

**TOWN OF DAMARISCOTTA, MAINE
DOWNTOWN WINTER 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 salting, and plowing of the areas listed below. 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 ice that accumulates from sleet, freezing rain, snowfall or drifting snow from the streets, sidewalks and parking lot listed below 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 31, 2024 of the fifth year. The streets, sidewalks and parking lots included in this contract are as follows:

**1. Main Street Sidewalk & Other
Sidewalks:**

This includes Main Street sidewalks from the Information Center at the southwest end of Church Street to halfway across the Damariscotta/Newcastle Bridge, and sidewalks on Water Street, Cross Street, Theater Street, Elm Street to Lewis Point Road, the Bristol Road sidewalk from Main Street to the Firehouse Gallery, and the Bristol Road/Main Street island sidewalk. Note: The Maine Department of Transportation is responsible for plowing snow removal on Main Street (1B) travel lanes, while the Town contractor is responsible for snow removal from the resulting windrows and from sidewalks.

**2. Parking
lots:**

Municipal Parking Lot: This includes the Municipal Lot between Main Street and the waterfront, including the boat launch ramp, the parking spaces that the Town is required to plow per 2011-2013 release deeds executed with Main Street building owners and western access point to the lot at Main Street, Taco Alley, and the eastern access at Water Street. A map showing the Municipal Parking Lot area that must be plowed and salted as part of this contract is attached as Appendix A.

3. Elm, Cross, Water and Theater Streets and Lewis Point Road

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. Main Street and adjacent sidewalks and the municipal parking lot as defined in section A.2 above shall be plowed and treated as salt-priority areas in strict compliance with the Maine Department of Environmental Protection (DEP) Waste Snow Dump Permit #ME0102768. A copy of this permit is attached as Appendix B. In particular, the Contractor must comply with Section C and D under the "Special Conditions" section of the permit. The Contractor is aware that under this permit, these are the only areas from which snow can be removed and discharged into the Damariscotta River.

The Contractor is responsible for maintaining the records required under the snow discharge permit (Section D) including up-to-date records showing the approximate quantity of waste snow by date of discharge. This record log shall be made available to Town officials upon request. Also as required by DEP, the contractor must provide a list of all employees who will be providing services in the snow discharge area and shall ensure that all of these employees receive training on the requirements of the permit. The Contractor is not responsible for completing the "Best Practices" document since this will be prepared by the Town. All snow collected from Main Street sidewalks shall be discharged into the

River per the snow discharge permit and not blown, shoveled or plowed onto property outside of the public right-of-way.

3. The Contractor shall comply with the provisions contained in the Snow Disposal License Agreement with the River Falls Trust attached hereto as Appendix C.
4. The Contractor will commence plowing, sanding (where permitted) and salting when the snow on the road surface has reached a depth of no more than inch (1") on Elm, Cross, Water and Theater Streets and Lewis Point Road. Snow removal and sanding operations shall continue until roadways are cleared of snow to the ditch line or curbing. Careful attention shall be given to the melting action so as to remove any and all slush as soon as possible.
5. 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 curbing or ditch line of the 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 officials of the Town. The Town will provide the Contractor with the access necessary for the Contractor's vehicles to receive and send communications to County and Town personnel.
6. With the exception of the Elm Street sidewalk, snow removal, salting and sanding (where permitted) on all sidewalks and parking lots will begin prior to or immediately at the onset of a snow storm and continue through the duration of the storm. Elm St. sidewalks will only be cleared once at the end of the snowstorm and only one application of salt will be performed, Salt is to be applied to sidewalks and parking lots as required.
7. In the event of an ice storm, salting shall commence immediately and continue until all roadways, parking lots, and sidewalks are safe.
8. Contractor will follow 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.
9. Contractor agrees to supply, deliver and stockpile all of the sand and salt required to properly carry out the Contractor's duties under this Contract. The contractor may store salt in the Town's Heater Road salt shed. All labor and equipment necessary to stockpile salt will be the responsibility of the Contractor. All 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. Any salt stored property on other than Town

property must be DEP approved. The Contractor shall furnish the Town with a copy of the DEP salt storage permit by September 15 of each year of the contract.

10. The Contractor will be responsible for loading salt into the trucks. The Contractor will be responsible for cleaning the area outside of the salt shed in accordance with Appendix D. 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 salt for treating Town facilities and with Town equipment. The Town shall reimburse the Contractor for the cost of this material.
11. 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 fencing, 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.
12. Contractor will complete the initial treatment of Town facilities listed in this contract before proceeding to private contracts.
13. At the direction of the Road Commissioner or upon the request of the Police Chief or Fire Chief, the Contractor shall provide additional services to clear snow or apply sand at any emergency scene, the cost of which will be borne by the Contractor.
14. Contractor will provide the Road Commissioner 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 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 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 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.

J. SERVICE OF NOTICES.

In any case where it is desirable for the Town to serve upon the Contractor any notice or demand, it shall be sufficient to send a written or printed copy of said notice or demand by certified mail, return receipt requested, postage prepaid, addressed to:

Hagar Enterprises, Inc.
54 Biscay Road
Damariscotta, ME 04543

In any case where it is desirable for the Contractor to serve upon the Town any notice or demand, it shall be sufficient to send a written or printed copy of said notice or demand by certified mail, return receipt requested, postage prepaid, addressed to:

Town Clerk
Town of Damariscotta
21 School Street
Damariscotta, ME 04543

K PAYMENT SCHEDULE.

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

2020	\$103,637.75
2021	\$103,637.75
2022	\$103,637.75
2023	\$106,228.70
2024	\$108,353.27

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.

L. LOADER OPERATIONS.

Should it become necessary to have snow removed during any Agreement Period Contractor will charge \$130 per hour to include the loader operator. All billings for such Loader operations shall be billed separately and shall be paid by the Town within thirty (30) days of receipt of Contractor's invoice.

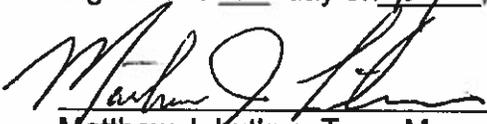
M. ASSIGNMENT, AMENDMENT, SEVERABILITY, AND JURISDICTION.

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.

N 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