

A Regular Meeting of the Town of Avon was held on Thursday, August 27, 2009 at 6:00 P.M. at the Avon Village Hall with the following members present:

PRESENT: Supervisor David LeFeber, Deputy Supervisor Kelly Cole (arrived at 6:45 P.M.), Councilmen Donald Cook, Thomas Mairs and James Blye

OTHERS: Highway Superintendent Robert Ayers, Town Engineer Timothy Rock, Code Enforcement Officer Anthony Cappello, Water Superintendent Daniel McKeown, Attorney James Campbell, Assessor Tami Snyder and Town Clerk Sharon Knight CMC/RMC

GUESTS: Mayor Thomas Freeman, Village Trustees Mark McKeown, William Zhe, Robert Hayes, and Timothy Batzel

VISITORS: David Peck, Stephanie Williams, Dana Peck and John Peck

Supervisor LeFeber called the meeting to order at 6:05 P.M.

Pledge of Allegiance

Supervisor LeFeber asked for any public comments and there were none.

RESOLUTION #146 APPROVAL OF MINUTES

On motion of Supervisor LeFeber, seconded by Councilman Mairs the following resolution was ADOPTED AYES 3 NAYS 0 ABSTAIN 1 (Councilman Cook) ABSENT 1 (Deputy Supervisor Cole)

RESOLVE to approve the minutes of August 13, 2009 as presented.

Vote of the Board: Councilman Blye – Aye, Councilman Mairs – Aye, Councilman Cook – Abstain, Deputy Supervisor Cole – Absent, Supervisor LeFeber - Aye

DISCUSSION – AVON PROPERTIES LLC V. TOWN OF AVON

Assessor Tami Snyder presented the Board with two letters. The first from Attorney Peter Skivington dated August 21, 2009 and the second from Wayne D. Wisbaum, Kavinoky Cook LLP dated August 19, 2009. There was discussion on the recommendation of Attorney Skivington's extensive experience, the cost of preparing an appraisal, possible legal fees and the Counties willingness to provide financial support. Assessor Snyder stated that both parties should get something in the settlement. The Board appeared to agree that a counter offer would be best for the Town of Avon and if an agreement is made, final approval would then require the Board to take action.

Attorney James Campbell thanked Assessor Snyder for providing all of the materials requested for the Route #39 Water District Extension. The New York State Comptroller has responded and is requesting additional information.

DISCUSSION – HIGHWAY REPORT

Highway Superintendent Ayers reported on the following:

He stirred up the County last year with his recommendation of the Snow & Ice Contract and that recommendation could be what cost his son his job. A handful of reports from Highway Superintendents were submitted to survey the true cost expended by Towns to take care of the Counties roads. The survey did not prove anything and as there were no ground rules such as using the States snow and ice formulas. The County did raise the number of miles of roads being serviced as it was determined the Town was not receiving credit for the correct number of miles. When considering the cost for maintenance of snow fence, storage of materials and possible increases in salt costs, the Town of Avon taxpayers will again be subsidizing this service to the County. He stated that he would not be making a recommendation this year but simply providing information for the Board's consideration.

Supervisor LeFeber stated that we were successful in getting a little over a mile paid for that was not paid in the past. He agreed that we, rather that the County are placing a burden on taxpayers. The question is "Where do we get the money for this service?" He agreed many Towns did not complete the paper work, but the question remains what would be gained by fighting the contract's costs as provided below.

Town of AVON

COUNTY OF LIVINGSTON

COUNTY SNOW AND ICE CONTROL CONTRACT



~ COVER SHEET ~

This contract consists of the following Contract, Appendix, Exhibits, and Forms of Resolutions which are annexed hereto and made a part of such contract.

1. Contract signed and approved as required.
2. Appendix A, B & C.
3. Map of County Road System.
4. Rules and Regulations for Control of Snow and Ice on County Roads.
5. Form of Resolution for Approval

COUNTY OF LIVINGSTON

COUNTY SNOW AND ICE CONTROL CONTRACT

MONTH, DATE, YEAR – MONTH, DATE, YEAR

AGREEMENT made _____, 20____, between **THE COUNTY OF LIVINGSTON**, with offices at the Livingston County Government Center, 6 Court Street, Geneseo, New York 14454, and **TOWN OF AVON**, a municipal corporation, with its office at 27 Genesee Street, Avon New York 14414.

WHEREAS, pursuant to Highway Law Section 102 (1), the County Superintendent of Highways has general charge and supervision of the work of constructing, improving, repairing and maintaining all county roads and bridges with the County; and

WHEREAS, pursuant to Highway Law Section 135, the Board of Supervisors shall annually appropriate and expend such sum as it deems proper for the removal of snow from County Roads and for sanding, or otherwise treating, them for the purpose of removing the danger due to snow and ice thereon; and

WHEREAS, pursuant to Highway Law Section 135-a, the County Superintendent of Highways, may contract with a Town and a Town Superintendent for the removal of snow from County Roads or for sanding or otherwise treating them for the purpose of removing the danger due to snow and ice thereon, subject to the approval by resolution of each of the legislative bodies of the County and Town; and

WHEREAS, the County of Livingston, desires to enter into a contract with the Town for control of snow and ice conditions on County Roads; and

WHEREAS, the Town is willing to undertake the control of snow and ice conditions on County Roads within said Town.

The parties agree as follows:

1. RIDER: The “Standard Contract Rider” and all schedules and exhibits set forth in the “Cover Sheet” attached to this contract is incorporated herein and made a part of this contract with the same force and effect as if more fully set forth at length herein.

COUNTY OF LIVINGSTON

COUNTY SNOW AND ICE CONTROL CONTRACT

2. PURPOSE OF THE CONTRACT: This contract is intended to provide for snow and ice control on County Roads and Bridges located within the Town pursuant to the provisions of Sections 135 and 135-a of the Highway Law.

3. OBLIGATIONS OF TOWN:

a. Undertaking: The Town does hereby undertake snow and ice control on County Roads, including town line bridges (except where the weight limits are restricted for the Town's vehicle, when it will be undertaken by the County), within said Town, a total of **12.04** miles, as the same are shown on a map of the Livingston County Road System, a copy of which is annexed hereto. The total miles to be subject to the provisions of this contract may change during the term of this contract or any extension hereof because of changes in the County Road System resulting from additions, abandonments, relocations, realignments or such other cause as may be deemed necessary by the County or its Superintendent of Highways in the best interests of the County.

b. Manner of Snow and Ice Control: Snow and ice control shall be performed on County Roads in such Town in the following manner:

i. By removal of snow from County Roads on **12.04** miles of two lane road, as shown on the exhibit annexed hereto.

ii. By sanding and otherwise treating the County Roads with snow and ice on **12.04** miles of two lane road, as shown on the exhibit annexed hereto.

c. Duties of the Town Superintendent: On behalf of the Town, the Town Superintendent shall perform the work required by this contract and shall:

i. Provide all necessary machinery, tools and equipment.

ii. Provide all necessary personnel and supplies to operate such machinery, tools and equipment.

iii. Furnish any abrasive, chemicals or other materials at such locations and in such quantities as may be necessary.

iv. Comply with all of the provisions of this contract.

COUNTY OF LIVINGSTON

COUNTY SNOW AND ICE CONTROL CONTRACT

3. OBLIGATIONS OF TOWN: (continued)

d. County Road Priority: County Roads covered by this contract shall receive first consideration for snow and ice control based upon such road's importance or as may from time to time be designated by the County Superintendent of Highways.

4. SPECIAL PROVISIONS: The Town shall comply in all respects with the “**RULES AND REGULATIONS FOR CONTROL OF SNOW AND ICE ON COUNTY ROADS,**” a copy of which is attached hereto. Such Rules may be amended and modified by the County Superintendent of Highways, who shall give ten (10) days prior written notice to the Town. Upon giving of notice to the Town such amendments shall become effective. If the Town does not agree with such modification or amendment of such Rules, the Town may give notice of such non-agreement within such ten (10) day period, and the County Superintendent of Highways and the Town shall meet to resolve any difference with respect to such amendment or modification. In the event that the County Superintendent of Highways and the Town cannot resolve such difference, the County Superintendent of Highways may unilaterally require compliance with such amendment or modification of such Rules. The Town may, at its option, give notice of termination of this contract, which termination shall be effective not less than one (1) year after the date of receipt of such notice by the County Superintendent of Highways. The County Superintendent of Highways may, in his discretion, shorten such one-year period to not less than thirty (30) days.

5. PAYMENTS: During the term of this contract:

a. The County shall pay to the Town for work performed pursuant to this contract the following **annual flat rates per centerline mile** for snow and ice control services and materials during the contract year:

October 15, 2009 to October 14, 2010: \$ 4,000.00

b. Payment shall be made in three equal installments during the contract year. The first installment shall be made in January followed by another in February and the balance will be paid in August of each year.

COUNTY OF LIVINGSTON

COUNTY SNOW AND ICE CONTROL CONTRACT

6. **INSURANCE:** See Appendix C.

7. **TERM OF CONTRACT:**

a. This is a One (1) – Year Contract, commencing on **October 15, 2009**, and ending on **October 14, 2010**.

b. **This contract does not provide for yearly extensions.**

c. This contract may be terminated by the County Superintendent on the grounds of inadequate or unsatisfactory performance by the Town by the County Superintendent filing an official order in the office of the County Superintendent which shall become effective five (5) days after the County Superintendent shall have mailed a certified copy of same to the Town Clerk. In the event this contract is cancelled by such order, the Town shall be compensated only for the period of the contract year which has expired prior to the effective date of such order. The County Superintendent shall thereafter perform such snow and ice control work in such manner as he shall deem appropriate.

COUNTY OF LIVINGSTON

COUNTY SNOW AND ICE CONTROL CONTRACT

The parties have signed this contract.

~ LIVINGSTON COUNTY ~

Chairman of the Board of Supervisors

County Highway Superintendent

Town Supervisor

~ APPROVED AS TO FORM ~

DAVID J. MORRIS
LIVINGSTON COUNTY ATTORNEY

BY: _____
County Attorney

NOTE: ATTACH APPENDIX A, B & C TO THIS AGREEMENT. THIS AGREEMENT CANNOT BE APPROVED WITHOUT THESE APPENDICES ATTACHED.

LIVINGSTON COUNTY APPENDIX "A"

1. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 109 of the **General Municipal Law**, this contract may not be assigned by the contractor or its right, title or interest there in assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the County and any attempts to assign the contract without the County's written consent are null and void.
2. **WORKER'S COMPENSATION BENEFITS.** In accordance with Section 108 of the **General Municipal Law**, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the **Workers' Compensation Law**.
3. **NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the **Executive Law** (also known as the **Human Rights Law**) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the **Labor Law**, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the **Labor Law**, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
4. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the **Labor Law** or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statute, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
5. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 103-d of the **General Municipal Law**, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on Contractor's behalf.
6. **SET-OFF RIGHTS.** The County shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for the

purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the County with regard to this contract.

7. **RECORD-KEEPING REQUIREMENT.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract for a period of six (6) years following final payment or the termination of this contract, whichever is later, and any extensions thereto. The County Treasurer or County Administrator or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to such books, records, documents, accounts and other evidential material during the contract term, extensions thereof and said six (6) year period thereafter for the purposes of inspection, auditing and copying. "Termination of this contract", as used in this clause 10, shall mean the later of completion of the work of the contract or the end date of the term stated in the contract.
8. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
9. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
10. **NO ARBITRATION AND SERVICE OF PROCESS.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York. All actions shall be venued in Livingston County. Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested.
11. **BUDGETED FUNDS.** This contract is executory only to the extent of funds available and the County shall incur no liability beyond the funds appropriated therefore.
12. **APPROVAL OF BOARD OF SUPERVISORS.** This contract is subject to and conditioned upon approval by the Livingston County Board of Supervisors.
13. **INCORPORATION.** The main contract contains a paragraph incorporating the terms of this appendix by reference and the parties herein have further signed and dated this appendix.

Livingston County

Contractor/Town
(Signature of Authorized Official Required)

LIVINGSTON COUNTY APPENDIX "B"

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the County of Livingston (herein after "County").

- I. The County shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall deliver to the County all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to guarantees, warranties, as-built plans and shop drawings. In any of these events, the County shall make settlement with the Contractor upon an equitable basis as determined by the County, which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions, exclusive of termination date, applicable to postponement, suspension or termination of the contract.

- II. The Contractor agrees that it will indemnify and save harmless the County from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of and to the extent of any negligent omission or act of the contractor, its agents, employees, or subcontractors in the performance of this contract. This indemnification shall include all costs and disbursements incurred by the County in defending any suit, including attorneys' fees. Furthermore, at the option of the County, the Contractor shall provide defense for and defend all claims, demands and causes of action referred to above, and bear all other costs and expenses related thereto. The Contractor shall not be required to indemnify the County for any damage or loss arising out of the negligence or willful misconduct of the County, its agents or employees.

- III.
 - A. The Contractor warrants that to the best of the contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the County.

 - B. An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, either result in an unfair competitive advantage to the Contractor or impair the Contractor's objectivity in performing the work for the County.

 - C. The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the contractor will make a full disclosure in writing to the County. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the County, to avoid, mitigate, or minimize the actual or potential conflict.

 - D. Remedies - The County may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware, or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the County, the County may terminate the contract, or pursue such other remedies as may be permitted by the law or this contract. The terms of Clause I of this Appendix B or other applicable contract provision regarding termination shall apply to termination by the County pursuant to this clause.

 - E. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform to the language of this clause.

IV. All requests for payment by the Contractor must be submitted on forms supplied and approved by the County. Each payment request must contain such items of information and supporting documentation as required by the County, and shall be all inclusive for the period of time covered by the payment request.

V. To the extent that federal funds are provided to the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized.

The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause, including this paragraph.

VI. The Contractor shall have the status of an independent contractor, and in accordance with such status, agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the County by reason of this contract. It further agrees that it will not make against the County any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. In the event of a conflict between the terms between this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B and Appendix A, the terms of Appendix A shall control.

VIII. The main contract shall contain a paragraph incorporating the terms of this appendix by reference and the parties therein shall further sign and date this appendix.

Livingston County

Contractor/Town
(Signature of Authorized Official Required)

LIVINGSTON COUNTY APPENDIX "C"

LIVINGSTON COUNTY STANDARD CONTRACT INSURANCE REQUIREMENTS

- I. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the contractor/permittee hereby agrees to effectuate the naming of the County of Livingston as an unrestricted additional insured on the contractor's/permittee's insurance policies, with the exception of workers' compensation and professional errors and omissions.

THE CONTRACTOR/PERMITTEE MUST PROVIDE AN ADDITIONAL INSURED ENDORSEMENT. A STATEMENT ON THE CONTRACTOR/PERMITTEE'S INSURANCE CERTIFICATE THAT THE COUNTY OF LIVINGSTON IS LISTED, AS AN ADDITIONAL INSURED IS NOT SUFFICIENT. THE FORM OF THE ADDITIONAL INSURED ENDORSEMENT MUST BE APPROVED BY THE LIVINGSTON COUNTY ATTORNEY.

- II. The policy naming the County of Livingston as an additional insured shall:
- be an insurance policy from an A.M. Best rated "secured" New York State licensed insurer;
 - contain a 30 day notice of cancellation;
 - state that the organization's coverage shall be primary coverage for the County of Livingston, its Board, employees and volunteers. Any insurance or self-insurance as maintained by the County of Livingston shall be in excess of the contractor's insurance, and shall not contribute with it.
- III. The contractor/permittee agrees to indemnify the County of Livingston for any applicable deductibles or self insurance reserves.
- IV. Required Insurance:
- **Commercial General Liability Insurance**
\$1,000,000 per occurrence/ \$2,000,000 aggregate per project.
 - **Automobile Liability**
\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
 - **Workers' Compensation**
Statutory Workers' Compensation and Employers' Liability Insurance for all employees.
 - **Owners Contractors Protective Insurance (Generally required only for construction contracts. Contact Livingston County Attorney for determination of necessity.)**
\$1,000,000 per occurrence/\$2,000,000 aggregate, with the County of Livingston as the named insured.
 - **Professional Errors and Omissions Insurance (If professional service contract)**
\$1,000,000 per occurrence/ \$2,000,000 aggregate for the negligent professional acts of the contractor.
- V. Contractor/permittee acknowledges that failure to obtain such insurance on behalf of the County of Livingston constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the County of Livingston. The contractor/permittee is to provide the County of Livingston with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of the County of Livingston to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by the County of Livingston.

- VI. If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the county, the contractor shall upon notice to that effect from the County, promptly obtain approval and submit a certificate thereof. Upon failure of the contractor to furnish, deliver, and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the contractor concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the county may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess or such claims or any portion thereof, may be withheld from payment due or to become due the contractor until such time as the contractor shall furnish such additional security covering such claims in form satisfactory to the County of Livingston.

The County reserves the right to require complete certified copies of all required insurance policies, at any time, which shall be delivered to the County within ten days of such request.

VII. ADDITIONAL INSURED ENDORSEMENT AND CERTIFICATE OF INSURANCE:

The contractor/permittee shall file with the Livingston County Attorney, prior to commencing work under this contract, an additional insured endorsement and a Certificate of Insurance, which shall include:

- a. Name and address of insured
- b. Issue date of certificate
- c. Insurance company name
- d. Type of coverage in effect
- e. Policy number
- f. Inception and expiration dates of policies included on certificate
- g. Limits of liability for all policies included on certificate
- h. Certificate holder shall be "County of Livingston, Livingston County Government Center, 6 Court Street, Geneseo, New York 14454-1043."**
- i. Description of contract for which insurance is being provided.
- j. Insurance agents name, address and phone number.

Contractor/Town
(Signature of Authorized Official Required)

Date

*** EXHIBIT A ***

MAP FOR TOWN OF

AVON

☐ SNOW & ICE CONTROL ROUTE

*** EXHIBIT B ***

**RULES AND REGULATIONS
FOR
CONTROL OF SNOW AND ICE ON COUNTY ROADS**

1. GENERAL:

a. The Town, through the Town Superintendent of Highways, who shall have authority to act for the Town, shall give constant attention to the work while it is in progress. The Town shall, at all times, employ labor and equipment which, in the opinion of the Livingston County Highway Superintendent or Designee, shall be sufficient to prosecute the several classes of work to full completion in the manner specified.

b. The Town shall conduct the work at all times with minimum interference with traffic. The type and quality of any implement used on any part of the work shall be such that no injury to the work or to traffic or to any public highways shall result from its use, and shall be satisfactory to the Livingston County Highway Superintendent or Designee.

2. SCOPE OF WORK:

a. Snow and ice control shall, to the extent provided in paragraph 3 of the "Agreement" herein, include all operations necessary to prevent the accumulation of snow and ice, together with the labor, equipment and materials necessary thereof, and shall include but not be limited to:

Preliminary preparations;

Plowing during storm, widening following storms and the removal of snow and ice from the traveled way;

Application of abrasives and chemicals;

Communications and reports.

3. PRELIMINARY PREPARATIONS:

a. Only skilled, capable and responsible workmen shall be employed, with experienced supervisors in charge at all times. All equipment to be used shall be of proper type for the use intended and must be in first class condition and repair. Mechanical spreaders for abrasives and chemicals shall be used so far as is practicable. All trucks shall be equipped with adequate and distinctive warning lights and all trucks shall be fully equipped with all equipment mandated by the New York State Vehicle and Traffic Law, and applicable regulations.

*** EXHIBIT B ***

**RULES AND REGULATIONS
FOR
CONTROL OF SNOW AND ICE ON COUNTY ROADS**

3. *PRELIMINARY PREPARATIONS: (continued)*

b. Care shall be exercised to preserve markers indicating location and extent to guard rails, culverts, curbs and other structures against damage and destruction and necessary replacements shall be made immediately.

c. Abrasives or chemicals, if required, shall be on hand at all times to the extent necessary for immediate protection against any ice conditions that may occur. Stock piles shall be located for minimum haul and the use of gravity bins or mechanical loaders shall be favored. Stock piles shall be so located that trucks loading and unloading shall be entirely clear of the pavement and shoulders of the road. They shall not be located close to dwellings.

d. Sand for abrasives shall be clean, hard, sharp, and free from loam, clay or large frozen lumps, meeting the following specification:

<u>Screen</u>	<u>Passing (% finer)</u>
¼"	100%
#50	0 – 20%
#100	0 – 10%

4. PLOWING SNOW:

a. Plowing shall start as soon as practical giving due consideration to the intensity and duration of the storm. Plowing shall continue throughout the storm with blades set to clean the pavement unless storm conditions warrant leaving a brine-slush accumulation until the storm subsides. The snow shall be pushed back off the shoulders and into the ditches to make way for later falls and to ensure that it melts down in the ditches.

* EXHIBIT B *

**RULES AND REGULATIONS
FOR
CONTROL OF SNOW AND ICE ON COUNTY ROADS**

4. *PLOWING SNOW: (continued)*

b. On super elevated curves all snow shall be removed from the high side so that when it melts the water will not run across the pavement. Care must be exercised not to obstruct public road approaches or hydrants. No plowing shall be done with the plow facing traffic except at intersections or under special permission of the Livingston County Highway Department or it's Superintendent. Care shall be exercised to avoid damage to guard rails, headwalls, curbs, signs, markers, etc.

5. ABRASIVES AND CHEMICALS:

a. Sanding shall be done on hills, curves, intersections, and other places where icy conditions may cause dangerous driving conditions. It shall be done as soon as possible after icing begins, and it shall be coordinated with snow plowing to minimize loss of abrasives and to properly safeguard traffic.

b. To minimize environmental damage by salt, towns are cautioned to avoid excessive application rates of salt. Spreaders should be calibrated or other methods used so the operator will know the pounds of salt applied per mile for the different spreader control settings and gate settings. For normal conditions, salt application should not exceed 500 pounds per centerline mile, when used in a mix with sand or used alone. Other conditions may require more or less salt.

c. The use of new or experimental materials will be allowed under this contract, **providing that such materials have been approved for use by NYSDOT.** The Town must inform the County of such use.

6. CLEANING CULVERTS:

a. **The County will thaw frozen culvert pipes as in the past.** The Town's cooperation in clearing snow from critical culvert pipes and ditches will be needed to prevent washouts during a thaw.

7. REIMBURSEMENT:

a. Pursuant to Article 6, Section 135-a, paragraph **b & c** of the Highway Law of the State of New York, removal of snow and ice on County Roads in accordance with conditions as set forth in the Contract and Rules and Regulations, with exceptions only as herein noted, shall be paid for at the rate set forth in said contract as separately established by resolution duly adopted by the Board of Supervisors and the Town Board.

*** EXHIBIT B ***

**RULES AND REGULATIONS
FOR
CONTROL OF SNOW AND ICE ON COUNTY ROADS**

8. INSURANCE: See Appendix A & C.

9. STANDARD CONTRACT RIDER: See Appendix B.

10. RENTAL OF COUNTY EQUIPMENT:

a. In the event the available Town equipment proves insufficient for specific work the Town may call upon the County Superintendent for rental of County owned equipment. If such County equipment is available, the County Superintendent will provide such equipment to the Town with or without operators and supplies for such time as may be required. The Town shall reimburse the County for all such equipment used in the performance of the contract for snow and ice control at the rates established by the New York State Department of Transportation.

b. County Self-Propelled Truck-Mounted Snowblower: The County's unit may be available for services under this contract at the County Superintendent's discretion on a priority, case-by-case, as-needed basis -- operated by a County employee -- at no charge to the Town.

PREPARED UNDER THE DIRECTION OF AND APPROVED BY:

County Superintendent of Highways

DATED: _____

The Board took the following action.

RESOLUTION #147 APPROVE SNOW AND ICE CONTROL CONTRACT WITH LIVINGSTON COUNTY

On motion of Councilman Cook, seconded by Councilman Mairs the following resolution was ADOPTED AYES 4 NAYS 0 ABSENT 1 (Deputy Supervisor Cole)

RESOLVED, that pursuant to Highway Law Section 135-a providing for snow and ice control on County Roads within the Town, the Supervisor and the Town Highway Superintendent be and they are directed to execute a contract with the County Highway Superintendent of the County of Livingston for the Town to undertake and perform snow and ice control on County Roads located in the Town for the period beginning **October 15, 2009** and ending **October 14, 2010** at the rates therein provided.

Vote of the Board: Councilman Blye – Aye, Councilman Mairs – Aye, Councilman Cook – Aye, Deputy Supervisor Cole – Absent, Supervisor LeFeber - Aye

DISCUSSION – HIGHWAY SUPERINTENDENT REPORT- continued

- ❑ The shoulders of the paving job on North Littleville and South Avon Road were completed and the Department has been mowing roadsides. We will be helping the Town of Caledonia for three days next week as they had helped us.
- ❑ Future projects include cleaning drainage districts and continued mowing.
- ❑ Route 5 & 20 will be paved beginning at the County of Ontario and Livingston line to the bridge to Caledonia with the exception of the Village of Lima.

DISCUSSION - CODE REPORT

Code Enforcement Officer Cappello reported on the following:

- ❑ We continue to have problems with Aldon and a stop work order and fine were issued. We still have problems with their building permit paperwork.
- ❑ Insurance on a house on Pole Bridge Road continues to be a problem.
- ❑ The Michael's property continues to sit idle on Routes #5 & 20 and #15.

DISCUSSION – ATTORNEY REPORT

Attorney James Campbell reported on the following:

- The Comptroller's office has completed an exhausted review of our application to extend water service to the Route #39 area and they are requesting additional information. The expectation that is once the information is received it appears it would be approved. An inter-municipal agreement is not a part of the statutory issues and no discussion has been held with the Village Attorney regarding water.
- An update of the bond for road improvements to the Empire Zone of Pooler LLC has provided indication that they may be scrambling to get something prepared. There was discussion on the Board's need to review annually. He is unaware of any recourse the Board may have if Pooler LLC does not provide a bond. Discussions will continue in an attempt to get a bond for the project which is supposed to be in place and should not have been discontinued by Pooler.
- An application for an additional screen at the drive-in was granted at the last Zoning Board of Appeals Meeting. There was general discussion of items being sent to the Planning Board prior to the Zoning Board of Appeals (ZBA). In the vast majority of building permits the Code Enforcement Officer has the authority to forward applications to the proper Board whether it is to the Town Board, Planning Board or the ZBA. The general discussion also included the ZBA Board's interest in reviewing and making recommendations for changes to the Code Book. The Planning Board appears to have the same interest and therefore it's suggested to have a working committee that includes the Town Attorney, Town Planning, County Planning, ZBA, Town Board, builders and developers to review the Code and make recommended changes. The committee could also discuss other issues such as the Ashantee Development and the concept plan for Royal Springs.

DISCUSSION – WATER REPORT

Water Superintendent McKeown reported on the following:

- The problem at the residence on Darby Road has been corrected.
- Verizon was here last week and they sent out bids. They expect to start construction this September to locate on the elevated water tower at the corner of Route #15 and Route #5 & 20.
- Mark Alexander's Development on Pole Bridge Road was to put in the water tap this week, but they have had problems. A master meter was requested to be installed.

DISCUSSION – ENGINEER REPORT

Engineer Tim Rock provided the following report:

- During Verizon's visit to the water tower, outside blisters in the paint were discovered as well as a possible grounding problem. It was suggested that the next time an electrician is available to have them take a look at the ground as they may have lost their contact.
- He will be on vacation from Labor Day to the 21st of September.
- There has been no word from the County Health Department on the Route #39 plans.

DISCUSSION – OPERA BLOCK

Deputy Supervisor Cole provided the following update:

- Jim Biondolillo is doing a great job with the contractors.
- The stair tower and elevator installations are complete.
- The painters are taking a long time and are working hard.
- The brick restoration has two tones and will be stained.
- They are starting to hang doors
- Plastering is being completed. In some areas where possible we are just fixing holes and in more damaged areas new dry wall with blue board is being hung.
- Frank J. Marianacci, Inc has the Town of Avon's interest at heart as well as his reputation in this project.
- In September the Board will need to appoint a "Stewart" for the operation and maintenance of the Opera Block. A memo will be sent to current employees to seek interest in filling this position.
- The grant dollars are coming in and have eliminated our cash flow concerns.

Supervisor LeFeber stated financial decisions need to be made and a work session will be held in September. The decisions include the amount needed for bonding, the cost of issuing another BAN if we are not ready for bonding, the timing to secure the best interest rate. The first payment is due December 31, 2009. The budget meeting at St. John & Baldwin will be held on 3rd of September. A meeting with Bond Council, Bernard Donegan's office is scheduled for the 23rd September. There was also discussion on the BAN for the Route #39 water extension project.

DICUSSION – AVON VILLAGE MAYOR AND TRUSTEES

Supervisor LeFeber welcomed the Village of Avon Mayor and Trustees to the meeting.

Mayor Freeman acknowledged the Village of Avon legal notice and it follows:

NOTICE
VILLAGE OF AVON

PLEASE TAKE NOTICE THAT THERE WILL BE A SPECIAL MEETING OF THE VILLAGE BOARD OF TRUSTEES SCHEDULED FOR THURSDAY, AUGUST 27, 2009, WHO WILL AT THAT TIME MEET WITH THE TOWN BOARD. THE JOINT MEETING WILL BEGIN AT 7:00 P.M. THE PURPOSE OF THIS MEETING IS TO DISCUSS OLD AND NEW BUSINESS.

By Order of Thomas Freeman, Mayor

Dated: August 19, 2009

DISCUSSION – ROUTE #39 WATER SUPPLY CONTRACT BETWEEN THE VILLAGE AND TOWN - EXTENSION/SCHEDULE A

Supervisor LeFeber reported on the Route #39 Water District extension project including the completion of an income survey, Small Cities application that was not approved, and the Rural Development application. A requirement of the Rural Development grant requires a water agreement to be the same length of the loan.

The State Comptroller is also asking for proof of a water supply agreement as the project is over the individual limit allowed by the Comptroller.

Mayor Freeman reported we do not have a contract as of today as the amendment was not signed by the former Mayor. Supervisor LeFeber stated both boards agreed by resolution but it was not signed. Forward movement is going to require two resolutions and they follow.

RESOLUTION #148 EXTENSION OF THE WATER SUPPLY CONTRACT BETWEEN THE VILLAGE AND TOWN

On motion of Councilman Cook, seconded by Councilman Mairs the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to extend the Water Supply Contract between the Village and Town to be extended for forty years.

Vote of the Board: Councilman Blye – Aye, Councilman Mairs – Aye, Councilman Cook – Aye Deputy Supervisor Cole – Aye, Supervisor LeFeber - Aye

VILLAGE RESOLUTION EXTENSION OF THE WATER SUPPLY CONTRACT BETWEEN THE VILLAGE AND TOWN

On motion of Village Trustee McKeown, seconded by Trustee Hayes the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to extend the Water Supply Contract between the Village and Town to be extended for forty years.

Vote of the Board: Mayor Thomas Freeman - Aye, Village Trustees Mark McKeown - Aye, William Zhe - Aye, Robert Hayes- Aye, and Timothy Batzel- Aye

RESOLUTION #149 AMEND "SCHEDULE A" THE WATER SUPPLY CONTRACT BETWEEN THE VILLAGE AND TOWN

On motion of Deputy Supervisor Cole, seconded by Councilman Blye the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to authorize the Supervisor and the Mayor to sign on behalf of their respective Boards an amendment to Schedule A of the Water Supply Contract between the Village and Town to contain the same language as the former agreement with the new Schedule A.

Vote of the Board: Councilman Blye – Aye, Councilman Mairs – Aye, Councilman Cook – Aye Deputy Supervisor Cole – Aye, Supervisor LeFeber - Aye

VILLAGE RESOLUTION AMEND "SCHEDULE A" THE WATER SUPPLY CONTRACT BETWEEN THE VILLAGE AND TOWN

On motion of Trustee Hayes, seconded by Trustee Batzel the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to authorize the Supervisor and the Mayor to sign on behalf of their respective Boards an amendment to Schedule A of the Water Supply Contract between the Village and Town to contain the same language as the former agreement with the new Schedule A.

Vote of the Board: Mayor Thomas Freeman - Aye, Village Trustees Mark McKeown - Aye, William Zhe - Aye, Robert Hayes- Aye, and Timothy Batzel- Aye

DISCUSSION – JOINT COURT

Supervisor LeFeber thanked the Village Board for allowing the Town to use their facilities for the day to day operations of the Town Court, meetings of the Town Board, Planning Board, Board of Assessment Review, and Zoning Board of Appeals.

DISCUSSION – JOINT COURT-continued

When the Opera Block renovations are complete both the Town and Village courts will be in the Opera Block. Village Mayor Freeman asked for confirmation that there would be no charges to the Village and that all terms identified in the grant application were still in force. Both Boards appeared to agree with that statement.

DISCUSSION – OUTSTANDING YOUTH RECREATION INVOICE

Supervisor LeFeber referred to the following letter in terms of coming to an agreement of an invoice from the Village of Avon.

August 10, 2009

Mayor Thomas Freeman
Village Trustees
74 Genesee Street
Avon, NY 14414

Dear Tom and Trustees,

Thank you for agreeing to meet in a joint meeting with us to allow for discussion of several issues. This correspondence will help to first explain our process as a Town in the transition of the joint youth program.

I would like to bring to your attention the Town Board meeting minutes of November 9, 2006 where Mayor Tom Vonglis asked the Town to consider taking over the leadership and financing of the youth programs. Also please note the action taken on January 11, 2007 where the Town agreed by resolution to transfer the program's administration to the Town.

With these items in mind and the fact that our two municipalities work on different budget calendars – fiscal vs. calendar years, a time of transition would obviously be necessary. This being the case, the Village had collected tax money from Village residents for the 2006-2007 year and the Town had budgeted for half of the estimated budgeted expenses in our 2007 budget year. We agreed to take over the program effective June of 2007 to help to transition the program from one municipality to the other with the agreement that the Village would then be billed for half of the expenses incurred for the summer program.

Attached, please find copies of Village of Avon invoices from your fiscal years 2004-2007. These invoices reflect a history of billing shortly after the start of your fiscal year for expenses to be incurred in the upcoming year. The invoice in question, Invoice #967, dated 8/08/07 requests reimbursement of 2006-2007 expenses. This period had been previously billed on invoice #871 dated 7/05/06 and paid in full by the Town. We, as per our agreement, billed the Village for half of the 2007 summer program expenses. This amount was paid by the Village on 12/14/07. In our 2008 budget year, the full cost of the program was included in our "A" budget line.

Hopefully, this information helps to alleviate your concern over the unpaid invoice.

Sincerely,

David LeFeber

DISCUSSION – OUTSTANDING YOUTH RECREATION INVOICE-continued

Mayor Freeman suggested Trustee Batzel, Village Treasurer Chris Quinlan meet with Supervisor's Secretary Mary Blye to discuss the invoice. This will allow for a new set of eyes to review the documents and determine if the Town owes the Village money or not.

Supervisor LeFeber stated he would like to bring closure during the Town's budget season and he is required to present a Tentative Budget by the 30th of September.

DISCUSSION – SKATE BOARD PROGRAM

Visitors David Peck and Stephanie Williams address the Board regarding Avon's skate boarding history of the past, where we are at and moving ahead. The following topics were discussed:

- The Youth Board not supporting a program for Skate Boarding this year without any contact.
- The program had been run for the last three years.
- The need for yearly discussions of issues and the need for a permanent solution.
- Extending the four hours per week program.
- Forming a committee to move forward.
- Parents' notarized waivers of approximately fifty kids to participate in a skate program. All willing to pay \$120.00 for the opportunity to visit an indoor park once per month.
- Identifying this sport to be the fastest growing sport in the last ten years.
- The need for a permanent structure to reduce injuries due to unstable equipment which could be a project of the Technology Department at Avon Central School
- There is no increased cost for insuring a Skate Park; however, signage is an important part of insurance as well as monitoring policies.
- Although there is not equipment currently at the Downs, kids still go there.
- The possibility of drug deals at Paper Mill Park.

Other items discussed:

- The semi-permanent ramp built by the Rotary Club fifteen years ago that did not last even a year.
- The lack of general support of the Youth Recreation Board.
- The Avon Youth Recreation's Board is one of the best in the County that has stayed within budget even while hiring additional personnel due to large numbers of participants.
- An apology was again extended for not informing everyone of the decision of the Youth Recreation Board to not include skate boarding in this year's programs.
- The question of the community's willingness to continue to be involved in a skate park.

DISCUSSION – SKATE BOARD PROGRAM-continued

- There is an increase of insurance when there are skate parks that range somewhere around \$2,000.00 to \$20,000.00.
- Councilman Cook and Village Trustee Hayes are both willing to serve on a committee to review future possibilities of a skate park.

DISCUSSION – POLE BRIDGE ROAD INTERSECTION

There was discussion on the safety issues on the corner of Route #5 & 20 and Pole Bridge Road and a speed limit reduction from the Village line at Pole Bridge Road to the 40 mile speed limit in East Avon. Supervisor LeFeber stated a future Town Board agenda item is the consideration of a petition recently received to reduce the speed limit from the Lima/Avon town line to the current 40 mile per hour limit. Supervisor LeFeber also discussed a petition received about five years ago to reduce the speed limit from the light in East Avon to the Caledonia Bridge. Highway Superintendent Ayers stated that Pole Bridge is a Town road but the intersection is controlled by the State.

Supervisor LeFeber stated that Dennis Wright is the Town of Avon Representative to the Livingston County Traffic and Safety Board, the County Highway Department, Village and Town Boards could all provide recommendation on these two issues and then forward to the State.

Highway Superintendent shared his thoughts and added safety issues of the stop sign in the middle of the road at the intersection on Route #15 and Henty Road.

DISCUSSION – VILLAGE CELEBRATION OF THE VILLAGE THREE MILLION DOLLAR ROUTE #5 & 20 ROAD PROJECT

Village Mayor Freeman reported there will be a celebration of the completion of the three million dollar project the first week of October for the Route #5 & 20 road project.

DISCUSSION – OPERA BLOCK

Supervisor LeFeber thanked the Village Board for their cooperation in drilling the geothermal wells. Trustee McKeown questioned when the area would be clear to return to use for parking. Code Enforcement Officer Cappello stated the area can be used for parking, but that at the completion of the renovations the entire area would be leveled one more time.

RESOLUTION #150 EXECUTIVE SESSION

On motion of Councilman Blye, second by Councilman Mairs the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to enter into executive session for the purpose of discussion of the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof. Inviting all in attendance including, Highway Superintendent Robert Ayers, Town Engineer Timothy Rock, Code Enforcement Officer Anthony Cappello, Water Superintendent Daniel McKeown, Attorney James Campbell, and Town Clerk Sharon Knight CMC/RMC. TIME 8:15 P.M.

Vote of the Board: Councilman Blye - Aye, Councilman Mairs - Aye, Councilman Cook - Aye, Deputy Supervisor Cole - Aye, Supervisor LeFeber - Aye

RESOLUTION #151 CLOSE EXECUTIVE SESSION

On motion of Deputy Supervisor Cole, second by Councilman Mairs the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to close executive session with no action. TIME 8:30 P.M.

Vote of the Board: Councilman Blye - Aye, Councilman Mairs - Aye, Councilman Cook - Aye, Deputy Supervisor Cole - Aye, Supervisor LeFeber - Aye

On motion of Mayor Freeman, seconded by Village Trustee McKeown the meeting adjourned at 8:31 P.M.

RESOLUTION #152 PAYMENT OF BILLS

On motion of Deputy Supervisor Cole, second by Councilman Cook the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to accept for payment Abstract 2009-16 in the follow amounts:

Concerning ABSTRACT of Claims Number 2009-16 including claims as follows:

General Fund	Voucher #422 through #438 in amounts totaling \$3,304.33
Highway Fund	Voucher #160 through #169 in amounts totaling \$4,546.59
Water Fund	Voucher #112 through #115 in amounts totaling \$60,116.79
Cemetery Fund	No Voucher
Opera Block Capital Improvement	Voucher #67 through #69 in amounts totaling \$41,625.90
Royal Springs Lighting	No Voucher

RESOLUTION #152 PAYMENT OF BILLS-continued

Cross Roads Drainage District	No Voucher
Bruckel Drainage District	No Voucher
Royal Springs Drainage	No Voucher
Town Of Avon Fire Protection	No Voucher
Water Capital	No Voucher

Vote of the Board: Councilman Blye – Aye, Councilman Mairs – Aye, Councilman Cook – Aye, Deputy Supervisor Cole – Aye, Supervisor LeFeber – Aye

DISCUSSION - OPEN ITEMS

Councilman Mairs requested Highway Superintendent Ayers talk with his employees to see if they are available for the 12th day of September dump days.

Supervisor LeFeber asked for any public comments and there were none.

On motion of Councilman Blye, seconded by Councilman Mairs, the meeting adjourned at 8:40 P.M.

Respectfully submitted by, _____
Sharon M. Knight, CMC/RMC, Town Clerk