

## CONTRACT FOR SHARED HIGHWAY SERVICES

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between the \_\_\_\_\_, with its offices at \_\_\_\_\_ and any Municipality which has approved a similar contract and filed such contract with the clerk of the undersigned Municipality.

### Section 1. Definitions

For purposes of this contract, the following terms shall be defined as follows:

a. "Municipality" shall mean any city, county, town or village, as well as the County Highway Department and the New York State Department of Transportation, which has agreed to be bound by a contract for shared services or equipment similar in terms and effect with the contract set forth herein, and has filed a copy of said contract with the clerk of the undersigned city/county/town or village, the County, or the State of New York.

b. "Contract" shall mean the text of this agreement which is similar in terms and effect with comparable agreements, notwithstanding that each such contract is signed only by the chief executive officer of each participating Municipality filing the same, and upon such filing each filing Municipality accepts the terms of the contract to the same degree and effect as if each chief executive officer had signed each individual contract.

d. "Shared Service" shall mean any service provided by one Municipality for another Municipality that is consistent with the purposes and intent of this contract and shall include but not be limited to:

- i. the renting, exchanging, or lending of highway machinery, tools and equipment, with or without operators;
- ii. the providing of a specific service;
- iii. the maintenance of machinery or equipment.

e. "Superintendent" shall mean, in the case of a city, the head of the department of public works; in the case of a county, the county superintendent of highways, or the person having the power and authority to perform the duties generally performed by county superintendents of highways; in the case of a town, the town superintendent of highways and/or superintendent of public works; in the case of a village, the superintendent of public works.

### Section 2. Parties

The undersigned Party has caused this agreement to be executed and to bind itself to the terms of this contract and it will consider this contract to be applicable to any Participating Municipality, the County, and/or the State of New York

Department of Transportation which has approved a similar contract and filed such contract with the clerk of the undersigned Municipality.

### Section 3. Terms

The undersigned Municipality by this agreement grants unto the superintendent, the authority to enter into any shared service arrangements with any other Municipality or other Municipalities subject to the following terms and conditions:

a. The Town of Clayton agrees to rent or exchange or borrow from any Municipality any and all materials, machinery and equipment, with or without operators, which it may need for the purposes of the Town of Clayton. The determination as to whether such machinery, with or without operators, is needed by the Town of Clayton shall be made by the superintendent. The value of the materials or supplies borrowed from another Municipality under this agreement may be returned in the form of similar types and amounts of materials or supplies, or by the supply of equipment or the giving of services of equal value, to be determined by mutual agreement of the respective superintendents.

b. The Town of Clayton agrees to rent, exchange or lend to any Municipality any and all materials, machinery and equipment, with or without operators, which such Municipality may need for its purposes. The determination as to whether such machinery or material is available for renting, exchanging or lending shall be made by the superintendent. In the event the superintendent determines that it will be in the best interests of the Town of Clayton to lend to another Municipality, the superintendent is hereby authorized to lend to another Municipality. The value of supplies or materials loaned to another Municipality may be returned to the Town of Clayton by the borrowing Municipality in the form of similar types and amounts of materials or supplies, or by the use of equipment or receipt of services of equal value, to be determined by the respective superintendents.

c. The Town of Clayton agrees to repair or maintain machinery or equipment for any city/county/town/village under terms that may be agreed upon by the superintendent, upon such terms as may be determined by the superintendent.

d. An operator of equipment rented or loaned to another Municipality, when operating such equipment for the borrowing Municipality, shall be subject to the direction and control of the superintendent of the borrowing Municipality in relation to the manner in which the work is to be completed. However, the method by which the machine is to be operated shall be determined by the operator.

e. Legal liability, as it applies to both general liability and physical damage to the equipment itself, is the responsibility of the entity which owns the equipment, except as a result of the negligence of the Borrowing Municipality. In the case of

negligence of the Borrowing Municipality, the responsibility is shifted to the Borrowing Municipality. All Municipalities shall maintain a General Liability policy which includes blanket additional insureds, as well as blanket leased/borrowed/rented equipment coverage on an Inland Marine policy with a value equivalent to the value of the leased/borrowed/rented equipment. The Municipality shall ensure that there is no lapse in this coverage during the shared service agreement term. If self-insured, liability is assumed under the terms of this contract. (see Appendix A)

f. Each Municipality shall remain fully responsible for its own employees, including but not limited to, salary, benefits and workers compensation.

#### Section 4. Form of Memorandum

The renting, borrowing or leasing, repairing or maintaining of any particular piece of machinery or equipment, or the exchanging or borrowing of materials or supplies, or the providing of a specific service shall be evidenced by the signing of a memorandum by the superintendent. Such memorandum may be delivered to the other party via mail, personal delivery, facsimile machine, or any other method of transmission agreed upon.

#### Section 5. Content of Memorandum

In the event any shared services arrangement is made without a memorandum at the time of receipt of the shared service, the superintendent receiving the shared service shall within ten business days thereof, send to the provider a memorandum identifying the type, time and date of the acceptance of the repair or maintenance shared service. In the event such shared service related to or included any materials or supplies, such memorandum shall identify such materials or supplies and time and place of delivery.

#### Section 6. Value of Shared Service

In the event a Municipality wishes to rent machinery or equipment from another Municipality or in the event a Municipality wishes to determine the value of such renting for the purposes of exchanging shared services or a comparable value, it is agreed that the value of the shared service shall be set forth in the memorandum.

#### Section 7. Responsibility for Repairs

In the event machinery or equipment being operated by an employee of the owning Municipality is damaged or otherwise in need of repair while working for another Municipality, the Municipality owning the machinery or equipment shall be responsible to make or pay for such repairs. In the event machinery or

equipment is operated by an employee of the borrowing, receiving or renting Municipality, such Municipality shall be responsible for such repairs.

#### Section 8. Insurance

Each entity shall carry General Liability insurance and Commercial Auto Liability insurance policies. Such insurance shall name the other Participating Municipalities as additional insured protecting both the owner of the equipment and the Party receiving or accepting services under this contract. Each Party shall supply the other with certificates of insurance documenting the procurement and maintenance by the other of all insurance required by this contract. In addition, upon request, each Party shall supply the other with certified copies of complete policies of insurance for any insurance required by this contract.

- a. Each Participating Municipality agrees that the Commercial Auto Liability limit shall not be less than \$3,000,000, per accident for bodily injury and property damage and the General Liability limit shall be not less than \$3,000,000 per occurrence. Commercial Umbrella Liability may be used to provide the limits requested. If self-insured, the entity must demonstrate financial responsibility under the terms of this contract.
- b. The County agrees to maintain during the life of this Shared Highway Services Contract automobile liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 and comprehensive general liability insurance, with a minimum policy limit of \$1,000,000 combined single limit for personal injury and property damage, and \$1,000,000 aggregate.
- c. The State of New York Department of Transportation agrees to be responsible for carrying out its duties under the terms of this contract.

#### Section 9. Notification

Any accident arising from work being performed by any party to this contract, or from the entity's operations under this contract, shall be reported to the other party under this contract as soon as possible, and not later than 24 hours after the time that the responsible Superintendent receives knowledge of the accident. Each party agrees to cooperate in investigating the accident and in providing information concerning the accident in a timely manner. The party performing the work or operations under this contract shall be responsible for any damage or expense to the Lending Municipality which arises as a consequence of its failure to cooperate or to notify the Lending Municipality as provided herein.

#### Section 10.. Records Maintenance

Records shall be maintained by each Municipality setting forth all machinery rentals, exchanges, borrowings, repair or maintenance and other shared

services. Such records will be available for inspection by any Municipality which has shared services with such Municipality.

#### Section 11.. Dispute Resolution

In the event a dispute arises relating to any repair, maintenance or shared service, and such dispute cannot be resolved between the parties, such dispute may be resolved through mediation or arbitration.

#### Section 12. Revocation

Any Municipality which is a party to this contract may revoke such contract by filing a notice of such revocation with cause. Upon the revocation of such contract, any outstanding obligations shall be submitted within thirty days of such revocation.

#### Section 13. Obligation Limited to Funds Available

Any action taken by the superintendent pursuant to the provisions of this contract shall be consistent with the duties of such official and expenditures incurred shall not exceed the amounts set forth in the budget for highway purposes of the Participating Municipalities, the County and/or the NYS Department of Transportation.

#### Section 14. Auditing

The record of all transactions that have taken place as a result of the Town of Clayton participating in the services afforded by this contract shall be kept by the superintendent and a statement thereof in a manner satisfactory to the Town of Clayton's governing board, shall be available to the Town Supervisor at any time upon request.

#### Section 15. Severability

If any provision of this contract is deemed to be invalid or inoperative for any reason, that part may be modified by the Municipalities which are a party to this contract to the extent necessary to make it valid and operative, or if it cannot be so modified, then severed, and the remainder of the contract shall continue in full force and effect as if the contract had been signed with the invalid portion so modified or eliminated.

#### Section 16. Modification

Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by the parties authorized agent.

Section 17. Term of Contract

This contract shall be reviewed each year by the Town of Clayton and shall expire five years from the date of its signing by the chief executive officer. The Town of Clayton board may extend or renew this contract at the termination thereof for another five year period.

Section 18. Notice of Agreement

Copies of this contract shall be sent to the Clerk and the Superintendent of each Municipality with which the superintendent anticipates engaging in shared services. No shared services shall be conducted by the superintendent except with the Superintendent of a Municipality that has completed a shared services contract and has sent a copy thereof to the Clerk of his or her Municipality and the superintendent.

Section 19. Attachments

Incorporated herein are: Appendix A- Scenarios of Exposure Related to Liability.

IN WITNESS THEREOF, the said Town of Clayton has by order of the Town Board, caused these presents to be subscribed by the Town Supervisor, and the seal of the Town to be affixed and attested by the Town Clerk thereof, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Town of Clayton

By: \_\_\_\_\_  
Supervisor

Attest:

\_\_\_\_\_  
Town Clerk

The Town Clerk is authorized and directed to file a copy of the contract set forth in this resolution with the chief executive officer of the County.

This resolution shall take effect immediately.

The vote having been taken upon such resolution the result was as follows:

Board Member	Yes	No
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Supervisor

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There being a majority of the Town Board voting to approve the resolution, the resolution was declared by the Supervisor to have been adopted.

I, Clerk of the Town of Clayton hereby certify that the above is a correct text of the resolution adopted by the Town Board of the Town of Clayton on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and that the above is the complete and whole text of such resolution.

(Seal) \_\_\_\_\_  
Town Clerk

## APPENDIX A

### SCENARIOS OF EXPOSURE RELATED TO LIABILITY

1. Your owned equipment operated by your own employees causes damage to others. Covered by your general liability policy.
2. Your owned equipment operated by your own employees is damaged. Covered by your inland marine policy.
3. Your owned equipment operated by others causes damage to others. The intent is to contractually transfer this exposure over to the operator's general liability insurance. Make sure that the operator's policy includes "blanket additional insureds".
4. Your owned equipment operated by others is damaged. Again, the intent is to contractually transfer this exposure over to the operator's inland marine policy. However, additional caution should be used to ensure that the operator's coverage includes "blanket leased/borrowed/rented equipment coverage". Such coverage commonly has a dollar value limit, so it is important that the value of the equipment does not exceed the limit. Also, sometimes there is a time limit for the lease, after which (such as 15 or 30 days), there is no coverage. Again, these provisions need to be addressed, since not all municipal insurance markets use the same forms.
5. Scenerios 5-8 are the same, only change your owned equipment to equipment leased by you. I think you can figure out where coverage would be provided, since it has converse relationship to scenerios 1-4 above.