

SNOW AND ICE CONTROL AGREEMENT
2023-2024

This Agreement is made this ____ day of _____, 20____, by and between the City of Brockton, Massachusetts, a Municipal Corporation duly organized under the laws of the Commonwealth of Massachusetts and having a usual place of business at 45 School Street in Brockton, MA 02301, hereinafter referred to as "CITY," and

Contractor Name: _____
(PLEASE PRINT LEGAL NAME OF CONTRACTOR, COMPANY OR CORPORATION)

Contractor Address: _____

Contractor Taxpayer Identification Number or Social Security Number is: _____
(Only Sole Proprietors and LLCs with NO employees to provide SSN)

Contractor shall be hereinafter referred to as "OWNER."

In consideration of mutual promises between the parties and for other valuable considerations, it is agreed that:

1. The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:
 - a. This Agreement;
 - b. All Attachments including Appendices A through D; and
 - c. Amendments, or other changes mutually agreed upon between the parties.
2. OWNERS are not employees of the CITY. OWNERS are independent contractors as defined by the Massachusetts Independent Contractor Law, M.G.L. c. 149 § 148B, for all legal purposes in connections with the snow removal operations procured by this agreement.
3. The term of this Agreement shall be from **November 1, 2023 to May 15, 2024**.
4. The CITY hereby agrees to hire the equipment described below by OWNER as follows _____

for the use on behalf of the CITY, and to pay for the use of said equipment ***for plowing, sanding, and hauling purposes*** at the rates shown below:

5. **CITY OF BROCKTON-SNOW PLOWING RATES ARE SET FORTH AND DEFINED BY THE TABLE INCLUDED IN APPENDIX A, WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. The attached rates shall be in effect for the term of this Agreement.**
6. The OWNER warrants that the equipment is in first class condition and fit for use and agrees to abide by the decisions of the CITY with respect to fitness.
7. The OWNER agrees that the use of the equipment shall be devoted for the benefit of the CITY as the Superintendent of the Highway Division, the Commissioner of the Department of Public Works, and/or their authorized agent(s) shall direct and that all work shall be done in a proper manner and in a way satisfactory to the duly authorized agent or representative of the CITY.
8. OWNER agrees to furnish a duly licensed and responsible operator for the hired equipment and to pay all expenses incidental to the operations and insurance thereof.

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If the OWNER is a sole proprietor or a one member LLC that utilizes an operator other than him or herself, then OWNER must provide proof that the operator is included as additional insured under OWNER'S automobile liability policy.

9. By signing this Agreement, the OWNER certifies under the pains and penalties of perjury that the OWNER shall not knowingly use unlicensed vehicle operators in connection with the performance of this Agreement. This Agreement prohibits the use of unlicensed operators in the performance of this Agreement. The use of any unlicensed operator shall be considered a material breach of this Agreement, subjecting the OWNER to sanctions including but not limited to withholding of payments and Agreement suspension or termination.
10. During the term of this Agreement each OWNER shall maintain a current vehicle registration for the specified equipment in this Agreement. Out of state registrations are allowed, but they must meet all the requirements of the Massachusetts Registry of Motor Vehicles (RMV) and all other applicable motor vehicle laws. All specified equipment in this agreement must have a valid safety sticker. The OWNER agrees to promptly forward a copy of any new or revised registration of listed equipment to the Commissioner of the Department of Public Works. Failure to keep listed equipment registered will terminate this Agreement relative to each unregistered piece. All registration plates must be attached to the vehicle or equipment at all times during the snow and ice operations.
11. The OWNER is responsible to ensure that all equipment listed in this Agreement is fully insured as required by all Massachusetts laws and regulations. Contractors shall be solely responsible for damage to public and private property caused by operation of their equipment by them or their employees.
12. **Use of SUBCONTRACTORS or SUBCONTRACTING of snow removal services under this Agreement is STRICTLY PROHIBITED.**
13. Payments under this Agreement shall be made pursuant to the provisions of the City Charter relating to the payment of municipal obligations. This Agreement is subject to appropriation and is subject to and governed by General Laws Chapter 44, section 33. **For Contractor's Billing Procedures please see APPENDIX B attached hereto and incorporated herein by reference. All bills must be in the DPW Highway Office within two (2) weeks of each use for which the hiring of the equipment is necessary.**
14. For one (1) and up to fourteen (14) working **plow** vehicle(s) on contract with the CITY: In consideration of mutual promises by and between the parties and for other valuable consideration, it is agreed that the CITY will pay and the OWNER will accept a minimum of twenty (20) hours for payment throughout the entire Agreement term ***provided that this Agreement has been signed and all required information received no later than November 1, 2023.***

For fifteen (15) or more working **plow** vehicles on contract with the City of Brockton: In consideration of mutual promises by and between the parties and for other valuable consideration, it is agreed that the CITY will pay and the OWNER will accept a minimum of twenty-five (25) hours for payment throughout the entire Agreement term ***provided that this Agreement has been signed and all required information received no later than November 1, 2023.***
15. If the OWNER has previously submitted all documents required under this Agreement ***for working plow vehicles*** prior to ***November 1, 2023***, OWNER may elect, upon their own request, to receive up to ten (10) hours of pay prior to the performance of work under this Agreement. ***This request must be submitted to the Operations Division prior to November 15, 2023. Any request received after November 15, 2023 will not be approved.*** If the OWNER elects to receive such payment, it shall be in lieu of the same amount of time taken by the OWNER that has been previously guaranteed under this Agreement.
16. The minimum hours for snow plowing per storm shall be increased from four (4) hours to six (6) hours.
17. Prior to commencement of any work under this Agreement, the OWNER shall provide proof of insurance, providing, at a minimum, the following coverage:

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A. Workers' Compensation Insurance: The OWNER shall maintain Workers Compensation in accordance with the laws and regulations of the Commonwealth of Massachusetts.

B. Business Automobile Liability: The OWNER shall maintain business automobile liability insurance covering all owned, non-owned, leased, rented and hired automobiles used in the performance of this Agreement. The limits of liability shall be as follows:

- i. Bodily Injury: \$100,000.00 per occurrence
- ii. Property Damage: \$100,000 per occurrence

C. Commercial General Liability including Snow Plow Operations Coverage Endorsement (CG 22 92):

The OWNER shall maintain a commercial general liability policy for bodily injury and/or property damage claims arising out of the OWNER'S completed snow plowing operations. The limits of liability shall be at least as follows:

- i. Combined Bodily Injury and Property Damage liability: \$100,000.00 per occurrence

The OWNER shall name the CITY as "Additional Insured for Snow Plowing Operations" including by endorsement Ongoing and Completed Operations. With the exception of Workers' Compensation and Automobile Liability, the CITY will not accept being named as "Certificate Holder". Please be aware that there may be a charge for this type of policy to be paid at your expense, so you may want to consult with your insurance agent.

Said insurance must remain in full force and effect throughout the term of the Agreement. In the event the insurance expires during the term of this Agreement, the OWNER shall provide proof of renewed insurance seven (7) days before the expiration of the policy.

18. To the fullest extent permitted by law, the OWNER shall indemnify, defend, and hold harmless the CITY and their respective officers, directors, employees and agents ("Indemnified Parties") from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities, (including costs, reasonable attorneys' fees, consequential damages and punitive damages), arising out of or resulting from, or alleged to arise out of or arise from, the performance of OWNER'S work under this Agreement whether such claim, damage, demand, loss or expense is attributable to bodily injury, personal injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting there from; but only to the extent attributable to the negligence of the OWNER or any entity or individual for which it is legally responsible or vicariously liable and; regardless whether the claim is presented by an employee of OWNER. Such indemnity obligation shall not be in derogation or limitation of any other obligation or liability of the OWNER contained in this Agreement or otherwise. This indemnification shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the OWNER under any workers' compensation acts, disability benefits acts or other employee benefits acts. This indemnification shall be in addition to any indemnity liability imposed by the Agreement and shall survive the completion of the work performed under or the termination of the Agreement.

The OWNER'S assumption of liability is independent from, and not limited in any manner by the OWNER'S insurance coverage obtained pursuant to the terms of this Agreement.

19. The OWNER and the CITY recognize that time is of the essence in this Agreement and that the CITY will suffer financial loss if snow removal is not performed in accordance with the Agreement. The parties further recognize the delays, expense and difficulties involved in proving, in a legal proceeding or otherwise, the actual loss suffered by the CITY in the event the snow is not removed in a timely manner. Accordingly, instead of requiring any such proof, the OWNER and the CITY agree that, should the OWNER fail to commence or diligently perform according to the terms of the Agreement, the OWNER agrees to pay to the CITY, as liquidated damages (but not as a penalty) the amount equivalent to the combined hourly rate of each piece of equipment covered under this Agreement for each hour (not to exceed eight (8) hours per calendar day) that OWNER fails to commence or diligently perform the work in accordance with the Agreement documents and/or is in violation of the Agreement.

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20. **All** pieces of equipment and/or personnel working on behalf of the OWNER must maintain telephone communication capabilities, in addition to Global Positioning Systems as outlined below, throughout the life of this Agreement. OWNER shall provide all telephone numbers to the Operations Superintendent. OWNER shall bear all costs associated with obtaining and maintaining the aforementioned telecommunication device(s) for each piece of equipment/personnel working on behalf of OWNER in the CITY.

VERIZON GPS TRACKING SYSTEM (Provided and owned by The City of Brockton)

- The GPS tracking device must be placed in all contractors' vehicles.
 - The GPS tracking device must be fully charged prior to and during the snow operation.
 - The GPS tracking device must be turned on during the entire snow operation and charged or charging as needed.
 - The GPS tracking device must be turned off and properly secured for the next snow operation, after completion of the snow operation.
 - The contractor is responsible for safe and proper care of all parts of the GPS tracking system device.
 - Damages or loss of GPS tracking device systems will result in deducting said amount from monies owed by the City of Brockton.
 - Devices and accessories will be returned to the City of Brockton at the end of the winter snow season.
21. The OWNER agrees that compensation is fully contingent upon the actual number of vehicles in use while performing job duties under this Agreement.
22. The terms of this Agreement and any disputes that arise hereunder shall be governed by the laws of the Commonwealth of Massachusetts.
23. This Agreement may be terminated upon one (1) day's notice by the CITY to the OWNER, and will not continue for any stated period other than for the Agreement term set forth in Paragraph 3 above.

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I, on behalf of and/or duly authorized by OWNER, hereby sign this agreement certifying that I have read, understand and agree to comply with all of the conditions stated within the 2022-2023 Snow and Ice Control Agreement and any applicable attachments.

OWNER Signature DATE

DPW COMMISSIONER DATE

Approved as to form only:

MAYOR DATE

CITY SOLICITOR DATE

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APPENDIX A

CITY OF BROCKTON - SNOW PLOWING RATES - INCREASE EFFECTIVE FY 2023

<u>EQUIPMENT TYPE</u>	<u>PLOW TYPE</u>	<u>NEW RATE:</u>
4 x 4 PICKUP	3/4 Ton 9' Power Angle Plow	\$115.00
	1 Ton 9' Power Angle Plow	\$115.00
6 WHEELER	Min. 11' One Way Plow	\$110.00
	Min. 10' Power Angle Plow	\$120.00
	10' to 12' Power Angle All Wheel Drive	\$129.00
10 WHEELER / TRIAXLE	10' to 12' One Way Plow	\$130.00
	Min. 12" Power Angle Plow	\$140.00
LOADER / BACKHOE	11' to 12' 2 Wheel Drive	\$135.00
	10' to 13' Power Angle 4x4	\$185.00
FARM TRACTOR	12' to 13' Power Angle 4x4	\$155.00
LARGE SKID STEER	Min. 9' Power Angle Plow	\$125.00
SMALL LOADERS (2-3 Yards)	10' One Way Plow	\$185.00
	11' to 13' One Way Plow	\$215.00
	12' Power Angle Plow	\$240.00
LARGE LOADERS (4-5 Yards)	10' to 13' One Way Plow	\$200.00
	15' One Way Plow	\$215.00
	16' to 18' One Way Plow	\$240.00
	12' to 15' Power Angle Plow	\$235.00
	16' to 18' Power Angle Plow	\$265.00
GRADERS	11' to 13' Front Plow	\$215.00
	13' Plus Front Blade	\$240.00
	12' Front Plow and a 10' Side Plow	\$260.00
SMALL GRADERS	Min 10' Plow	\$195.00
SANDERS	7-9 Cubic Yards	\$129.00
	10-12 Cubic Yards	\$160.00
	14+ Cubic Yards	\$185.00
SNOW HAULING	Trailer Dumps	\$140.00
	10 Wheelers	\$110.00
	Tri-Axle	\$110.00
	Skid Steers	\$125.00
	Backhoes	\$130.00
	Loaders 2-3 Yards	\$190.00
	Loaders 4-5 Yards	\$215.00

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APPENDIX B

CONTRACTOR'S BILLING PROCEDURES

SEND TO:
DEPARTMENT OF PUBLIC WORKS
OPERATION DIVISION – HIGHWAY SECTION
ATTENTION: COLLEEN/JENNA
301 OAK HILL WAY
BROCKTON, MA 02301

- Please allow up to five (5) working days for the hours worked by each contractor to be turned in by the Route Foreman. Once the hours are submitted to the General Foreman, a breakdown for each contractor will be provided showing the equipment and the hours worked for each plowing operation. This can be used to invoice the City of Brockton for the hours worked.
- Once the invoices are received, the General Foreman will review the hours and equipment billed and forward them to DPW - Operations for processing.
- *No* hours will be given over the phone.
- *No* invoices will be processed after May 31, 2024.

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CHECKLIST TO ASSIST OWNERS IN COMPLETING APPLICATION PROCESS:

(All Items Specified Below Must Be Completed And Attached To The Executed Agreement)

_____ EQUIPMENT LIST

_____ TAX CERTIFICATE & CERTIFICATE OF NON-COLLUSION (APPENDIX C)

_____ CERTIFICATE OF AUTHORIZATION TO SIGN (APPENDIX D)

_____ ATTACH CERTIFICATE(S) OF INSURANCE (SEE ¶ 17 OF AGREEMENT)
MUST HAVE ALL CONTRACTED VEHICLES LISTED ON INSURANCE FORM

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APPENDIX C

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. c.62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature of Individual or Corporate Officer

Legal Name of Corporation or Business

*Employer Identification Number (EIN)
or Social Security Number (SSN)*

Date

* Approval of this Agreement will not be granted unless this certification clause is signed by the Applicant.

* Your SSN or EIN may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under the pains and penalties of perjury that this Agreement has been entered into in good faith and without collusion or fraud with any other person. As used in the certification, the word “person” shall mean any natural person, business partnership, corporation, union, committee, club or other organization, entity or group of individuals.

Signature of Individual or Corporate Officer

Legal Name of Corporation or Business

Date

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APPENDIX D

(CERTIFICATE OF AUTHORIZATION)

**Note: A certified vote of the corporation may be substituted for this form.*

The OWNER, _____, is: (CHECK ONE)

___ A. a corporation formed and existing under the laws of the state of _____, and pursuant to the corporate by-laws,

(Insert Name & Title of Authorized Rep)

is authorized to execute contracts in the name of said corporation. Such execution of any contract or obligation in this corporation's name on its behalf by such duly authorized individual shall be valid and binding upon the corporation. (ATTACH COPY OF OFFICIAL CERTIFICATE OF CORPORATE VOTE)

___ B. a limited liability company or a partnership formed and existing under the laws of the state of _____, and pursuant to the limited liability company agreement or partnership agreement, _____.

(Insert Name & Title of Authorized Rep)

is authorized to execute contracts in the name of said company or partnership. Such execution of any contract or obligation in this company or partnership's name on its behalf by such duly authorized individual shall be valid and binding upon the company or partnership.

___ C. is a sole proprietorship owned and operated exclusively by the undersigned.

(Insert Name & Title of Authorized Rep)

Execution of any contract or obligation in this sole proprietorship's name by such duly authorized individual shall be valid and binding.

SIGNED under the pains and penalties of perjury this ___ day of _____, 20___.

Signature:

(Must be signed by Corporate Officer, Partner, Member or Sole Proprietor)

Print Name of Above Signatory

Date: