

TOWN OF WEST SENECA



SHEILA M. MEEGAN
TOWN SUPERVISOR

To: Fellow Town Board Members

From: Sheila M. Meegan, Town Supervisor

Date: November 4, 2019

Re: **Erie County 2019-2022 Intermunicipal Snow Removal and Ice Control Agreement**

Kindly move to enter the 2019 - 2022 Snow Removal and Ice Control Agreement with the County of Erie and further direct Tina Hawthorne, Town Attorney, to review and execute the contract.



**ERIE COUNTY 2019-2022
INTERMUNICIPAL SNOW REMOVAL AND ICE
CONTROL AGREEMENT**

THIS INTERMUNICIPAL SNOW REMOVAL AND ICE CONTROL AGREEMENT (this "Agreement") made and entered into as of the _____ day of _____, 2019, by and between the **COUNTY OF ERIE**, a municipal corporation organized under the laws of the State of New York having its offices at 95 Franklin Street, Buffalo, New York, (hereinafter referred to as the "County") and the **TOWN OF WEST SENECA**, a municipal corporation within the County of Erie, having its offices at **1250 UNION ROAD, WEST SENECA**, New York, (hereinafter referred to as the "Municipality").

WITNESSETH:

WHEREAS, the County owns, operates, and maintains a highway system located throughout the towns and villages of the County; and

WHEREAS, the County's Department of Public Works is responsible for administering and supervising all County related highway work, including the removal of snow and control of ice on County roadways; and

WHEREAS, the County wishes to contract with the Municipality for the removal of snow and control of ice on certain County roadways defined herein; and

WHEREAS, the Municipality has appropriate personnel and equipment to properly maintain County roadways for the purposes of snow removal and ice control; and

WHEREAS, on _____, 2019, the Municipality's Board approved a resolution in support of the Municipality contracting with the County for snow removal and ice control services; and

WHEREAS, on **July 25, 2019**, the Erie County Legislature approved resolution **Comm.16E-12** supporting the arrangement described herein.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and consideration contained herein, the County and the Municipality (collectively the "Parties") agree as follows:

1. **RECITALS**: The foregoing Recitals are incorporated into the terms of this Agreement.
2. **DEFINITIONS**: Capitalized terms used but not defined herein shall have the meanings ascribed to them in this paragraph 2.
 - a. **Snow Season** shall be defined as beginning on September 1st and ending of April 30th of the following calendar year

- b. **Lane Mile** shall mean a portion of any County road which is one mile long and of sufficient width to allow for the safe passage of a vehicle. Shoulders, median strips and short widened sections designed for intersection turning lanes shall not be considered in the calculation of the number of Lane Miles to be maintained under this Agreement. All County roads shall be considered to be at least two lanes wide for such purposes.
 - c. **Remove** shall mean that which is moved and re-deposited alongside the road, and shall include, if necessary, push back and shelving.
 - d. **Push Back** after storm is over, plowed snow should be plowed back as far as possible to provide snow storage in anticipation of the next storm.
 - e. **Shelving/Benching** additional snow storage can be provided by plowing high level snow banks with the wing elevated. The wing should be at least three feet off the pavement to avoid hitting guide rail.
 - f. **Extra Work** (requires prior approval of ECDPW) the removal of snow from areas requiring loading equipment and hauling vehicles, front end loaders, snow blowers or heavy dump trucks are usually used for this purpose.
 - g. **Municipal Executive** shall mean the Municipality's Mayor, Supervisor, Administrator, Highway Superintendent or DPW Commissioner.
3. **TERM:** The term of this Agreement shall be for a three-year period beginning on **September 1, 2019 and expiring on August 31, 2022** and will include three (3) Snow Seasons. This Agreement shall be reviewed annually in accordance with paragraph 10 of this Agreement. This Agreement may be extended at the request of the County with the approval of the Municipality. The Parties agree that they will commence discussion or negotiations pertaining to the extensions or renewal of this Agreement, whether in whole or in part, beginning **March of 2022**.
4. **SERVICES:** This Agreement shall include all activities necessary to control snow and ice on County roads, together with all necessary labor, equipment and materials. The Municipality agrees to Remove snow and to control ice and snow on the County roads, hereinafter listed on **Exhibit A**.

The Municipality will be required to maintain a sufficient level of manpower, equipment, and materials to enable it to meet the goal of providing safe and passable roadways. The Municipality shall clear such County highways of snow and ice as designated by the County, to the extent that the County may deem necessary to provide reasonable passage and movement of vehicles over such highways all in accordance with terms, rules and regulations as may be deemed by the County to be in the best interest of the public.

At all times, the County reserves the right to call out the Municipality to Remove and/or clear snow and ice and the Municipality hereby agrees to respond within a reasonable period of time. Both Parties shall **designate a 24-hour contact person**, with whom the County or the Municipality will contact in the event that either Party determines it is necessary to call out the other.

The Municipality will notify the County, in writing, when a higher level of snow removal is potentially required. The County will have a written response to the Municipality within twenty-four (24) hours of such notification as to whether or not the County is going to do the work themselves or have the Municipality do the higher level of snow removal. If the County District Engineer orders the work, with the approval of the County's Commissioner of Public Works, and the Municipality satisfactorily performs the work, the Municipality will be compensated by the County as follows:

- Labor shall be billed at the applicable Municipal rate; and
- Equipment will be billed at the present FEMA rates for such equipment.

In the event the Municipality does not perform as required per Section 2 of this Agreement, the County and the Municipality will be required to meet, as soon as possible, within ten (10) business days to settle the dispute.

5. **LANE MILES**: The schedule of County roads and number of Lane Miles that are subject to this Agreement are attached hereto and incorporated herein as **Exhibit A: Lane Mile Confirmation**. Shoulders, median strips and short widened sections designed for intersection turning lanes shall not be considered in the calculation of the number of Lane Miles to be maintained under this Agreement. All County roads shall be considered to be at least two lanes wide for such purposes. The number of Lane Miles for which compensation shall be paid hereunder is as set forth on **Exhibit A**.
6. **REPORTING REQUIREMENTS**: The Municipality agrees to complete daily log reports evidencing the work performed under this Agreement, a copy of which is attached hereto as **Exhibit B: Form SI-7ECrev**. The invoices, signed by the Municipal Executive, shall be submitted with the supporting documentation at least forty-five (45) days in advance of payment, as listed below in paragraph 7.
7. **PAYMENT**: The County agrees to reimburse the Municipality for services each year, subject to the terms and conditions enumerated herein, in the form of two (2) payments, payable as follows:

\$4,193.37 for the 2019 – 2020 Snow Season, beginning September 1, 2019 through August 31, 2020:

\$2,096.68 x number of Lane Miles in Exhibit A by December 15, 2019; and
\$2,096.67 x number of Lane Miles in Exhibit A by April 15, 2020.

\$4,340.14 for the 2020 – 2021 Snow Season, beginning September 1, 2020 through August 31, 2021:

\$2,170.07 x number of Lane Miles in Exhibit A by December 15, 2020; and
\$2,170.07 x number of Lane Miles in Exhibit A by April 15, 2021.

\$4,470.34 for the 2021 – 2022 Snow Season, beginning September 1, 2021 through August 31, 2022:

\$2,235.17 x number of Lane Miles in Exhibit A by December 15, 2021; and
\$2,235.17 x number of Lane Miles in Exhibit A by April 15, 2022.

Payments shall be made on invoices submitted by the Municipality to the County's Department of Public Works ("Department"). The invoices shall be signed by the Municipal Executive and shall be submitted to the Department at least forty-five (45) days in advance of payment, as listed above.

8. **INDEMNIFICATION**: To the fullest extent permitted by law, the Municipality agrees that it will, at its own expense, indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Municipality or third parties under the direction or control of the Municipality; and to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto. The County agrees that it shall provide timely notice to the Municipality of any claim, action of proceeding, which may be filed or commences against the County by reason of the performance of such work.
9. **INSURANCE**: As a part of its obligation to indemnify, defend and hold harmless the County, its officers, agents and employees, as set forth above, the Municipality agrees to obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage, naming the County as an additional insured, as described in **Exhibit C: County of Erie Standard Insurance Certificate and Instructions, Classification G**, which is attached hereto and incorporated herein.

In lieu of the foregoing, the Municipality may furnish satisfactory evidence of a self-insurance plan acceptable to the Erie County Attorney and/or Risk Management.

10. **AMENDMENT/TERMINATION**: Any modifications made to the terms of this Agreement which are mutually agreed upon by the Parties, in writing, shall become effective immediately, or as otherwise agreed.

Prior to the commencement of each Snow Season, the County will annually notify the Municipality, in writing, of any proposed modification(s) to this Agreement by September 1st. It is understood and agreed by the Parties that notice of any modification to this Agreement shall be deemed to be accepted by the Municipality and made a part hereof, except that in the event that the Municipality does not concur with the modification, the Municipal Executive may submit a letter of dispute to the County within ten (10) business days after receipt of the notice, setting forth the reason for the non-concurrence.

The Municipality and the County shall attempt to resolve the matter. If a resolution is unsuccessful, either Party may choose to terminate this Agreement upon thirty (30) days written notice to the other Party; however a request to terminate must be made no later than October 1st of each year. In the event a request to terminate is made after October 1st, said termination shall not be effective until the end of the current Snow Season, unless mutually agreed to, in writing, by the Parties.

11. **EXECUTORY**: It is understood by the parties that this Agreement shall be executory only to the extent of the monies available to the County of Erie and appropriated therefore, and no liability shall be incurred by the County beyond the monies available and appropriated for these purposes.
12. **SUCCESSORS**: This Agreement shall bind the successors, assigns and representatives of the Parties hereto.
13. **ASSIGNMENT**: This Agreement shall not be assigned without the written permission of the County.
14. **WAIVER**: Failure of any of the Parties to assert any right or declare any default hereunder shall not preclude such assertion or declaration at a later date or upon a recurrence of violation of such rights or event of default.

15. **GOVERNING LAW:** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York.

16. **ENTIRE AGREEMENT:** This Agreement and its attachments constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their duly authorized officers on the day and year first above written.

COUNTY OF ERIE

MUNICIPALITY

By: _____
Mark Poloncarz/Maria Whyte
County Executive/Deputy County Executive

By: _____
Name:
Title:

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

By: Electronically Signed
William E. Geary, Jr., Commissioner
Department Of Public Works

By: Electronically Signed
Kristen M. Walder
Assistant County Attorney

Document # _____-PW

FOR THE MUNICIPALITY:

State of New York}ss.
County of Erie}

On this _____ day of _____, 2019, before me, the undersigned, personally appeared _____, to me personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the entity or individual upon behalf of which the individual acted, executed the instrument by authority of said municipality.

Notary Public

Town of West Seneca

2019-2022 ERIE COUNTY SNOW REMOVAL EXHIBIT A: LANE MILE CONFIRMATION

Town of West Seneca
1250 Union Road
West Seneca, NY 14224

County Road Number	Street Name	FROM	TO	MILES	Lane Miles
322	Borden Road	Clinton Street	French Road	0.34	0.68
363	East & West Road	Orchard Park Rd (RT 240)	Leydecker Road	3.26	6.52
459	Fisher Road	Orchard Park Rd (RT 240)	Lackawanna Town Line	1.65	3.30
458	Langner Road	Fisher Road	Ridge Road	0.70	1.40
364	Leydecker Road	East & West Road	Seneca Street	0.62	1.24
365	Michael Road	Orchard Park Rd (RT 240)	Southwestern Blvd. (RT 20)	0.80	1.60
534	Mineral Springs Road	Indian Church Road	City Line	1.82	3.64
366	Reserve Road	Orchard Park Rd (RT 240)	Southwestern Blvd. (RT 20)	1.90	3.80
Total				11.09	22.18

UPDATE INFO BELOW, 24 HR CONTACT REQUIRED BY CONTRACT

**Erie
County
Highway
Maintenance
District 2/3/4**

VERIFIED BY: _____
MUNICIPALITY REPRESENTATIVE SIGNATURE

VERIFIED BY: _____
ERIE COUNTY REPRESENTATIVE

Position Name	Supervisor	Clerk	Engineer	Highway Superintendent	24 HOUR CONTACT
	Shella Meegan	Jacqueline Felsler	George Montz, P.E.	Mathew English	Mathew English
Address	See Above	See Above	See Above	39 South Avenue West Seneca, NY 14224	
Phone (Office)	674-5600	558-3215	558-3221	558-3244	
Phone (Home)				677-5775	
Phone (Cell/Mobile)				597-8816	597-8816
Pager					
Fax	675-7205	558-2250		674-0981	
E-mail		...@twsny.org		menglish@	

(Michael Road & Reserve Road) portion in Town of Orchard Park

**Erie County
Department of Public Works**

STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY

CLERK'S OFFICE

BUFFALO, N.Y., July 25, 2019

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY, *That at the 16th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the 25th day of July, 2019 A.D., a Resolution was adopted, of which the following is a true copy:*

WHEREAS, the County has contracted with local towns in Erie County for many years to provide ice and snow control on County owned roads and facilities during the snow season; and

WHEREAS, the said agreements will expire on August 31, 2019; and

WHEREAS, the County of Erie negotiated and entered into three (3) year agreements with local municipalities for the control of snow and ice on County roads by towns and incorporated villages for snow seasons 2019-2022; and

WHEREAS, it would be in the best interests of Erie County to execute an agreement at a lane mile reimbursement rate increasing three and half (3.5%) percent each year for the first two years and three percent (3%) the third year, ending August 31, 2022, and representatives of the affected municipalities have agreed to terms with the County.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby authorizes the County Executive to sign and execute the new Snow and Ice Control Agreements, as modified and updated, at a lane mile reimbursement rate increasing three and a half percent (3.5%) each year for the first two years and three percent (3%) the third year, to expire August 31, 2022, payable from the adopted Division of Highways, Operating Budget, Fund 210, Funds Center 1231010, G/L 520060 Town and Village Snow Contracts, as set forth below:

September 1, 2019 through August 31, 2020	\$4,193.37 per lane mile
September 1, 2020 through August 31, 2021	\$4,340.14 per lane mile
September 1, 2021 through August 31, 2022	\$4,470.34 per lane mile

and be it further

RESOLVED, that the County Executive is hereby authorized and directed on behalf of Erie County to execute agreements with participating municipalities; and be it further

RESOLVED, that the Clerk of this Legislature is hereby directed to transmit four (4) certified copies of the foregoing resolution to the Commissioner of Public Works, one (1) certified copy each to the Office of the County Executive, the Division of Budget and Management, the County Attorney and the Office of the Comptroller.

REFERENCE: COMM. 16E-12 (2019)

ATTEST



ROBERT M. GRABER
Clerk of the Legislature of Erie County