

**TOWN OF DAMARISCOTTA, MAINE
WINTER ROAD MAINTENANCE
SANDING, SALTING, and PLOWING**

**Five-Year Contract
Term: September 1, 2019 to August 31, 2024**

This contract between the Town of Damariscotta, by and through its Board of Selectmen (referred to as "Selectmen"), and Hagar Enterprises Inc. (referred to as "Contractor") provides for services related to the sanding, salting, and plowing of all Town roads exclusive of the roads covered in the Downtown Winter Maintenance Contract. The administration of this contract for the Town shall be the responsibility of the Town Manager and the Town Road Commissioner. When the contract refers to "Contractor" it includes employees and agents of the Contractor.

A. SERVICES:

Contractor agrees to remove snow, properly sand and control ice that accumulates from sleet, freezing rain, snowfall or drifting snow, from approximately twenty one and a half (21.5) miles of State-aid and Town streets and roads between September 1, 2019 to August 31, 2020 of the first year, September 1, 2020 to August 31, 2021 of the second year, September 1, 2021 to August 31, 2022 of the third year, September 1, 2022 to August 31, 2023 of the fourth year and September 1, 2023 to August 1, 2024 of the fifth year. The roads included in this contract are as follows: (distances are approximate):

<u>Street/ Road</u>	<u>From Rd/Section</u>	<u>To Rd/Section</u>	<u>Length</u>	<u>Priority</u>
1. Back Meadow	Main St	Nobleboro Town line	2.25	High
2. Belvedere	US Rt. 1	Nobleboro Town line	1.03	Med
3. Belvedere Ext.	Main St.	US Rt. 1	.10	High
4. Biscay*	Main St	Bremen Town Line	3.21	High
5. Branch	Belvedere	End	.36	Med
6. Bristol*	Main St	Bristol Town line	1.91	High
7. Center *	US Rt. 1	Nobleboro Town line	.39	High
8. Chapman	Church St	School St	.33	Med
9. Church	Main St (North)	Main St (South)	.97	High
10. Egypt	Biscay Rd	Back Meadow Rd	2.92	High
11. Hammond	Main St	Back Meadow Rd	.23	Med
12. High	Bristol Rd	School St	.29	High
13. Hodgdon	Church St. (East)	Church St. (West)	.80	Med
14. Keene Woods	Center St.	Loop of Keene Woods	.47	Med
15. Lessner	Biscay Rd	Bristol Town Line	1.57	Med
16. Midcoast	US Rt. 1	Center St.	.25	Med
17. Miles	Bristol Rd	End	.13	High
18. Oak	Biscay Rd	Biscay Rd	.16	Med
19. Pine Ridge	Bristol Rd	Loop of Pine Ridge	.72	Med
20. Pinkham	Biscay Rd	End	.44	Med
21. Pleasant	Church St	End	.13	Med
22. Rocky Run	Biscay Rd	Egypt Rd	.24	Med

differences regarding work or interpretation of this agreement by mediation following the conclusion of the storm or weather related emergency. Such performance shall not be considered to be a waiver of the rights of either party under mediation.

In the event of a claim of non-performance by either party, the party claiming a breach by the other shall give the alleged breaching party notice by the quickest means possible, followed immediately by written notice to the address of the alleged breaching party as provided hereinafter. The immediate and written notice shall provide the other party with the exact nature of the alleged breach and exactly what the party should do to correct the breach.

A. If the Town is alleging that the Contractor is in breach due to failure to clear snow or ice or some other specific violation of the work called for in the contract, the contractor shall immediately correct the alleged breach and in doing so does not waive its right to dispute the allegation in a later mediation as hereinafter provided. If the allegation of a breach occurs during a storm and related to the work of the Contractor and the Contractor refuses or fails to remedy the alleged breach immediately, placing the public at risk, the Town may terminate this agreement on seven (7) days' notice to the Contractor.

B. If the Contractor is alleging that the Town is in breach and immediate action by the Town would correct the alleged breach by allowing the Contractor to perform its work then the Town shall immediately correct its action or failure to act. If the alleged breach concerns payment or non-weather or non-storm related actions by the Town, the Town shall, on notice of the exact nature of the claim, have seven business days to correct the alleged breach. If not so corrected, the Contractor may, on seven days' notice beginning at the time of refusal to correct, terminate the contract.

C. Either party may invoke mediation in order to resolve the dispute prior to termination and such invocation of mediation shall toll the running of the seven day termination notice until mediation is complete. During the period pending mediation both parties shall continue to be bound by the duties and obligations under this contract. Such mediation shall be the sole remedy under this agreement

D. The parties agree to submit any dispute to mediation under the Maine Mediation Service.. All mediation under this agreement shall be commenced not more than ten (10) days from the date of notice and completed not more than 21 days following such notice. Both parties, as a part of this agreement agree to cooperate fully with any mediator and the mediation process and to move such mediation along as rapidly as possible in order to minimize any negative effect or delay that such may have on the Town. The party losing the mediation shall be responsible for the cost of mediation and if both parties are found to be responsible, shall share the cost of the mediation equally.

I. PAYMENT SCHEDULE.

The Selectmen agree to pay the Contractor for each agreement period as follows:

Roads listed Section A:

and notify the Contractor of any problems, errors or non-performance. The Road Commissioner may order that work be done in a satisfactory manner to be determined by the Road Commissioner.

G. BILLS AND CLAIMS.

The Contractor is responsible for all costs for labor, materials, equipment, fuel, and other items incurred in the performance of this contract.

H. BREACH OF CONTRACT.

If the Contractor is in violation of any terms of the contract, or if the Selectmen or its representative is of the opinion that the work described in the contract is being performed unsatisfactorily, the Town shall immediately give oral notice to the Contractor and written notice to the Contractor's Surety. Upon receipt of such notice, the Contractor shall be given reasonable time ("reasonable time" may vary depending on the nature of the breach, and road and weather conditions) to comply with the terms and conditions of the contract or rectify the unsatisfactory work. In the event that the Contractor still does not for whatever reason perform duties of the contract to the satisfaction of the Selectmen, or if the Contractor is not in compliance with the terms of the contract, the Town shall have the following options:

1. Terminate the Contract: The Selectmen may terminate the contract by sending the Contractor and the Contractor's Surety a written notice stating the reason for termination. Contractor shall be paid for all work that is satisfactorily done by that time, but the remainder of the money due under the contract may be used to obtain another contractor to maintain the roads.
2. Substitution: The Selectmen may hire a substitute contractor to plow and sand the roads for any period of time considered necessary. Substitution shall be paid from the remainder of any money due to the Contractor (but unearned) under the contract.
3. In the event the Town is unable to find a substitute contractor, the Town shall be entitled to receive from the Contractor as damages an amount equal to the higher of: (1) twice the outstanding balance which would have been paid by the Town if the Contractor had performed as agreed for the remainder of the current year of the Agreement; or (2) any actual, incidental and compensatory damages suffered by the Town as the result of the Contractor's failure to perform. Provision for such damages shall be made a condition of the bond.
4. The Selectmen shall seek any other legal remedies available to enforce the contract.

I. DISPUTE RESOLUTION.

If either party fails to perform according to any of the terms or conditions of this Agreement at the time and in the manner specified, such failure to perform shall constitute a breach of this Agreement.

The parties to this contract recognize that the primary goal of this agreement is to provide for the public safety of citizens using the roads and parking lots in Damariscotta. In keeping with this the parties agree to work together in the event of a disagreement during a snow storm or ice storm or other weather related emergency to provide for the public safety and to resolve any

11. Contractor agrees to fully comply with the rules for use and maintenance of the Town's sand and salt storage facility which rules are attached hereto as Appendix B and incorporated herewith by reference.
12. Contractor will reimburse the Town, through direct payment or a deduction from the final annual payment to the Contractor, for the cost of replacement of guardrails, signs, signposts, or guard posts that are damaged by reason of snow removal operations under this agreement, if the Road Commissioner determines that such damage could have been avoided by the Contractor.
13. Contractor shall perform its Town responsibilities prior to allocating the resources identified in section C.6 to any other job.
14. Contractor will provide the Selectmen a list of equipment and contact cell phone numbers not later than September 15th of each contract year.

D. INSURANCE.

Contractor agrees to maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for bodily injury and property damage claims which arise from snow removal or sanding operations under this contract. Contractor agrees to maintain Business Auto Liability insurance with a Combined Single Limit of not less than \$1,000,000. Contractor agrees to name the Town as an additional insured on both the General Liability and Business Auto Liability. Contractor agrees to maintain Workers Compensation coverage per Maine State Statute and Employers Liability with aggregate limits of not less than \$1,000,000. The contractor will require of their insurance company(ies) that should any of the limits be changed or coverages be cancelled on the above mentioned policies, the contractor's insurance carrier(s) will notify the Town in writing in advance. The Contractor will provide to the Town a Certificate of Insurance evidencing the above mentioned coverages before the project begins and upon subsequent renewals for a period not less than two years after the project is completed. The Contractor is responsible for all subcontractors and will require the subcontractors meet the same insurance requirements.

E. SURETY BOND OR LETTER OF CREDIT.

The Contractor is required to execute and file with the Town either a surety bond or letter of credit covering the terms of these specifications in the amount of 65% of the current yearly payment due Contractor pursuant to Section I of this contract from a company authorized to do business in the State of Maine and satisfactory to the Town. Said executed surety bond or letter of credit shall be required for the faithful performance of this Contract and the indemnification of the Town against all loss by reason of any claims, deficits, objects, liens, encumbrances, damages, , or cost of suit arising from the non-fulfillment of any provisions herein contained. The Contractor shall submit such surety bond or letter of credit to the Town by September 15th of each year of the Agreement.

F. SUPERVISION AND CONTROL.

The Contractor has a right and duty to supervise and control its own employees, agents and equipment. The Road Commissioner has a right to inspect winter road maintenance operations

roadways. Contractor must have communication equipped vehicles compatible with the Lincoln County communication system so that messages of urgency can reach the plowing or sanding vehicles. Contractor must respond to messages of urgency from the Road Commissioner, or other officials of the Town. . The Town will provide the Contractor with the access necessary for the Contractor to receive and send communications to County and Town personnel.

5. In the event of an ice storm, sanding or salting shall commence immediately and continue until a safe traveling roadway is provided.
6. Contractor will follow Maine Department of Transportation (MDOT) methods and precautions of plowing, sanding and salting. Such methods and practices as excessive speed of plows and disregard of mailboxes must be controlled by the Contractor and will be monitored by the Road Commissioner. Contractor will fix or replace properly installed mailboxes or roadway traffic signs that have been hit or damaged by Contractor plows.
7. Contractor will provide and maintain manpower and equipment that satisfy the requirements of each of the years of the contract. The minimum equipment required to be dedicated to Damariscotta roads shall be as follows:
 - Two five-ton plow trucks with wing plows
 - One one-ton with wing plow
 - One one-ton with plow
 - Two of the above trucks including at least one of the five ton trucks need to be equipped with five yard or larger sanders.
 - Access to one grader
 - One bucket loader
 - Equipment to apply melting agent
8. The Fire Station driveway, parking lot and bay doors, located on the Biscay Road shall be cleared, shoveled and sanded shall be salted and sanded at the contractor's expense. Additionally, the entrance at the Fire Station must be kept clear throughout the storm. The Town Public Works Department shall be responsible for snow and ice removal on the walkways at the Fire Station.
9. Contractor agrees to supply, deliver and stockpile at the Town's sand and salt shed all of the sand and salt required to properly carry out the Contractor's duties under this Contract. All labor and equipment necessary to stockpile the sand and salt will be the responsibility of the Contractor. All sand and salt will be equal to or better than the quality specified and used by the State of Maine. Salt shall be pre-mixed with sand at a proportion of at least 140 lbs. of salt to one cubic yard of sand.
10. The Contractor will be responsible for loading sand and salt into the trucks. The Contractor will be responsible for cleaning the area outside of the sand and salt shed. The clean-up work will be done no later than May 15th of each year of this Contract or extensions thereof and will include the removal of all sand and salt debris from winter operations. Sand and salt shall be stored at the Town's facilities and used exclusively on Town of Damariscotta roads, parking lots and sidewalks. Contractor will allow the Town's Road Commissioner to take salted sand from the pile for sanding of Town facilities and ways with Town equipment. The Town shall reimburse the Contractor for the cost of these materials.

23. School	Main St	Church St	.17	Med
24. School *	Main St	Bristol Rd.	.86	Med
25. Standpipe	Biscay Rd	Back Meadow Rd	.94	Med
26. Vine St	Church St	End	.13	Med
27. Westview	Bristol Rd	End	<u>.49</u>	Med
		Total Miles	21.49	

*State-aid roads

**State Highway

In addition to the above road miles, Contractor agrees to clear and sand the Fire Station driveway and parking lot, Heater Road to the Town garage and bus turnarounds, a list of which will be provided annually.

At the Selectmen's option, this agreement may be extended for two years, September 1, 2024 to August 31, 2026 (Years 6 and 7). The contractor shall provide the Town with a proposed updated payment schedule (See Section J) for the years 2024-2025 and 2025-2026 no later than eight months prior to the start of years 6 and 7. The Selectmen shall notify the Contractor of its exercise of option no later than six months prior to the start of the two year (Years 6 and 7) extension.

B. INDEPENDENT CONTRACTOR.

The Contractor and its agents and employees, during the performance of this contract, shall act in an independent capacity and not as officers or employees of the Town of Damariscotta. Any and all workers needed to fulfill the obligations of this contract shall be employees or agents of the Contractor and the Contractor shall be solely responsible for complying with applicable State and Federal laws including, but not limited to, workers' compensation, employment security, and minimum wage. The Contractor is responsible for maintaining its equipment in a safe, operable, and legal condition.

C. PERFORMANCE REQUIREMENTS.

1. Contractor will provide and maintain manpower, materials and equipment necessary to satisfy the requirements of this contract.
2. As roads designated as high priority become coated with ice or snow, the Contractor shall apply salt or other melting agent on the crown of the road at a rate of no less than amounts shown on the Maine Local Roads Center Salt Application Chart attached to this contract as Appendix A. In the alternative, the contractor may use a salt brine or other melting agent as long as the use of this alternative melting agent achieves the same result as the use of salt. Moreover, at the Contractor's option, the Contractor may also use salt or a melting agent on medium priority roads to mitigate the effects icy conditions.
3. The Contractor will commence plowing, sanding and salting when the snow on the road surface has reached a depth of no more than one half inch (1/2") on high priority roads and one inch (1") on all other roads. Snow removal and sanding operations shall continue until roadways are cleared of snow to the ditch line. Careful attention shall be given to the melting action so as to remove any and all slush as soon as possible.
4. During severe storms or drifting, plows will continue to operate as necessary to maintain two-way traffic. Immediately following extreme conditions, snow will be plowed back to the ditch line of the

2019-2020 cost per mile \$ 7,134.88 times 21.5 miles = \$ 153,400
2020-2021 cost per mile \$ 7,134.88 times 21.5 miles = \$ 153,400
2021-2022 cost per mile \$ 7,134.88 times 21.5 miles = \$ 153,400
2022-2023 cost per mile \$ 7,313.26 times 21.5 miles = \$ 157,235
2023-2024 cost per mile \$ 7,459.52 times 21.5 miles = \$ 160,379.70

Heater Road, Fire Station parking lot and driveway, and bus turnarounds:

2019-2020 \$ 1.00
2020-2021 \$ 1.00
2021-2022 \$ 1.00
2022-2023 \$ 1.00
2023-2024 \$ 1.00

*Note, cost per mile is rounded to the nearest cent

It is further agreed that payments to the Contractor shall be paid as follows:

1/9 of the contract price on or before the first day of each month, to begin on September 1st of each year of the contract and to end with a May 1st payment.

Any initial payment each year will be held until the Contractor has provided proof of satisfaction of conditions of this contract which shall include but not be limited to insurance certificates for workers compensation and liability coverage, and performance bond or letter of credit.

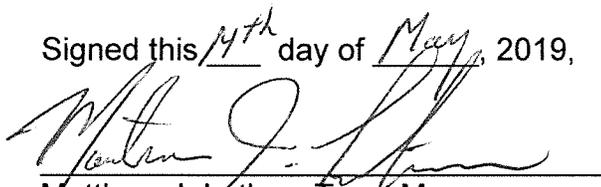
J. ASSIGNMENT, AMENDMENT, SEVERABILITY, AND JURISDICTION.

The Contractor's rights and duties under this contract cannot be assigned or transferred by the Contractor to another person or entity without the express written consent of the Selectmen. This contract may be amended only by written consent of the Selectmen. If any part of this contract is declared by a court to be void and unenforceable, the remainder of the contract continues to be valid and effective. This contract shall be interpreted and enforced pursuant to the Laws of the State of Maine.

K. TOWN MEETING BUDGET APPROVAL

The fulfillment of this contract is contingent upon approved funding at Town Meeting.

Signed this 14th day of May, 2019,



Matthew J. Lutkus, Town Manager
On behalf of the Board of Selectmen
Damariscotta, Maine

Contractor