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INSPECTOR GENERAL

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January 27, 2017

Thomas J. Tinlin  
Highway Administrator  
Massachusetts Department of Transportation  
10 Park Plaza, Suite 7410  
Boston, MA 02116

**Re: MassDOT's Payments for Individuals' and Businesses' Emergency Services  
on the Massachusetts Turnpike**

Dear Administrator Tinlin:

I write concerning a review that my Office's Internal Special Audit Unit ("ISAU") conducted of emergency services on the Massachusetts Turnpike ("Turnpike").<sup>1</sup> Before the creation of the Massachusetts Department of Transportation ("MassDOT" or "Department") in November 2009, the Massachusetts Turnpike Authority ("MTA") had agreements with eighteen cities and towns that abut the Turnpike, whereby the MTA paid for ambulance response services provided on the Turnpike or at service plazas. The MTA also paid these cities and towns for fire, rescue and hazmat<sup>2</sup> services. Since November 2009, MassDOT has continued paying for these emergency responses, even when the emergency services were provided to private citizens and businesses. The Department entered into new contracts with these municipalities in 2012 and again in 2015.

When the Massachusetts State Police assigned to the Turnpike requests ambulance, fire, rescue or hazmat services in response to incidents on the Turnpike, local fire departments or ambulance companies that respond send invoices to MassDOT according to a specific rate schedule. Since the creation of MassDOT in 2009, these charges have totaled \$634,460. Thus, MassDOT is using public funds to pay for private citizens' and businesses' emergency services. MassDOT does not pay for ambulance, fire, rescue or hazmat services on any other state road, including other toll roads like the Maurice J. Tobin Memorial Bridge ("Tobin Bridge"). Additionally, with the exception of limited ambulance and hazmat services, municipalities typically do not charge a fee when their fire departments respond to car accidents, fires and other emergencies. Consequently, MassDOT is paying for services that others do not pay for.

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<sup>1</sup> The Massachusetts Turnpike is Interstate 90, a 138-mile toll road that begins in Boston and runs to the New York state border.

<sup>2</sup> "Hazmat" refers to hazardous materials.

**I. Background**

Before November 2009, the MTA operated as an independent authority<sup>3</sup> that limited access to the Turnpike. Thus, municipal fire and ambulance services did not respond to car accidents or other incidents on the Turnpike unless the Massachusetts State Police called them first. Consequently, the MTA contracted with eighteen cities and towns that abut the Turnpike to provide emergency response services on the Turnpike and at service plazas.<sup>4</sup> The eighteen cities and towns are as follows:

Becket	Hopkinton	Palmer
Blandford	Lee	Southborough
Brimfield	Ludlow	Warren
Charlton	Millbury	Westfield
Chicopee	Natick	Weston
Framingham	Newton	West Springfield

After MassDOT assumed operation of the Turnpike in November 2009, the Department continued to honor these agreements, executing new contracts with each city and town in 2012 and again in 2015. Also in 2015, MassDOT entered into a contract with the town of Sturbridge that was identical to the other eighteen contracts; MassDOT did not have a contract with Sturbridge before 2015. The contracts outline specific rates for each type of response and equipment used. The chart below provides an example of the current rates for these services from the contract with the city of Newton. The rates below are similar to those in the other eighteen contracts:

<b>Emergency Service</b>	<b>Per Response</b>
Ambulance	\$200 flat fee <sup>5</sup>
Fire Apparatus	\$400 for the first hour <sup>6</sup>
	<b>Per Each Additional Hour:</b>
Heavy Rescue Truck	\$250
Engine Company	\$200
Chemical Truck	\$200
Brush Truck	\$150
Tanker	\$150
Command Vehicle	\$100
Light Rescue Truck	\$100
Aerial Truck	\$250
Hazmat Unit	\$750 plus actual cost of materials
	<b>Other</b>
Special Extinguishing Agents	Actual cost of replacing the extinguishing agents

<sup>3</sup> See M.G.L. c. 81A.

<sup>4</sup> Based on numerous discussions with current MassDOT employees whom the MTA formerly employed, the Office of the Inspector General (“Office”) estimates these agreements have been in place for over forty years.

<sup>5</sup> The contracts provide for MassDOT to pay a flat fee for an ambulance to respond to an emergency, but not any charges for transportation to a medical facility. Local ambulance services typically charge individuals’ insurance carriers directly for any transport fees.

<sup>6</sup> This charge includes all fire apparatus responding within the first hour, except for a hazmat unit.

Each of the nineteen contracts has a term of five years for the period July 1, 2015 through June 30, 2020. The chart below details each city's or town's total charges to MassDOT between 2010 and 2016:

City/Town	Total Amount MassDOT Paid under Prior Contracts <sup>7</sup>	Total Amount MassDOT Paid under Current Contracts <sup>8</sup>
Becket	-	-
Blandford	\$21,300	\$9,538
Brimfield	-	-
Charlton	\$23,005	\$11,347
Chicopee	\$36,712	\$9,000
Framingham	\$13,650	\$2,500
Hopkinton	\$3,500	-
Lee	\$51,995	\$7,780
Ludlow	\$21,350	-
Millbury	\$9,400	\$4,000
Natick	\$37,950	\$4,600
Newton	\$40,800	\$28,800
Palmer	\$18,500	\$4,000
Southborough	\$8,600	-
Sturbridge	-	\$9,500
Warren	\$13,833	\$1,800
Westfield	\$41,600	\$6,000
Weston	\$137,125	\$50,025
West Springfield	\$6,250	-
<b>Total</b>	<b>\$485,570</b>	<b>\$148,890</b>

According to language in each contract, MassDOT attempts to recover these costs from the responsible drivers' insurance carriers. For instance, the executed Master Service Agreement with the city of Newton as of July 1, 2015 states that MassDOT's Accident Recovery Program "will pursue such costs as part of MassDOT's insurance claim against the responsible carrier. The Accident Recovery Program generally achieves a positive recovery rate ranging up to 85% historically." The ISAU determined that this statistic is based on the former MTA's subrogation activity.<sup>9</sup> MassDOT has not recovered any of these costs since the 2009 merger. As discussed below, however, MassDOT has committed to pursuing recoverable expenses going forward.

<sup>7</sup> For the period between January 1, 2010 and June 30, 2015.

<sup>8</sup> For the period between July 1, 2015 and December 1, 2016.

<sup>9</sup> The ISAU did not examine the accuracy of this statistic aside from discovering no cost recoveries since 2009. Further, absent statutory authorization, municipal fire departments cannot recover the costs of firefighting or responding to other emergencies. See *Town of Freetown v. New Bedford Wholesale Tire, Inc.*, 384 Mass. 60 (1981) (dismissing lawsuit seeking to recoup costs of fighting a fire on private property because no statute authorized town to recover such expenses). Compare M.G.L. c. 40, § 5F (granting cities and towns authority to charge fees to defray the costs of ambulance services). Thus, it is unclear how much of the costs incurred under these agreements are recoverable.

## **II. Issues of Concern**

When the MTA operated as an independent authority, it may have had the discretion to enter into these agreements; however, as a public entity using public funds, the Department should have provided more scrutiny when these contracts came up for renewal. The current arrangement between MassDOT and these cities and towns requires MassDOT to pay for ambulance response, fire, hazmat and other emergency services provided to motorists on the Turnpike or at service plazas. MassDOT should have examined these agreements in 2009 and allowed them to expire.

MassDOT informed the ISAU that there is no statute requiring MassDOT to contract for emergency services on the Turnpike, and the Office could find no such legal requirement. Further, the Department does not employ this practice on any other state road, including toll tunnels and toll roads such as the Tobin Bridge. For example, the Chelsea Fire Department responds to emergencies on the Tobin Bridge, but does not have a contract with MassDOT. Local fire and ambulance services in municipalities that abut the Turnpike should respond to (and be compensated for) the emergency services they provide in the same way they operate on any other road within their jurisdiction. Specifically, when a town ambulance service responds to an emergency, it often seeks payment for some of its services from the driver's or patient's insurance carrier, not a public entity. The nineteen municipalities could employ this practice when they provide ambulance services on the Turnpike or its service plazas.

Furthermore, the service plazas along the Turnpike contain private businesses, such as gas stations and restaurants. MassDOT should not be paying for responses to incidents that occur within these private businesses. For example, some of the invoices the ISAU reviewed revealed fire responses to false alarms set off inside private businesses. Examples of incidents that caused these false alarms include steam from a dishwasher, burnt food and customers pulling the fire alarm without justification. MassDOT pays a flat response fee each time a fire department responds to a fire alarm at a service plaza, although these incidents occur within private businesses.

Additionally, MassDOT has not recovered any of the \$634,460 that it paid under these contracts. As such, the Department continues to pay for these expenses in full.

Finally, the ISAU's review of emergency services invoices identified billing errors from some of the cities and towns noted in this letter. In one instance, the town of Weston overcharged MassDOT \$12,200 for emergency services. Specifically, in 2011, the Weston Fire Department listed fourteen incidents twice on the same invoice. MassDOT paid the entire amount on the invoice, thus paying twice for each of the fourteen incidents. Additionally, the same 2011 bill from Weston included expenses from as far back as 2007, which MassDOT paid. Such long delays in billing make it difficult to review the charges for accuracy.

## **III. Conclusion**

In July 2015, MassDOT entered into five-year agreements with the nineteen cities and towns noted in this letter to pay for emergency services provided to private citizens and private businesses on the Turnpike. Based on the average expense for these services over the past six years, the Office estimates that MassDOT will spend over \$370,000 for emergency services during the remainder of

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the contract period. Thus, the total cost for these contracts could reach over one million dollars<sup>10</sup> by 2020.

The Office recommends that MassDOT discontinue these agreements once they expire. The Office further recommends that MassDOT incorporate audit procedures into its review of the invoices under these contracts, including a process to verify the accuracy of the invoices. For example, the Department should not only reconcile each incident on an invoice with information from the Massachusetts State Police, it should also confirm that the charges conform to all of the contract terms.

Following the completion of the ISAU's review, MassDOT drafted a revision to the Standard Operating Procedures for the Accident Recovery Program. The proposed revision requires MassDOT to determine whether to pursue insurance reimbursement for emergency services expenses. Further, MassDOT intends to pursue recovery of emergency services expenses on any pending claims within the previous three years. Pursuing reimbursements will help MassDOT to offset some of the expenses it will incur under the new contracts. The Office acknowledges these positive steps toward the recovery of public funds.

Thank you for your and your staff's cooperation during this review. Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,



Glenn A. Cunha  
Inspector General

Enclosure

cc: Stephanie Pollack, Secretary of Transportation, MassDOT (with enc.)

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<sup>10</sup> For the period 2010 through 2020.

## Enclosure: 2010 MassDOT Interoffice Memorandum

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### INTEROFFICE MEMORANDUM

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TO: [REDACTED] STATEWIDE OPERATIONS  
FROM: [REDACTED] SUPERVISOR OF RISK & CLAIMS ADMINISTRATION  
SUBJECT: REIMBURSEMENT TO CITIES AND TOWNS FOR EMERGENCY RESPONSE  
DATE: 11/8/2010  
CC: FISCAL DEPARTMENT

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The Massachusetts Turnpike Authority maintained open ended fire & ambulance service contracts with many cities and towns along the Turnpike for emergency fire, ambulance, and haz-mat response to incidents and accidents on the Turnpike as well as the service areas. The Massachusetts Turnpike Authority was considered to be a private entity and these services were not provided. A contract was established between each specific city and town along the Turnpike from Boston to the New York border to reimburse for response to an emergency within the parameters of their contract defined as mile markers.

The city or town charges for their response and depending upon how many pieces of equipment are required for each individual response additional charges are applied for the cost of each piece of additional equipment. Each city and town generates an Invoice with the signature of the State Police officer or emergency official who requested the services of the fire or ambulance apparatus. The Invoices are paid by the Turnpike according to the agreed rate(s) contained in the contract between each specific city and town. Most of the contract costs are the same, however, Lee Fire only charges \$75.00 for ambulatory response. Once the payment was processed for the fire and ambulance and the checks were issued, the information on the insurance company or owner if there was no coverage was entered into the Oracle financial system and generated an Invoice for each. A police report was obtained and the Invoice was billed to the respective insurance carrier. In the past, recovery for these Invoices was about 85-90%. MassDOT is responsible for payment of these Invoices until such time as a new contract is established or the old one is amended and agreed amongst the parties.

Due to the above-mentioned circumstances, the attached contract for emergency fire & ambulance response is believed to be a competitive procurement exception. Due to the "emergency" nature of this situation the abutting cities and towns, who respond the quickest due to their location and the proximity of the emergency, are required to respond to incidents on the Massachusetts Turnpike based on the language contained in their contracts.

Since the creation of MassDOT and the uncertainty of how to process invoices for this service under the umbrella of state government there has been a delay in payment for services rendered.

In summary, the attached encumbrance document/contract is justified as a competitive procurement exception and should be approved to pay invoices for services already rendered for emergency fire response on the Mass Turnpike.

Respectfully submitted,