

AVALON BOROUGH

RESOLUTION NO. 917

BE IT RESOLVED, by authority of the Borough Council
(Name of governing body)
of the Borough of Avalon, Allegheny County, and it
(Name of Municipality)

is hereby resolved by authority of the same, that the President of Council of
(designate official title)

said Municipality be authorized and directed to sign the attached Agreement on its behalf.

ATTEST:

[Signature]
(Signature and designation of official title)
Assistant Secretary
I, Harry W. Dilmore,
(Name)

Borough of Avalon
(Name of Municipality)
By: [Signature]
(Signature and designation of official title)
President of Council
President of Council
(Official title)

of the Borough of Avalon, do hereby certify that the foregoing
(Name of governing body and Municipality)

is a true and correct copy of the Resolution adopted at a regular meeting of the

Avalon Borough Council, held the 20th day of July, 19 99.
(Name of governing body)

DATE: 7/20/99

[Signature]
(Signature and designation of official title)
President of Council

NOTE: Signature on the department signature page of this Agreement must conform to the signature on this Resolution.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

MAINTENANCE SERVICES

AGREEMENT NO 111
FID #: 256400270

THIS AGREEMENT, made and entered into this _____ day of _____, by and between the COMMONWEALTH of Pennsylvania, acting through the Department of Transportation ("COMMONWEALTH"),

AND

the Borough of Avoca of the COMMONWEALTH of Pennsylvania, acting through its authorized officials ("MUNICIPALITY").

WITNESSETH:

WHEREAS, certain public highways, including bridges with their approaches, located in the MUNICIPALITY have been adopted and taken over as part of the State Highway System, to be constructed, improved and maintained by the COMMONWEALTH, upon the terms and conditions and subject to the limitations contained in the Act of May 29, 1945, P.L. 1108; the Act of June 1, 1945, P.L. 1242; and the Act of September 18, 1961, P.L. 1389, all as supplemented and amended; and,

WHEREAS, under the provisions of Act 1985-92, the COMMONWEALTH may, at the discretion of the Secretary of Transportation, enter into agreements with municipalities for the latter to perform minor routine maintenance work on the roadway and shoulders of any State Highway, or portion thereof, located within the boundaries of the MUNICIPALITY; and,

WHEREAS, the COMMONWEALTH desires to obtain the assistance of the MUNICIPALITY to carry out minor routine maintenance on the State Highways listed on Exhibit "A", which is attached to and made a part of this Agreement; and,

WHEREAS, the MUNICIPALITY has the equipment, materials, and personnel available and ready to perform all the items of repair and maintenance within the MUNICIPALITY listed on Exhibit "B", which is attached to and made part of this agreement, in a prompt and efficient manner and has signified its willingness to furnish these repair and maintenance functions subject to payment by the COMMONWEALTH as set forth in the List of Prices in Exhibit "B".

NOW, THEREFORE, the parties hereto, for and in consideration of the foregoing premises and of the mutual promises set forth below, with the intention of being legally bound, agree as follows:

1. The MUNICIPALITY shall, in a good and workmanlike manner, perform the minor routine maintenance items at the amounts set forth in the List of Prices, all as set forth in Exhibit "B", on the State Highways located within the boundaries of the MUNICIPALITY, as listed on Exhibit "A". The MUNICIPALITY shall use equipment owned or leased by it and its own materials and personnel to perform the work. All work shall be completed in accordance with all applicable Department of Transportation specifications ("Publication 408"), and with the policies and procedures set forth in the MORIS Highway Maintenance Foreman Manual ("Publication 113"), which are incorporated by reference into this Agreement as if physically attached.
2. The COMMONWEALTH shall pay the MUNICIPALITY for all authorized work performed on the items contracted for in Exhibit "B" as follows:
 - (a) Lump sum items shall be paid on a quarterly basis.
 - (b) Items performed on a unit price basis shall be paid in accordance with Paragraph 11 below.
3. The MUNICIPALITY undertakes these responsibilities as an independent contractor, and its employees and/or lessors and/or contractors are not to be considered employees of the COMMONWEALTH for any purposes. The COMMONWEALTH shall not be liable, nor shall it indemnify, defend, or save harmless the MUNICIPALITY for the negligent acts of the MUNICIPALITY'S employees and/or lessors and/or contractors during the performance of, or resulting from the performance under, this Agreement.

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This Agreement shall be effective for the period commencing upon written notice by the COMMONWEALTH to the MUNICIPALITY and terminating on June 30 2000, unless sooner terminated for cause upon thirty (30) days' written notice by either party to the other. Upon termination for cause, all obligations, except liability for claims arising from the MUNICIPALITY'S performance and damages incurred by the COMMONWEALTH, shall cease. In the event of termination, the MUNICIPALITY shall be paid for the work performed to the date of termination, to the extent such work has been performed in accordance with the requirements of this agreement.

Work performed by the MUNICIPALITY under this agreement shall be subject to inspection by the Secretary of Transportation, the District Engineer, and/or their duly authorized representatives within sixty (60) days of completion of the work. If, upon inspection, certain work is found not to be in conformance with the specifications, policies and procedures of the COMMONWEALTH, or is not performed in a good and workmanlike manner, the work shall be corrected or re-performed, as necessary, by the MUNICIPALITY, at no cost to the COMMONWEALTH. The COMMONWEALTH shall not be obligated to conduct an inspection program. Spot inspection or inspection of a particular project will be conducted at the discretion of the COMMONWEALTH.

- 6. Attached to and included as part of this Agreement is the COMMONWEALTH "Nondiscrimination Clause" (Exhibit "C"), the "Contractor Integrity Provisions" (Exhibit "D"), the "Provisions Concerning the Americans with Disabilities Act" (Exhibit "E") and the Contractor Responsibility Provisions (Exhibit "F").
- 7. The MUNICIPALITY agrees that the COMMONWEALTH may offset the amount of any state tax or COMMONWEALTH liability of the MUNICIPALITY or its affiliates and subsidiaries that is owed to the COMMONWEALTH against any payments due the MUNICIPALITY under this or any other contract with the COMMONWEALTH.
- 8. (a) Within ten (10) days after the effective date of this agreement and every ninety (90) days thereafter, the MUNICIPALITY shall submit a proposed work program to the COMMONWEALTH, addressed to the Department of Transportation's local County Maintenance Manager. The MUNICIPALITY may proceed to work five (5) working days after submitting its proposed work program to the COMMONWEALTH, unless notified to the contrary.
- (b) The MUNICIPALITY may, at any time during the progress of a quarterly work program, submit, for the COMMONWEALTH'S approval, a supplemental or amended work program and may proceed to work five (5) working days after submitting such amended work program, unless notified to the contrary.
- (c) If an emergency situation arises, the Department of Transportation's local County Maintenance Manager, who shall be responsible for declaring such an emergency situation, may give verbal authorization to perform necessary additional work. The MUNICIPALITY shall promptly confirm any emergency authorization in writing. Any emergency work authorized pursuant to this paragraph shall be limited to the categories of work for which the MUNICIPALITY has assumed responsibility under this Agreement.
- 9. The MUNICIPALITY shall be responsible for maintenance and protection of traffic at all times during the performance of its responsibilities under this Agreement. This shall be performed in accordance with the Department of Transportation's Publication 203, entitled Work Zone Traffic Control, current edition, which the COMMONWEALTH shall make available to the MUNICIPALITY upon request.
- 10. The MUNICIPALITY may submit invoices at various intervals, but in no event shall invoices be submitted more frequently than on a monthly basis. Invoices shall be accompanied by a written statement certifying that the work listed in the invoice was performed properly, specifically in accordance with the specifications, policies and procedures set forth in this Agreement.
- 11. It is understood between the parties that the maximum amount payable under this Agreement by the COMMONWEALTH to the MUNICIPALITY shall not exceed the sum of Five hundred thirty three 30 (\$ 51330) dollars, without a written supplemental agreement signed by both parties