



## Inter-Municipal Mutual In-Kind Services Agreement

THIS AGREEMENT, (the "Agreement") is entered into with an effective date of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by and between the **COUNTY OF ULSTER**, having its principal place of business at 244 Fair Street, Kingston, New York 12401 (hereinafter referred to as the "County"), and the **TOWN OF MARBLETOWN** having its principal place of business at 1925 Lucas Avenue, Cottekill, New York 12419 (hereinafter referred to as the "Town") (each, a Party, together, the Parties).

### WITNESSETH:

**WHEREAS**, this Agreement is made pursuant to Article 5-G of the New York General Municipal Law and Sections 102, 133-a and 135 of the New York Highway Law; and

**WHEREAS**, the Parties agree that a cooperative arrangement such as is established hereby is in the best interests of the citizens of the respective municipalities; and

**WHEREAS**, each Party hereto has certain highway, non-highway, specialty equipment, materials and/or skilled personnel (including equipment operators) that may be available from time-to-time (referred to hereinafter as "Equipment, Materials and/or Personnel"); and

**WHEREAS**, the Parties agree that it is possible for one Party to make such Equipment, Materials and/or Personnel available for use by the other Party when it is in the public interest; and

**WHEREAS**, the use of such Equipment, Materials and/or Personnel may be loaned for a scheduled short duration of time, an unanticipated event and/or an emergency situation; and

**WHEREAS**, each Party has authorized their respective highway or public works superintendents and/or other appropriate department heads to act using their discretion pursuant to this Agreement; and

**NOW THEREFORE**, it is mutually agreed between the parties as follows:

1. **SERVICES:** The Parties may loan Equipment, Materials and/or Personnel that may be available from time-to-time to the other Party. All such Equipment, Materials and/or Personnel shall be loaned at the discretion of the respective highway or public works commissioner, superintendent and/or other appropriate department head.
2. **TERM OF AGREEMENT:** This Agreement shall take effect on \_\_\_\_\_ and shall continue in full force and effect for a period of five (5) years from the effective date identified above.
3. **EMPLOYEES:** Each Party shall remain fully responsible for its own employees, including salary, benefits and workers' compensation insurance and disability insurance. All employees of the Parties are to be treated in accordance with their respective collective bargaining agreements, if any, whether or not on loan to the other Party.
4. **EQUIPMENT OPERATORS:** From time to time, machinery and/or equipment may be loaned under this agreement. At all times, the Lending Party, as set forth on Attachment A shall provide an operator (the "Operator"), and may provide an additional employee, with said machinery and/or equipment, or no such loan shall be made. While on loan, said Operator, and any additional employee, shall be subject to the direction and control of the Highway Commissioner, Superintendent or Department Head of the Borrowing Party, as set forth on Attachment A in relationship to the manner in which the work is to be completed. However, the method by which the machine and/or equipment is to be operated shall always be determined by the Operator.
5. **MAINTENANCE AND REPAIRS:** The Lending Party shall be responsible for all maintenance and repairs to the loaned machinery and/or equipment. However, the Borrowing Party shall be responsible for the repair and/or

replacement of the machinery and/or equipment loaned under this Agreement that is lost or damaged due to negligence by the Borrowing Party, its acts or omissions, during the loan period.

6. **RECORDS AND REPORTS:** Each Party is responsible for maintaining its own full and accurate records of the equipment and/or materials loaned or borrowed. Such records may, but are not required to, include the completion of an "Equipment/Material Loan Record" and vehicle diagram, or equivalent forms, samples of which are attached hereto as Attachments A and A-1. Any such forms shall be completed for each piece of equipment or quantity of materials at the time the loan is requested. Records of loaned equipment and/or materials maintained by a Party shall be subject to inspection by the other Party to this Agreement, upon reasonable notice and during the record-keeper's normal business hours, during the term hereof and for a five (5) year period following the expiration of this Agreement.

In the case of an accident involving items covered under this Agreement, the appropriate reports and claims shall be filed promptly with the Town Clerk's Office, the County's Insurance Department or Workers' Compensation coordinator of each Party, as required by the situation. For any and all Towns, a copy of said documents shall be sent, in addition, to the Town Supervisor.

7. **INDEMNIFICATION:** Each Party agrees to defend, indemnify and hold harmless the other Party, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of its performance pursuant to this Agreement, which either Party, or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of the other Party, its employees, representatives, subcontractors, assignees, or agents. Notwithstanding the foregoing, each Party's obligation to defend, indemnify and hold harmless the other Party shall have no applicability to the extent that such other Party, its officers, agents, servants, employees, contractors or subcontractors contributed to the claims, losses, damages, costs or expenses.

In the event that any claim is made or any action is brought against the Lending Party arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of the Borrowing Party, either within or without the scope of his/her respective employment, representation, subcontract, assignment, or agency, or arising out of Borrowing Party's negligence, fault, act or omission, then the Lending Party reserves all rights and remedies provided by law, in equity, or, pursuant to this Agreement.

## 8. **INSURANCE:**

A) The Borrowing Party shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, **insurance with stated minimum coverages, all as set forth in Schedule "B" ("Indemnification and Standard Contract Insurance Requirements")**, which is attached hereto and hereby made a part of this Agreement. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing, satisfactory to the Lending Party, who have been fully informed as to the nature of the use of the machinery and/or equipment.

B) The Lending Party shall be an additional insured on all insurance policies required to be maintained by the Borrowing Party pursuant to this Agreement with the understanding that any obligations imposed upon the insured (including without limitation, the liability to pay premiums) shall be the sole obligation of the Borrowing Party and not those of the Lending Party.

C) Each Party, at the inception of this Agreement, shall provide the other Party with an Additional Insured Endorsement or equivalent form and a Certificate of Insurance evidencing the required Commercial General Liability Insurance, Property and Casualty Insurance, Automobile and Physical Damage Insurance, Workers' Compensation and Disability Benefits Coverage. Each Party shall provide the other Party with a new Additional Insured Endorsement or equivalent form and Certificate of Insurance 30 days prior to the expiration of the original certificate as is necessary during the Term of this Agreement.

D) All Towns in Ulster County may obtain Workers' Compensation Insurance coverage through the Ulster County Self-Insurance Plan, in which case proof to the County of Workers' Compensation coverage is waived. Any Town that is not part of said Plan shall provide proof of Workers' Compensation coverage by filing Form C-105.2, Form U-26.3 or Form SI-12 with the County.

E) Notwithstanding anything to the contrary in this Agreement, the Borrowing Party irrevocably waives all claims against the Lending Party for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 8. The provision of insurance by the Borrowing Party shall not in any way limit the Borrowing Party's liability under this Agreement. Notwithstanding anything to the contrary set forth above in this Article 8 or in any other part of this Agreement, to the extent that any loss, damage, claim or expense arose from or is associated in whole or in part, with any act or omission on the part of the Lending Party, its officers, agents, servants, employees, contractors or subcontractors, the aforesaid waiver shall be, to such extent, inapplicable, and the Borrower may assert any and all such claims against the Lender.

F) An Operator shall always be provided by the Lending Party when loaning machinery and/or equipment. In the event that, against the express terms of this Agreement, no Operator is provided by the Lending Party or that the provided Operator is not operating the machinery and/or equipment when liability is incurred or damages ensue through the improper use or operation of said machinery and/or equipment during the loan period, the Lending Party, as owner of the machinery and/or equipment, shall be the primary responsible party for insurance purposes.

G) For the purposes of this Agreement, all equipment to be loaned by a Lending Party shall be listed on an Inventory List to be submitted to the Lender's Insurance Carrier in order to make sure there is either Inland Marine insurance or Auto Physical Damage Insurance on the equipment in accordance with Schedule B, which is attached hereto and made a part hereof. Said Inventory List shall be up-dated at least annually or more frequently if required. Equipment that is not so insured for physical damage on either an Inland Marine or Auto policy shall not be loaned under this Agreement.

9. **EFFECTIVENESS:** By Resolution No. 350 of 2015, approved on September 15, 2015 by the Ulster County Legislature and executed by the County Executive on September 17, 2015, the Ulster County Legislature has approved the participation of the County of Ulster in inter-municipal shared services agreements such as this one and has authorized the Commissioner of the Ulster County Department of Public Works to sign such agreements. This Agreement shall not be effective until approved by a majority vote of the Town Board of the Town as required by Section 119-o of the General Municipal Law, and until the Agreement is signed by the respectively authorized representatives of the Parties.

10. **TERMINATION:** Either Party may, by written notice to the other Party effective thirty (30) days from mailing, terminate this Agreement in whole or in part at any time for the terminating Party's convenience. However, upon the failure of the Borrowing Party to comply with any of the terms or conditions of this Agreement, the Lending Party may, by written notice to the Borrowing Party, effective as of the date of mailing, terminate this Agreement.

Upon termination of this Agreement, the Borrowing Party shall within fifteen (15) days of termination return all Equipment, Materials and/or Personnel to the Lending Party. Should replacement Materials be unavailable at the time of termination, the Borrowing Party shall immediately notify the Lending Party of the unavailability of the Materials and provide a date when the Borrowed Materials will be replaced. The Lending Party in its sole discretion may elect to have the Borrowing Party pay to the Lending Party the replacement value of the Materials.

11. **SAFETY PRECAUTIONS:** The Parties shall provide and employ all safety measures, safety equipment, and safety devices appropriate and necessary when operating the equipment. The Parties shall comply with all safety standards, codes, regulations, and laws applicable to their activities under this Agreement.
12. **MODIFICATIONS TO BE IN WRITING:** No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement.

13. **ENTIRE AGREEMENT:** The rights and obligations of the Parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, which supersedes any other prior understandings or writings between or among the Parties to this Agreement.

**IN WITNESS WHEREOF**, this Agreement has been executed by the duly authorized officers of the respective Parties.

**TOWN OF MARBLETOWN**

**COUNTY OF ULSTER**

BY: \_\_\_\_\_  
George Dimler  
Town Highway Superintendent

BY: \_\_\_\_\_  
Brendan M. Masterson, Commissioner  
Ulster County Department of Public Works

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ATTACHMENT A**  
**EQUIPMENT/MATERIAL LOAN RECORD**

Lending Party: \_\_\_\_\_ Borrowing Party: \_\_\_\_\_

Loan Commencement Date: \_\_\_\_\_ Loan End Date: \_\_\_\_\_

Item Loaned \_\_\_\_\_ Includes Operator: Yes \_\_\_\_\_ No \_\_\_\_\_

Full Value of Equipment: \_\_\_\_\_

VIN/Serial #: \_\_\_\_\_ For Registered Equipment: Plate number \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_

Picked-up by Borrower at Commencement ☐ Returned by Borrower at End ☐

Delivered by Lender at Commencement ☐ Picked up by Lender at End ☐

Location where equipment is to be used:

\_\_\_\_\_

Visible damage on equipment prior to loan:

\_\_\_\_\_

\_\_\_\_\_

☐ See Schedule A-1 for damage

Other comments/information related to this equipment loan:

\_\_\_\_\_

\_\_\_\_\_

Please fill out information below:

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Municipality:

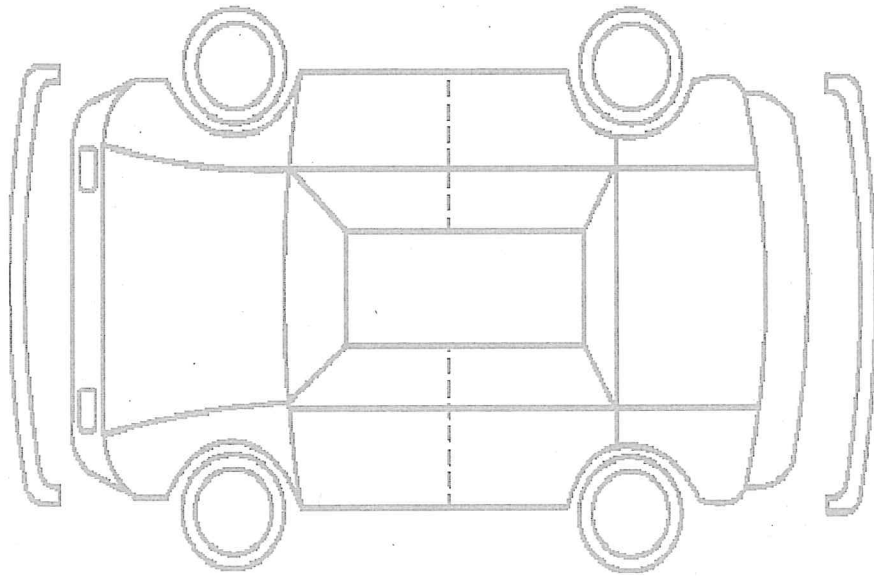
Town of \_\_\_\_\_

or

County of \_\_\_\_\_

**SCHEDULE A -1**

Please indicate pre-loan vehicle damage on diagram below:



**SCHEDULE B**  
**INDEMNIFICATION AND STANDARD CONTRACT INSURANCE REQUIREMENTS**

**WORKERS' COMPENSATION AND DISABILITY INSURANCE:**

Each Party shall take out and maintain during the life of this Agreement, Workers' Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed at the site of the project, and shall provide to the other Party's Town Clerk or County Insurance Department Certificates of Insurance evidencing this coverage.

**WORKERS' COMPENSATION REQUIREMENTS:** All Towns in Ulster County may obtain Workers' Compensation Insurance coverage through the Ulster County Self-Insurance Plan, in which case proof to the County of Workers' Compensation coverage is waived. Any Town that is not part of said Plan shall provide proof of Workers' Compensation coverage by filing Form C-105.2, Form U-26.3 or Form SI-12, as described below, with the County:

- **IF THE PARTY IS REQUIRED TO CARRY COVERAGE AND HAS AN OUTSIDE CARRIER**, submit Form C-105.2, "Certificate of Workers' Compensation Insurance" (the borrower's insurance carrier will send this form to the lender at the borrower's request). (PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3)
- **IF THE PARTY IS REQUIRED TO CARRY COVERAGE AND IS SELF INSURED**, submit Form SI-12, "Certificate of Workers' Compensation Self-Insurance" (the borrower's Group Self-Insurance Administrator will send this form to the lender at the borrower's request).

**DISABILITY BENEFITS REQUIREMENTS:** To assist the State of New York and municipal entities in enforcing WCL Section 220(8), business entities seeking to enter into contract with municipalities **MUST** provide ONE of the following forms to the government entity (the lender) entering into a contract:

- **IF THE PARTY IS REQUIRED TO CARRY COVERAGE AND HAS AN OUTSIDE CARRIER**, submit Form DB-120.1, "Certificate of Disability Benefits Insurance" (the Party's insurance carrier will send this form to the other Party at the Party's request).
- **IF THE PARTY IS REQUIRED TO CARRY COVERAGE AND IS SELF INSURED**, submit Form DB-155, "Certificate of Disability Self-insurance" (the Party must call the Workers Comp. Board's Self-Insurance Office at 518-402-0247).

**IF THE PARTY IS NOT REQUIRED TO CARRY COVERAGE**, submit Form CE-200, "Affidavit For New York Entities With No Employees And Certain Out of State Entities. That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required" (this form and the instructions for completing it are available at: <https://www.wcb.ny.gov/icexempt/index.jsp>)

Please note that ACORD forms are NOT acceptable proof of New York State Workers' Compensation or Disability Benefits insurance coverage.

**COMMERCIAL GENERAL LIABILITY INSURANCE:**

Each Party shall take out and maintain during the life of the Agreement, such bodily injury liability and property damage liability insurance as shall protect it and the other Party from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Agreement, whether such operations be by the Lending Party, the Borrowing Party, by any subcontractor, or by anyone directly or indirectly employed by either of them.



It shall be the responsibility of each Party to maintain such insurance in amounts sufficient to fully protect itself and the other Party, but in no instance shall amounts be less than those set forth below. The amounts set forth below establish the minimum acceptable levels of coverage.

Bodily injury and property damage liability insurance in an amount not less than ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS for each occurrence and in an amount not less than TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS general aggregate.

**OTHER CONDITIONS OF COMMERCIAL GENERAL LIABILITY INSURANCE, INLAND MARINE COVERAGE OR AUTO PHYSICAL DAMAGE COVERAGE:**

1. Coverage shall be written on Commercial General Liability form.
2. The Lending Party shall insure items of equipment that may be loaned under the "Inter-Municipal Mutual In-Kind Services Agreement" attached hereto for full equipment value under Inland Marine Coverage or Auto Physical Damage Coverage.
3. The Lending Party shall be added to the Borrowing Party's Commercial General Liability policy and Umbrella Policy/Excess Liability policy as an "Additional Insured" for insurance coverage in the event that the Borrowing Party shall be the primary responsible party for insurance purposes when, against the express terms of the Agreement, no Operator is provided by the Lending Party or the provided Operator is not operating the machinery and/or equipment when liability is incurred or damages ensue through the improper use or operation of said machinery and/or equipment during the loan period.

**UMBRELLA LIABILITY OR EXCESS LIABILITY INSURANCE:**

Umbrella Liability or Excess Liability Insurance shall be obtained by the Borrowing Party in an amount not less than TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS.

**AUTOMOBILE LIABILITY INSURANCE:**

Automobile bodily injury liability and property damage liability insurance shall be provided by the Borrowing Party with a minimum Combined Single Limit (CSL) of ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS.

**OTHER CONDITIONS OF AUTOMOBILE LIABILITY INSURANCE:**

1. Coverage Shall Include:
  - A. All owned vehicles
  - B. Hired car and non-ownership liability coverage
  - C. Statutory No-Fault coverage

**ADDITIONAL CONDITIONS OF INSURANCE:**

1. The Borrowing Party shall submit copies of any or all required insurance policies as and when requested by the Lending Party.
2. An Operator shall always be provided by the Lending Party when loaning machinery and/or equipment. However, the Borrowing Party shall name the Lending Party as an Additional Insured on the Borrower's General Liability and Umbrella Policy/Excess Liability Policy so that there is insurance coverage in the event that, against the express terms of this Agreement, no Operator is provided by the Lending Party or the provided Operator is not operating the machinery and/or equipment when liability is incurred or damages ensue through the improper use or operation of said machinery and/or equipment during the loan period, and under the circumstances the Borrowing Party shall be the primarily responsible party for insurance purposes.

**CERTIFICATE OF INSURANCE:**

The Borrowing Party shall file with the Lender's town clerk or insurance department, as appropriate, all proper Certificates of Insurance with Additional Insured Endorsement or equivalent form attached



1. Certificate of insurance 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 the certificate
- G. Limits of liability for all policies included on the certificate
- H. "Certificate Holder" if County is the Lender: shall be the County of Ulster, P.O. Box 1800, Kingston, NY 12402-1800.
- I. A signed Additional Insured Endorsement or equivalent form shall be attached to the Certificate of Insurance

2. If the Borrowing Party's insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the Lending Party shall be provided with a new Certificate of Insurance and Additional Insured Endorsement or equivalent form indicating the replacement policy information as requested above. The Lending Party requires thirty (30) days prior written notice of cancellation [fifteen (15) days for non-payment of premium] from the Insurer, its Agents or Representatives.