety data sheet (MSDS) and appropriate protection equipment for all vendors. In addition MassHighway shall provide a portable eyewash station at each depot where chemicals are dispensed.

### **Licenses, Registration and Insurance Requirements**

By signing this Agreement, the Contractor has consented to Attachment G, Contractor License Certification and the terms contained therein. This certification requires Contractors to verify the license status of all vehicle or equipment operators and prohibits the use of unlicensed operators in the performance of this Agreement. The Contractor is further obligated to report the loss, revocation or suspension of any operator's license between October 15th and April 15th. Each Contractor must complete Attachment G prior to receiving Agreement approval and or being allowed to work. The use of any unlicensed operator may be considered a material breach of this Agreement, subjecting the Contractor to sanctions including but not limited to monetary penalties, withholding of payments, Agreement suspension or termination.

MassHighway reserves the right to implement a system to verify the license status of all drivers and operators of equipment subject to this Agreement. Once implemented, this system will require Contractors to submit the name, license number and date of birth for all drivers and equipment operators for verification by MassHighway or its designee. This system may require Contractors to enter information into a secure internet application or to enter the information into an approved MassHighway form and submitted via email. It shall be the Contractor's responsibility to submit the required license data prior to permitting said drivers or equipment operators to work under this Agreement. Failure to list operators may be considered a material breach of this Agreement, subjecting the Contractor to sanctions including but not limited to monetary penalties, withholding of payments, Agreement suspension or termination.

During the term of this Agreement each Contractor 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 Contractor 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 Contractor is responsible to ensure that all equipment listed in this Agreement is legally insured as required by all Massachusetts laws and regulations. Contractors shall be responsible for damage to private property.

## **2008-2010 Agreement Submission Deadlines and Requirements**

**In order to receive MassHighway's Sign-up Bonus, Extended Season Bonus and to maintain seniority within a depot location, Contractors must complete, sign and submit the specified documents on or before the following deadlines.**

### **September 15, 2008 - The following items must be delivered to the District Office:**

1. One original Equipment Listing and Vehicle Code sheet for each Depot a Contractor requests to work.
2. One original of MassHighway's 2008-2010 Snow and Ice Control Agreement Signature Page.

### **October 15, 2008 - The following items must be delivered to the District Office:**

1. A copy of the current vehicle registration for each piece of equipment listed on the Vehicle Code sheet. Equipment without Massachusetts Commercial Snow Removal (SR) plates must submit a new registration prior to January 1, 2009.
2. Attachment G, Operator License Certification Form
3. Attachment H, Executive Order 481, Contractor Certification Form
4. A minimum of two recent photographs of each piece of equipment listed in the Agreement. 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, all vehicle accessories, safety lights and retroreflective sheeting.
5. W-9 Tax Form (Only required for new vendors or returning vendors who have changed their company name, address or tax identification number.)

### **November 15, 2008 – The following items must be completed and delivered to the Depot:**

1. A Vehicle Inspection Checklist signed by the vehicle owner and MassHighway representative.
2. A Safety Inspection Checklist signed by the vehicle owner and MassHighway representative.
3. Attachment I, Certificate of Spreader Calibration form. (If applicable)
4. A Spreader Body Volume Form. (Only required if the body is new or has been modified).

### **October 15, 2009 - The following items must be delivered to the District Office:**

1. A copy of the current vehicle registration for each piece of equipment listed on the Vehicle Code sheet. Equipment without Massachusetts Commercial Snow Removal (SR) plates must submit a new registration prior to January 1, 2010.
2. Attachment G, Operator License Certification Form
3. Attachment H, Executive Order 481, Contractor Certification Form

Note: New photographs will only be required for new vehicles or if a Contractor makes approved equipment modifications.

### **November 15, 2009 – The following items must be completed and delivered to the Depot:**

1. A Vehicle Inspection Checklist signed by the vehicle owner and MassHighway representative.
2. A Safety Inspection Checklist signed by the vehicle owner and MassHighway representative.
3. Attachment I, Certificate of Spreader Calibration form. (If applicable)
4. A Spreader Body Volume Form. (Only required if the body is new or has been modified).

## **Agreement Approval**

This Agreement and necessary attachments are required to be mailed or delivered to the District Headquarters in which the Contractor 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 as time allows, but will not be time stamped until they are received at the District Headquarters.

MassHighway's District Highway Directors will determine the equipment needs, including quantity, type and accessories at each depot location. First priority will be given to Contractors that meet the specified deadlines for submission of the all required documents and vehicle inspection/calibration. Second priority will be given to Contractors with the greatest number of consecutive years of service at the chosen depot and third priority will be given to Contractors with the greatest number of total years worked for MassHighway. Contractors can indicate up to three depot locations that they are willing to work at. Please review the MassHighway District Boundary Maps and District office listing.

Contractors who have incomplete submissions will not be considered for assignment, unless other equipment is not available and approved by the District Highway Director. Contractors will be notified as to what information is outstanding. Contractors that deliver their agreements to the District Office will be given a receipt and Contractors that mail in their agreements will be mailed a receipt.

Upon submission of all the required documents, MassHighway will either contact the Contractor for an inspection of their equipment or establish dates, times and locations when inspections will be performed. In order to maintain first priority at a requested depot, Contractors must have their equipment inspected by the deadlines shown on page 6. Equipment inspections may be performed at an agreed upon location approved by the District Maintenance Engineer. Upon a completed vehicle inspection and approval of this Agreement by the District Highway Director, Contractors will be notified of their assigned depot location.

## **Rotation**

MassHighway's District Highway Director will determine the required type and quantity of all vehicles and accessories for each depot/gang. Approved equipment shall be rotated throughout the season. In establishing the rotation list, consideration will be given to the submission deadlines and required documents as listed on page 6, response time, and job performance. Equipment will not be considered as part of a rotation unless all required documents are submitted and approved and all required vehicle inspections have been performed.

Rotation will be based on the per vehicle average hours worked to date. The total number of hours shall include hours worked during normal operations and hours that the equipment was requested to work but, not available, broken down or awaiting contract document submission. When MassHighway requests equipment and the Contractor fails to respond or is unavailable to work, the total hours for that event shall count towards rotation hours as though the equipment actually worked. Each Contractor is allowed two excused absences, due to vehicle repairs or personal reasons, as long as the Contractor notifies MassHighway, in advance and prior to 12:00 PM on a weekday, that they are unavailable for a defined period. Each defined period can not exceed more than five days from the date of notification. Failure to respond or notifications from a Contractor that they will be unavailable greater than the two excused absences will result in the Contractor's equipment being removed from the rotation list and being placed in the spare equipment listing.

The following hours worked for MassHighway shall not be credited towards a Contractor's rotation hours:

- Hours worked by a Contractor beyond the limits of their assigned depot.
- Hours worked by a Contractor performing post storm clean up or hauling snow.
- Hours worked by a Contractor hauling de-icing, anti-icing materials or sand.

Should a Contractor choose not to continue providing a material 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 Contractor. The next qualified Contractor shall be defined as the Contractor that has worked the greatest number of years providing MassHighway with a roadway loader within that depot. The selected contractor shall have a loader with a bucket capacity of 3 cubic yards or greater. If there are no available loaders with a bucket capacity of 3 cubic yards or greater, than the Contractor with the greatest number of years with the next largest loader shall be selected. The Contractor selected to provide the material loader must demonstrate the ability to provide a loader and operator within 45 minutes from the time called by MassHighway. Failure to meet this requirement shall be cause for MassHighway to select the next qualified Contractor.

### **Resolution of Issues**

All issues that affect a Contractor's rate of pay, hours worked, working conditions, safety issues or the behavior/performance of a MassHighway employee, should be verbally reported to MassHighway as soon as possible. To ensure the proper resolution of each issue, a written statement signed by the Contractor shall be submitted within 72 hours of the completion of the storm event in which the incident occurred, to the District Highway Director and MassHighway's Snow and Ice Dispute Resolution Committee. Issues that occur during non-snow and ice operations must be submitted in writing within 72 hours of the Contractor being made aware of the issue.

The District Highway Director shall respond within 10 business days from the receipt of each written statement. Any necessary meetings shall be held within this 10-day period. All Contractors shall have the option to be represented by any individual person that they choose. If a Contractor chooses to be represented by an attorney they must inform MassHighway 48 hours prior to the meeting. Issues not received within the specified 72-hour period are not subject to the 10-day response time. All decisions will be based on the information submitted by the Contractor, MassHighway employees, and the conditions stated in this Agreement.

If an issue is not resolved in a manner that is satisfactory to the Contractor, they can submit a claim to MassHighway's Snow and Ice Dispute Resolution Committee. The committee shall be comprised of five members, appointed by the Commissioner. The committee shall also have two additional members comprised of a secretary and a representative from MassHighway's legal counsel. Information must be sent to: Snow and Ice Dispute Resolution Committee, Massachusetts Highway Department, State Transportation Building, Room 7410, 10 Park Plaza, Boston, MA 02116.

MassHighway will issue all reports or memos regarding a Contractor's performance or other documented issues within 10 business days of the District Highway Director's review and approval.

### **Global Positioning System (GPS)**

MassHighway, at its discretion, may issue GPS equipment to a Contractor. The GPS system will be utilized as a way to increase safety, track vehicle location and redeploy or dispatch equipment. MassHighway will not use the GPS system as a method of payment unless requested by the Contractor to verify time and location.

Upon the issuance of said GPS Equipment, MassHighway shall further provide, under separate agreement (Attachment F, GPS Handset Agreement), to the Contractor the terms and conditions on the operational use and maintenance responsibility for said GPS equipment. The GPS Agreement shall be incorporated and made part of this agreement.