

Promoting Intermunicipal Cooperation for Shared Highway Services



Town of Saugerties Shared Services

*(Photos compliments of Bernie Ellsworth,
Saugerties Superintendent of Highways)*



Prepared by the
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Acknowledgments

Senator George H. Winner, Jr. Chairman and the members and staff of the Legislative Commission on Rural Resources, extend their appreciation and thanks to those agencies and organizations that have reviewed this publication, made suggestions relating to its content or contributed to calling the report to the attention of municipal officials in order to encourage adoption and the extension of intermunicipal cooperation. They are set forth in alphabetical order:

Association of Towns of the State of New York

Cornell Local Government Program

Cornell Local Roads Program

Office of the State Comptroller

Promoting Intermunicipal Shared Highway Services

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Promoting Intermunicipal Shared Highway Services

Preface

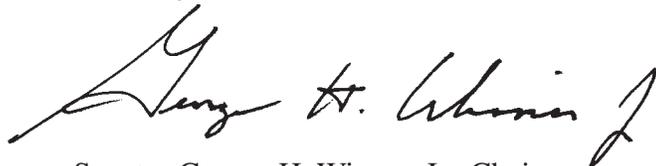
The Commission on Rural Resources has provided municipal officials with numerous publications designed to point them in the direction of more efficient and effective local government. By popular demand, this report relating to shared highway services is in its third printing. Previous editions have been sent to hundreds of local officials. Since there is an extensive turn over in local office holders, additional copies are requested by local governments.

The rising cost of highway machinery, construction, maintenance and materials essential to providing safe and convenient travel for people residing or visiting our municipalities compels local officials to take every possible step to provide services at the lowest cost to the taxpayers.

This publication, provides a sample resolution for use by local governing bodies to authorize the sharing of machinery, maintenance and equipment, and lending or borrowing of materials and supplies. It also offers a sample memorandum which may be used by highway officials when equipment is rented or loaned or material is exchanged or borrowed pursuant to such authorization.

Local officials seeking more information relating to the establishment of a shared services program as outlined in this publication, may contact the Commission on Rural Resources, Legislative Office Building, Albany, NY 12247. The telephone number is 518-455-2544; fax 518-426-6960; E-mail ruralres@senate.state.ny.us.

Sincerely,

A handwritten signature in black ink, appearing to read "George H. Winner, Jr.", written in a cursive style.

Senator George H. Winner, Jr., Chairman
NYS Legislative Commission on Rural Resources

Executive Summary

This report is divided into three basic areas. The first part sets forth the historic background of intermunicipal highway agreements which gives rise to the need to develop a relatively straightforward approach to shared services consistent with applicable statutes, so that insurance coverage will be assured, liability will be limited, proper accounts will be kept and municipal governments will operate efficiently and effectively.

Included in the report is a sample resolution, the purpose of which is to authorize the chief executive officer of the municipality to sign the contract set forth in the resolution. Such contract delegates to the highway official the authority to enter into cooperative agreements without the prior approval of the municipal legislative body. Such intermunicipal agreements can be made with highway officials of other municipalities that have adopted similar resolutions and for which the chief executive officer has signed similar contracts.

Finally the report sets forth a sample memorandum that may be used by highway officials when entering into an arrangement for shared services with cooperating municipalities.

The approach to shared highway services described herein will work regardless of whether only two or several municipalities enter into such agreements. In the event all municipalities in a region adopt similar resolutions, contracts and memoranda, intermunicipal cooperation will flourish.

Background

Cooperation is Alternative to Consolidation or Dissolution

Newspaper editorials and numerous publications authored by researchers consistently cite the large number of units of government that exist in New York. Writers stress there might be substantial savings to taxpayers in the event the number of units of local government was reduced.

Apparently, however, residents and taxpayers of local governments seem comfortable with the existing structure. There has been no significant change in the number of cities, towns, or villages in the last half century, and the number of special purpose units of government has increased significantly.

Nevertheless, there is increasing concern over rapidly rising taxes. In such a climate, it is incumbent upon local officials to utilize every means or device to provide the maximum services for the lowest possible cost.

The greatest single item of expenditure in rural towns is the repair and maintenance of highways. Hence, if efforts are to be made to reduce the cost of rural town government, such efforts should be directed toward the item of the greatest expenditure, to wit: the method of maintaining and improving highways.¹

Seldom can a single small rural town afford the high cost and rapid depreciation of specialized equipment designed to swiftly and efficiently perform a single special function. Advances in technology, the modernization of machinery and the development of expensive specialized equipment has resulted in the ability of local governments to perform once lengthy arduous tasks in a relatively short period of time and with a minimum of physical effort. The use of such timesaving machinery should be encouraged, as should the sharing of such equipment.

Sharing of highway machinery and equipment among local governments has occurred for a long time on a “hand shake” basis. This informal procedure, although laudable in terms of helping to reduce costs, flies in the face of statutory requirements that such agreements be approved by the local legislative body. Failure to obtain such approval poses a threat to local officials, employees and taxpayers, should something go wrong.

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The present method used for borrowing equipment is often based on a single telephone call by one highway superintendent to another neighboring highway superintendent. Attempts to develop a formal legal procedure to promote the greater use of shared services have been met with cries of , “*If it ain’t broke, don’t fix it*”.

The present informal practice ignores existing laws that specifically require legislative approval of such cooperative agreements among local governments. If an efficient and effective method, consistent with statutory requirements, could be developed to encourage shared services, prudence requires that it be explored. Such a legally acceptable procedure would encourage shared services with state agencies as well as between municipalities.

What do existing state laws say about shared services between municipalities and with state agencies? New York has a full arsenal of permissive statutes that give both state agencies and local governments a wide range of opportunities for full cooperation in undertaking assigned public duties.

The law is clear that cooperative agreements are subject to the approval of the municipal governing body.

*§142-d of the Highway Law, Rental or hiring of town highway machinery, tools or equipment. The town superintendent of highways, **with the approval of the town board** (emphasis added), may permit the use of any town-owned highway machinery, tools or equipment by a county or any municipality, district, district corporation, school district, community college, and any unit of the State University of New York, upon such terms and conditions as may be agreed upon by the parties involved. Moneys received by a town pursuant to the provisions of this section shall be applicable for the purposes for which amounts may be raised as provided in subdivision three of section two hundred seventy-one of this chapter.*

*§143 of the Highway Law, Town superintendents may hire machinery. The town superintendent may rent or hire machinery or equipment **at a rate to be approved by the town board** (emphasis added). The expense thereof shall be paid out of moneys provided for the repair and improvement of highways. Rentals paid by the town pursuant to this section shall not be applicable to the purchase of machinery or equipment so rented, except if pursuant to an installment purchase contract entered into pursuant to section one hundred nine-b of the general municipal law.*

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*Subdivision 16 of §102 of the Highway Law, General powers and duties of county superintendents. 16. Notwithstanding any inconsistent provision of law, general, special or local, the county superintendent of highways of any county may, **with the approval of the board of supervisors or county legislature**, permit the use of county highway machinery, tools, equipment and implements, by the superintendent of public works of any city in such county, **upon terms and conditions as may be agreed upon by the county and city involved**. All sums obtained pursuant to any terms agreed upon shall be deposited in the county road machinery fund (emphasis added).*

*§6-602 of the Village Law, Separate Highway District. The streets and public grounds of a village constitute a separate highway district **and are under the exclusive control and supervision of the board of trustees or other officers of the village when such control is delegated to them by such board** (emphasis added).*

*One of the most often cited is Article 5-G of the General Municipal Law, Municipal Cooperation. 119-o. In addition to any other general or special powers vested in municipal corporations and districts for the performance of their respective functions, powers or duties on an individual, cooperative, joint or contract basis, **municipal corporations and districts shall have the power to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis....**(emphasis added).*

The law further requires a municipal corporation, unless otherwise expressly stated in statute, to act through its legislative body. Hence, it is generally recognized that any agreement entered into pursuant to Article 5-G, must be done by the town board, the village board of trustees, the city council and county legislature or the governing board of a district.

*Note further that §99-r of the General Municipal Law authorizes **the governing board of a municipality to enter into agreements** with any state agency, including any department, board, bureau, commission, division, office, council, committee, or officers of the state, whether permanent or temporary, or a public benefit corporation or public authority or soil and water conservation district and any unit of the state university to provide any service of government (emphasis added).*

Opinions of State Comptroller Indicate Approval of Governing Board is Required in Cooperative Agreements

In an opinion of the State Comptroller (Op. State Compt. 79-800) it is stated: *A village's participation in a municipal cooperation agreement should be preceded by a resolution [of the village board of trustees] authorizing such participation.* (matter in brackets inserted for clarity).

Another opinion of the State Comptroller (Op. State Compt. 78-656) states: *Where two municipalities have had an informal agreement over the years whereby they performed various services for one another on a joint basis, it is strongly suggested that the two municipalities [i.e. their legislative bodies] involved execute one or more formal agreements under article 5-G of the General Municipal Law for the joint purchase of the performance of services for one another.* (matter in brackets inserted for clarity).

Town Elected Officials Responsible for Proper Expenditure of Highway Fund

§283 of the Highway Law places responsibility upon the town supervisor to account for the proper expenditure of all highway funds. When machinery or equipment is rented or loaned to another municipality, the supervisor has the duty to account for such use and any revenue derived therefrom.

§284 of the Highway Law places responsibility for the expenditure of highway funds on the town board and the superintendent of highways.

There is a proper procedure for the expenditure of town highway funds. It involves the approval of both the town board and the town highway superintendent. Nevertheless, as noted previously, there seems to be a continuation of paperless handshake deals in the sharing of highway equipment despite express state statutes that prohibit such action. Technically, the statutes require the approval of the town board at a duly called meeting each time the highway superintendent seeks to use a machine owned by another municipality. Likewise, in order to lend such equipment the legislative body of such municipality must officially grant its prior approval. This procedure is so onerous it is understandable why the strict legal requirements are ignored. A diligent highway superintendent, wanting to get the job done, has no interest in what, to him, is legal hogwash or accounting procedures that are difficult to understand.

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The challenge is to design a procedure that facilitates a prompt and efficient leasing and lending process, in compliance with the law so that:

1. The town supervisor's acts will not be in violation of his or her duties as a chief fiscal officer of the town.
2. The members of the town board will be acting pursuant to statute and free of potential charges of permitting the unlawful use of town property.
3. The town highway superintendent can be assured he or she is not acting in violation of state laws and is not exposed to personal liability.
4. The operators of loaned or leased machinery will be acting in accordance with state law and protected under contracts of employment, workers compensation and the town's liability insurance.



Achieving Sound Insurance Coverage

In the event machinery or equipment is sent to another town pursuant to an oral agreement made by the highway superintendent, and without the prior knowledge or approval of the town board, there is serious doubt insurance coverage would be available should there be an accident and major injury, and the town is sued for negligence.

Some officials assume their insurance policy covers town trucks and equipment no matter where or under what circumstances they are used. When requested by the authors of this report, one highway superintendent produced a letter from his insurance agent clearly stating town trucks were covered under their insurance policy whenever they traveled on town business.

That letter was correct as it related to the subject matter it covered. However, the question that should have been asked of the insurance agent was, *“In the event a town truck is sent to another town by the superintendent of highways without prior knowledge or consent of the town board and in the event damages are incurred by a third party as a result of the negligent operation of the truck, would the insurance carrier defend the town and the driver and pay any plaintiff damages?”*

In addition to believing municipal insurance policies cover their vehicles when working in another town under an informal agreement, some highway officials assume that since nothing serious has happened so far, the future will be secure. This view is not consistent with the litigious propensities of society in the twenty-first century.



Goal: To Protect Localities from Personal Liability

One goal many local officials would like to achieve is the development of an acceptable contract which would give highway superintendents and the operators of vehicles protection from personal liability, should they be sued when a truck or other highway equipment is sent to another town. Local officials, aware of the situation, are concerned that local governing boards will be exposed to liability in the event a case arises and an insurance carrier denies coverage, thereby leaving those lending or operating the equipment responsible for paying the judgment. The following citations indicate why this concern is justified:

Subdivision 1 of §388 of the Vehicle and Traffic Law provides:

1. Every owner of a vehicle used or operated in this state shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vehicle, in the business of such owner or otherwise, by any person using or operating the same with the permission, express or implied, of such owner. Whenever any vehicles as hereinafter defined shall be used in combination with one another, by attachment or tow, the person using or operating any one vehicle shall, for the purpose of this section, be deemed to be using or operating such vehicle in combination, and the owners thereof shall be jointly and severally liable thereunder.

Attention is called to New York State Rules and Regulations, Title 11, subpart 60-1 which relates to *Minimum Provisions for Automobile Liability Insurance Policies*. The cited subpart sets forth the requirements relating to coverage which must be included in every automobile policy. The definition of an insured person includes the owner of the vehicle *and any other person using the motor vehicle with the permission of the named insured*.

This statute and the rule show that insurance coverage of a vehicle is limited to those times when the vehicle is being operated with the consent of the named owner. Certainly an insurance carrier would not be expected to consider a person a covered party if he or she was operating a vehicle without the owner's consent! If, for example, a town truck was stolen and the thief was negligent and seriously injured a person, one would not expect the town to pay the injured party for the negligent acts of the thief. The decisions of the courts in such instances seem to indicate the town would not be liable to the injured person.

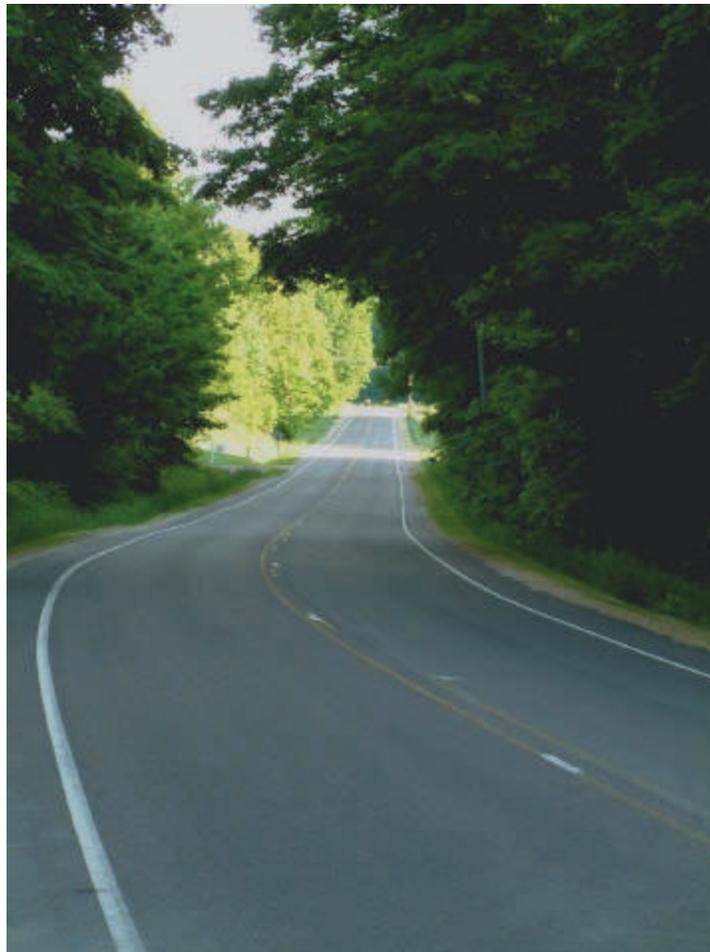
Case Law Sustains Insurance Company Denial of Coverage When Machinery is Used Illegally

Several examples are cited below from case law in which the insurance carrier did in fact deny coverage under their policy of insurance.

- ✓ *The case of Albouyeh v. County of Suffolk (96 AD2d 543; 465 NYS2d 50) involved a wrongful death action. A Buick Wildcat owned by the County of Suffolk was involved in a two car accident resulting in the deaths of passengers in the car. It was clearly shown that the county car was stolen. The Appellate Division stated, the county could not be held liable. We do not know if the County of Suffolk is self insured, however, if the county was insured by a private carrier, the carrier would not have to pay any damages. The only redress would be for the injured parties or their representatives to try to recover against the thief.*
- ✓ *The case of Aetna Casualty and Surety Company, et.al. V. Santos (573 NYS2d 695) arose when a person drove the insured owner's car without permission of the owner. There was an accident and serious injuries and a death. The insurance carrier asked the court to declare that the driver was not insured under the policy of insurance and hence did not have to pay the injured parties. The court agreed with the insurance carrier and pointed out an insured driver is one who operates the vehicle with consent, given by the owner. Since there was no consent by the owner, the driver was not insured.*
- ✓ *In the case of Downey v. Motor Vehicle Accident Indemnification Corporation (43 AD2d 178; 350 NYS2d 821), a city car was involved in an accident. The car was assigned to the fire department captain who was on call at all times. His wife used the car and an accident took place. The case clearly indicated, the wife was not an insured person since the city had no authority to permit the use of a city car by the wife. The effect was to leave the wife without insurance coverage and hence, personally liable for the injuries.*
- ✓ *In the case of Fox v. City of Syracuse (231 A.D. 273; 247 NYS2d 429, affirmed 258 NY 350), the court held the use of a city car by a city employee for private purposes did not show consent of the municipality. Hence, the operator of the car was not an insured person.*
- ✓ *In the case of Aspirall v. City of New York (221 AD 753, 223 NYS 501), the city was not liable to an injured party when the city vehicle in which the injured party was riding was involved in an accident. The driver, who was a city employee at the time of the accident, was not acting in the discharge of city business. We can conclude that since the driver was not an "insured party" he was exposed to personal liability.*
- ✓ *In the case of Aetna Casualty and Surety Company v. Santos (573 NYS2d 695, 175 AD2d 91), insured's tenant was not a "permissive user" of her car at the time he was involved in an accident with a third party, so the tenant was not "insured" under his landlord's automobile policy, given evidence that the tenant was permitted to use the car only in emergency situations; tenant's use of the vehicle to attend an appointment at the Department of Social Services was not an emergency under the circumstances of the case.*

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Clearly, drivers of vehicles who do so without the consent of the owner place themselves in financial jeopardy if they are not insured and they injure someone because of their negligence. The goal of this report is to design a procedure whereby consent is properly obtained, and highway employees operating municipal vehicles will be protected from possible liability under municipal insurance policies when vehicles are used in other municipalities pursuant to cooperative agreements.



Summary

This report has been prepared to clarify issues raised with respect to the legality, liability and accountability associated with cooperative sharing of highway services, maintenance, equipment and materials on an informal basis. The findings illustrate the importance of developing an appropriate contract which results in insurance protection for the officers and employees of the municipality when they engage in shared/cooperative services with other municipalities.

The practice of exchanging equipment without an appropriate contract places in jeopardy public workers, highway superintendents, highway employees, municipal legislative bodies, and particularly the city mayor, village mayor, town supervisor or county administrator.

The goal of the Rural Resources Commission's involvement has been to provide highway and other local officials with the means of promoting shared highway services within legally formalized arrangements, offering municipal employees, elected officials and taxpayers freedom from worry over possible liability concerns and accountability. While this may certainly involve a little more paperwork than has been the case under existing casual arrangements, the benefits are enormous. The Commission welcomes questions or input on issues relating to shared services among highway and public works departments and encourages municipal officials to contact it with suggested legislative actions that would further opportunities or remove impediments to such shared services.

Following research and discussions with local officials, Commission staff developed an inter-municipal agreement for shared highway or public works services that local legislative bodies or towns, villages, cities and counties could adopt by resolution. A copy of that resolution and a copy of the contract and memorandum which may be used to achieve the purposes of the resolution follow.

Resolution, contract and memorandum

The purpose of the resolution, contract and memorandum hereinafter set forth is to:

1. Establish a plan for the leasing, lending, exchanging or maintenance of equipment and materials consistent with the law which protects municipal officials and employees from personal liability.
2. Provide a simple manner for the local legislative body to authorize highway officials to enter into agreements with other highway officials whose legislative bodies have enacted a similar resolution.
3. Provide for the use of a short memorandum showing compliance with the resolutions and statutes which is consistent with the approval and direction of the local legislative body.
4. Provide for a settlement procedure whereby shared service accounts can be settled on a regular basis.
5. Provide the local legislative body with information relating to the use of municipal equipment and resources.
6. Enable the highway officials to determine where equipment and materials are being used or maintained and to determine if there is a fair and reasonable arrangement among participating municipalities.
7. Provide a basis for determining if new equipment is needed or if specialized equipment is being used or maintained in a manner which justifies renting or owning additional equipment.

Any part or provision of the resolution, contract or memorandum may be modified or revised in the manner determined by the parties thereto. However, it should be noted that such modifications should be in the documents of each of the parties. There should also be a review of the documents with your insurance carrier to be certain that any actions under such document will be covered by your policies.

Year End Closeout Recommended

In the event intermunicipal cooperation expands by the adoption of the suggestions made herein and is properly carried out, several “shared services” memoranda will be on file in the office of the municipal clerk when approaching the end of the fiscal year. Such memoranda submitted by the highway superintendent or public works officer would constitute a record of the lending or borrowing agreements that took place during the fiscal year.



It will be the duty of the chief fiscal officer of each municipality, in reviewing the memoranda, to determine whether the municipality owes other municipalities for the borrowing of machinery or supplies or if it is owed money from other municipalities for the use of machinery or equipment or for the borrowing or renting of machinery or supplies.

Such settling of accounts for the fiscal year, made possible by the filing of the shared services memoranda with the municipal clerk, will indicate to the legislative body and the public if intermunicipal agreements are worthwhile and if they should be encouraged. The annual final settlement of accounts will also enable highway and public works officials to determine if it would be worthwhile to expand the machinery inventory to include items that are being shared with others or to determine if it would be worthwhile to acquire highly specialized equipment, well knowing that it will be fully used by municipalities participating in sharing agreements as herein recommended.

**Sample Resolution Authorizing Chief Executive Officer to Sign a
Contract for Shared Highway Services on Behalf of the
CITY/COUNTY/TOWN/VILLAGE**

At a meeting of the City/County/Town/Village Board of the City/County/Town/Village of _____ duly held at _____ in such City/County/Town/Village on the ___ day of _____, ___ (year). Upon the calling of the roll by the Clerk the following members were:

Present:

Absent:

The following resolution was offered for adoption by _____, which resolution was seconded by _____.

Resolution Authorizing the Chief Executive Officer¹ to sign a contract on behalf of the City/County/Town/Village to permit the highway department head to share services with the highway department head in other municipalities who possess similar authorization for the borrowing or lending of materials and supplies and the exchanging, leasing, renting or maintaining of machinery and equipment, including the operators thereof, for the purpose of aiding the highway department head in the performance of his/her duties.

Whereas all municipalities, including the City/County/Town/Village of _____, have the power and authority to contract for the purpose of renting, leasing, exchanging, borrowing or maintaining of machinery and equipment, with or without operators, with other municipalities, and;

Whereas, all municipalities, including the City/County/Town/Village of _____, have the power and authority to borrow or lend materials and supplies to other municipalities, and;

Whereas, it is hereby determined that the City/County/Town/Village of _____ and other municipalities have machinery and equipment which is not used during certain periods, and;

¹ Wherever it appears in this document, "*Chief Executive Officer*" shall mean that person or body with authority to execute contracts on behalf of a municipality.

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SAMPLE RESOLUTION AUTHORIZING CHIEF EXECUTIVE OFFICER TO SIGN A CONTRACT FOR SHARED HIGHWAY SERVICES ON BEHALF OF THE CITY/COUNTY/TOWN/VILLAGE

Whereas, it is determined that the City/County/Town/Village of _____ and other municipalities often have materials and supplies on hand which are not immediately needed, and;

Whereas, it is hereby determined that by renting, borrowing, exchanging, leasing or maintaining highway machinery and equipment and the borrowing or lending of materials and supplies, the City/County/Town/Village of _____ and other municipalities may avoid the necessity of purchasing certain needed highway machinery and equipment and the purchasing of or storing a large inventory of certain extra materials and supplies, thereby saving the taxpayers money, and;

Whereas it is incumbent upon each municipality to design a simple method whereby materials and supplies, equipment and machinery, including the operators thereof, may be obtained or maintained with a minimum of paperwork and inconvenience and with a swift approval process, and;

Whereas, it is the intent of this City/County/Town/Village of _____ to give the head of the highway department the authority to enter into renting, exchanging, borrowing, lending or maintaining arrangements with the persons serving in similar capacities in other municipalities without the necessity of obtaining approval of the City/County/Town/Village governing board prior to the making of each individual arrangements, and;

Whereas, a standard contract has been prepared which is expected to be adopted and placed into effect in other municipalities, and will grant the person holding the position comparable to that of the head of the highway department, authority to make similar arrangements, and;

Whereas, it is hereby determined that it will be in the best interests of the City/County/Town/Village of _____ to be a party to such shared services arrangements;

NOW THEREFORE BE IT RESOLVED that the chief executive officer of _____ is hereby authorized to sign on behalf of the City/County/Town/Village, the following contract:

SAMPLE CONTRACT FOR SHARED HIGHWAY SERVICES

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

a. “Municipality” shall mean any city, county, town or village 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.

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.

2. The undersigned municipality 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 municipality which has approved a similar contract and filed such contract with the clerk of the undersigned municipality.

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3. 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 City/County/Town/Village of _____ 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 City/County/Town/Village of _____. The determination as to whether such machinery, with or without operators, is needed by the City/County/Town/Village of _____, 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 City/County/Town/Village of _____ 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 City/County/Town/Village of _____ 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 City/County/Town/Village of _____, 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 city/county/town/village of _____ 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.

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- e. When receiving the services of an operator with a machine or equipment, the receiving superintendent shall make no request of any operator which would be inconsistent with any labor agreement. All machinery and the operator, for purposes of workers compensation, liability and any other relationship with third parties, shall be considered the machinery of, and the employee of, the municipality owning the machinery and equipment.
 - f. The lending municipality shall be liable for any negligent acts resulting from the operation of its machinery or equipment by its own operator.
 - g. Each municipality shall remain fully responsible for its own employees, including but not limited to, salary, benefits and workers compensation.
4. 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.
 5. 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 five 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.
 6. 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.
 7. In the event machinery or equipment being operated by an employee or 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.
 8. Records shall be maintained by each municipality setting forth all machinery rentals, exchanges, borrowings,

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repair or maintenance and other shared services. Such records will be available for inspection by any municipality which has shared services with such municipality.

9. 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.

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

11. 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 City/County/Town/Village budget for highway purposes.

12. The record of all transactions that have taken place as a result of the City/County/Town/Village of _____ participating in the services afforded by this contract shall be kept by the superintendent and a statement thereof, in a manner satisfactory to the City/County/Town/Village governing board, shall be submitted to the City/County/Town/Village board semiannually on or before the first day of June and on or before the first day of December of each year following the filing of the contract, unless the City/County/Town/Village board requests the submission of records at different times and dates.

13. 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.

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

15. Copies of this contract shall be sent to the clerk and the Superintendent of each municipality with which the

Promoting Intermunicipal Shared Highway Services

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.

IN WITNESS THEREOF, the said City/County/Town/Village of _____ has by order of the City/County/Town/Village Board, caused these presents to be subscribed by the Chief Executive Officer, and the seal of the City/County/Town/Village to be affixed and attested by the Clerk thereof, this _____ day of _____, _____ (year).

City/County/Town/Village of _____
By: _____

Supervisor/Mayor/County Chief Executive Officer/Legislative Chairman Attest:

City/County/Town/Village Clerk

The City/County/Town/Village Clerk is authorized and directed to file a copy of the contract set forth in this resolution with the chief executive officer of the following municipalities:

This resolution shall take effect immediately.

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

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Board Member	Yes	No
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
Chief Executive Officer		
_____	_____	_____

There being a majority of the City/County/Town/Village Board voting to approve the resolution, the resolution was declared by the Chief Executive Officer to have been adopted.²

I, Clerk of the City/County/Town/Village of _____ hereby certify that the above is a correct text of the resolution adopted by the City/County/Town/Village Board of the City/County/Town/Village of _____ on the _____ day of _____, _____ (year) and that the above is the complete and whole text of such resolution.

(Seal)

City/County/Town/Village Clerk

SAMPLE Memorandum relating to Shared Highway Services

Town of: Good Hope County of: Cooperation

From: _____ Town Highway Superintendent, Town of Good Hope

To: _____ Town Highway Superintendent, Town of Good Neighbor

Lease of Equipment

Request of the Town of Good Neighbor for the use of such Town's D-4 Bulldozer with/without operator to be used for an estimated _____ days/hours commencing at _____ a.m./p.m./month/day/year

It is agreed that the rent of such equipment is \$_____ per hour/day

Town Highway Superintendent
Town of Good Hope

Town Highway Superintendent
Town of Good Neighbor

Lending of Material

Request of the Town of Good Neighbor for the borrowing of _____ (identify material and amount) to be returned on or before _____ a.m./p.m./month/day/year.

Town Highway Superintendent
Town of Good Hope

Town Highway Superintendent
Town of Good Neighbor

Note: Town governments and officials are referenced frequently in this report. However, the principles discussed herein apply to villages, cities and counties as well.

Maintenance or Repair

Request of the Town of Good Neighbor for the maintenance or repair of the following machinery or equipment: _____.

Services to be provided include the following:

_____.

Town Highway Superintendent
Town of Good Hope

Town Highway Superintendent
Town of Good Neighbor

