
Developing Intermunicipal Arrangements for Highway Services: A Guide for Local Government Officials

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The New York State
Commission on Local Government
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Introduction

The municipal highway function is an expensive undertaking involving personnel, vehicles, equipment, and large facilities. According to data from the NYS Office of State Comptroller, counties, towns, villages and cities (excluding New York City) spend approximately \$3 billion annually from all sources for highway services.¹

The responsibilities and organizational structure of local highway departments, and manner and extent that they interact, vary across the state. What is common, however, is a culture of cooperation with other departments. Shared service arrangements are not new to New York's municipal governments. There are many examples of counties, towns, villages and cities coming together to jointly perform public functions more efficiently. This is certainly the case for highway services where cooperative arrangements, both formal and informal, are prevalent. However, the cooperation that occurs often consists of "handshake" agreements between governments and is not formalized where responsibilities are spelled out in a way that provides legal protection for all parties involved.

Variations of the terms "sharing" and "cooperative arrangements" are used throughout this document to generally refer to the following intermunicipal arrangements:

- **Shared services** – A shared service is the joint provision, performance or delivery of a service, facility, activity, project or undertaking by two or more municipalities which each may lawfully undertake separately. The municipalities retain highway departments, but one may specialize in particular aspects of service delivery, or both may simply assist each other in a way that is legally documented.
- **Merger** – Merging highway departments entails the transfer of functions, powers or duties of one department to another.
- **Consolidation** – Consolidating is a process whereby two or more municipalities with highway departments combine, resulting in only one highway department.

This guide is designed to assist local government managers and elected officials with varying levels of expertise and resources, to identify opportunities to share highway services and to develop and implement sharing agreements. We encourage you to send comments to the Commission on how it might be improved. Send your comments with the subject line "Highway Services Manual" to nyslocalgov@empire.state.ny.us.

¹ The term "highway services" is used throughout this document to generally refer to all components of the construction and repair of roads, bridges and culverts; maintenance of roadways, shoulders and roadside areas; maintenance of highway department vehicles and equipment; and project planning and design.

Starting Out

As you consider whether to enter into a cooperative agreement related to highway services, you should consider some of the lessons learned from previous attempts by local government officials to study, develop and implement cooperative arrangements. The following “lessons learned” draw from analyses completed by the Government Law Center of Albany Law School and the Local Government Program of Cornell University (see textbox entitled, *Case Study Reports of Cooperative Arrangements*, for more information on this body of work).

Have a Clear Picture of What You Hope to Achieve

Why would municipalities investigate a formal cooperative arrangement for highway services? Most officials have pursued arrangements to share highway services to:

- Generate fiscal savings. Factors motivating efforts have included property tax concerns and stagnant funding for highway departments. Local officials have also pursued cooperative highway arrangements so realized savings could be reinvested into capital improvements.
- Deliver services more efficiently. An often cited example is contracting with another municipality for snow removal and ice control to reduce the distance needed to travel to the beginning of a snow plow route.
- Increase the quality or level of services provided. Some local highway departments contract out specific types of work such as maintenance, engineering studies, planning, etc. to free existing staff to specialize in other areas or to secure technical expertise without hiring a full-time employee.

Articulate Your Goals and Link Your Plan of Action to These Goals

Throughout developing and formalizing a cooperative arrangement, you may have to sell your ideas to appointed and elected officials, citizens, employees and other interested parties. It will be important for you to clearly articulate what you hope to achieve including specific outcomes and expected benefits where possible.

Equally important is a strong link between your plan of action and articulated goals or needs. For example, if your goal is to realize fiscal savings for reinvestment into capital improvements, you should be prepared to present a reliable fiscal analysis estimating the potential savings from your proposal and a reinvestment plan. Proposals that are only tangentially related to driving goals or needs may encounter more obstacles to approval.

Although your goal may be property tax relief, keep in mind that service sharing arrangements may not have an immediate impact on taxes. Suggesting that your proposal would have such an immediate impact may put your initiative on dangerous ground. In most cases the savings generated from a cooperative highway agreement

are subject to the local budget process and, as a result, may not directly impact taxation in an obvious way. A more cautious and general characterization of benefits may better serve your proposal.

Foster Trust and Encourage Collaborative Efforts

Successful efforts are more likely in an environment that encourages trust and collaborative efforts between local governments. There are many examples of potential arrangements failing to move forward because some or all of the parties questioned whether a fair and mutually beneficial agreement could be developed. You may be able to foster an environment of trust by creating a venue where ongoing consultation and collaboration between municipalities are the focus. These venues can be formal, such as committees or councils with representatives from each local government, or somewhat informal, an example being a group of local officials agreeing to meet on a regular basis.

Start Small Rather than Not Start at All

Small steps, including cooperative agreements that do not involve exchanging money or those for a one-time, limited in scope service, can lay the groundwork for further and more complex efforts. These initial arrangements allow municipal leaders to see the benefits of such arrangements without taking great financial or political risks, and provide parties the opportunity to get comfortable with each other.

A somewhat similar approach may be appropriate for proposals that could involve many local governments. Where possible, get started with those municipalities that are committed to collaboration. Your initial success may attract others thus providing the opportunity to expand your effort.

Consider Using Outside Experts

Using third-party experts from consulting firms, think tanks and academic institutions to identify opportunities for cooperative arrangements and develop an implementation plan offers three advantages. It provides an opportunity to bring data and analytical expertise to the table that may not be in house. It also avoids relying on possibly already overburdened department staff to produce the necessary analyses. Finally, using a dispassionate outside party to study potential sharing agreements may help to quiet fears that one or several parties may be pursuing cooperative arrangements for personal gain.

Encourage Community Involvement

An informed and engaged community can be one of your greatest allies in securing the commitment of hesitant officials and moving your cooperative arrangement forward. You may be able to encourage greater community involvement in your efforts by posting updates on your progress and analyses on your department's website; keeping deliberations between municipalities, particularly at decision points, transparent; and

establishing a mechanism for regular community feedback (e.g., public hearings, a comment page on your department website, etc.). Early efforts to keep your constituency informed and engaged may prove crucial for actions that require voter referendum such as shifting the town highway supervisor position from an elected to appointed position.

It May Take Time to Realize Success

Studying, planning, and implementing cooperative arrangements take time. Analyses of previous efforts suggest that patience and perseverance are typically necessary, and that the best course of action is to take the time necessary to adequately plan and prepare for change.

Anticipate and Take Advantage of “Striking Moments”²

As you study and plan for change, it is important to anticipate special circumstances that would potentially smooth the way for your effort. These are often characterized as “striking moments.” An example of a striking moment would be new vacancies in positions that you plan to drastically change the responsibilities of or eliminate. Another example would be the expiration of a lease on a facility that you wish to vacate. These types of special circumstances present opportunities to move forward where they may not have existed.

Case Study Reports

- *Government Law Center of Albany Law School*. The Center, through collaborations with academic institutions across New York State, produced case studies of intermunicipal cooperative arrangements funded by the NYS Department of State’s Shared Municipal Services Initiatives (SMSI) Grant Program. The case studies are available on the Department’s website at <http://www.dos.state.ny.us/lqss/smsi/smsicasestudiespage.html>.
- *Governance and Management Initiative of Binghamton University*. Dr. Michael Hattery, a senior research associate in the university’s Department of Public Administration, completed several analyses of local government efforts to share highway services in the late 1990s, and studied Chemung County’s more recent efforts in 2004-07. His reports are available on the University’s website at : <http://ccpa.binghamton.edu/community/localgov.html> <<http://bux2k.binghamton.edu/exchweb/bin/redirect.asp?URL=http://ccpa.binghamton.edu/community/localgov.html>> . Mike can be contacted by email: mhattery@binhamton.edu or by phone: 607-777-9185.

² See pages 11-12 of *Local Government Management Guide: Intermunicipal Cooperation*, NYS Office of State Comptroller, November 2003, available at <http://osc.state.ny.us/localgov/pubs/lqmg/intermunicipal.pdf>

Statutory Authority for Intermunicipal Agreements

New York State's counties, towns, villages, and cities have broad authority to enter into cooperative arrangements for highway services with each other and other public entities. Local officials may want to take advantage of this power to explore highway-related arrangements with government units that they have contracted with in the past and also those that they have had limited contact. For example, when exploring an intermunicipal agreement to share a regional facility, it may make sense to think beyond the realm of New York's counties, towns, villages and cities, and to include in your effort school districts, New York State Department of Transportation Regional Offices, and the neighboring local government units of another state.

Below is a brief overview of statutory authority to enter into intermunicipal agreements for building and maintaining New York's road and bridge system. This section concludes with a textbox noting sources for more information.

Broad Authority is Provided in General Municipal Law

New York State Statutes provide broad authority for municipalities to jointly provide services, including highway services. For example, Article 5-G of General Municipal Law grants "municipal corporations" general authority to jointly provide services that each has the power to provide separately. It is important to note that Article 5-G requires each party to the cooperative arrangement to have authority to provide the service in question individually. Section 119-o of that Article reads:

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 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 or for the provision of a joint service or a joint water, sewage or drainage project.

Section 119-n defines "municipal corporations" to include,

...a county outside the city of New York, a city, a town, a village, a board of cooperative educational services, fire district or a school district.

Intermunicipal agreements entered into pursuant to Article 5-G require the majority vote of the municipality's governing body, and any other requirements such as referendum or special consent, that are required when acting individually must also be followed when acting jointly. For example, General Municipal Law, Section 119-o reads:

Any agreement entered into hereunder shall be approved by each participating municipal corporation or district by a majority vote of the voting strength of its governing body. Where the authority of any municipal corporation or district to

perform by itself any function, power and duty or to provide by itself any facility, service, activity, project or undertaking or the financing thereof is, by any other general or special law, subject to a public hearing, a mandatory or permissive referendum, consents of governmental agencies, or other requirements applicable to the making of contracts, then its right to participate in an agreement hereunder shall be similarly conditioned.

Specific Authority to Share Highway Services

In addition to the broad powers provided by Article 5-G, statute provides authority for counties, towns, villages and cities to share specific highway services. The list below provides examples of such authority for snow removal and equipment rental. Local officials should consult state law for other possible citations and the specific requirements associated with the examples below.

Snow Removal

- Highway Law, Section 135-a authorizes any **county** or its superintendent of highways to contract with any **city, town, or village** for the removal of snow from the county roads of a county or for sanding or otherwise treating them for the purpose of removing the danger of ice and snow...
- Highway Law, Section 142-b provides that a **town** board may authorize the town superintendent of highways to remove snow and ice from any property within the town belonging to a **school district** or permit the use of snow and ice removal equipment during an emergency by any city, village, town, county, fire district, special improvement district or school district upon agreed terms.
- Highway Law, Section 142-c provides that a **town** may enter into agreements with the **villages** within its borders to remove snow and ice from village streets and sidewalks

Highway Equipment

- Highway Law, Section 133-a **authorizes counties** to permit the use of county-owned street or highway machinery, tools or equipment by any municipal corporation, political subdivision, district corporation or school district located in the state. Section 135 authorizes the county superintendent to lease county-owned equipment when not in use to (a) any town or towns in the county to be used on town highways under the direction of the town superintendent, (b) or to the state commissioner of transportation.
- Highway Law, Section 142-b **authorizes towns** to permit the use of town highway machinery, tools and equipment within the town by any fire district, special improvement district or school district, located in whole or in part in any such town... Section 142-c authorizes towns to [p]ermit the use of town highway machinery, snow and ice removal equipment, tools and equipment in or by any village located wholly or partly within the town. Section 142-d permits 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 system of New York...

- General City Law, Section 20(31) **provides that cities may permit the use of any city-owned street or highway machinery, tools or equipment by a county in which such city is wholly or partly located or by a municipal subdivision, district, district corporation, or school district, wholly or partly in such a county...**

Example of a Shared Service Arrangement

In March 2007 a Highway Services Board was created in Chemung County to increase cooperation among the seven towns and villages participating in the agreement. Later that year, the City of Elmira joined the group. This cooperative effort was magnified by an agreement that took effect in January 2008 between the City of Elmira and the Chemung County. Under the agreement, the city public services director took on the additional role of county public works commissioner, which includes overseeing highway operations for both municipalities and responsibility for all Chemung County and City of Elmira civil engineering activities and projects. The timing was perfect, as the county superintendent of highways and public works was retiring.

The new director is assisted by clerical staff, a deputy director, and soon a project engineer. While the administration is shared, the departments have not merged. The director is a city employee, acting under contract with the county. The county pays \$100,000 towards the shared administration. In addition to a reduction in personnel costs, savings are expected to occur from single-source purchasing, sharing of equipment, and avoidance of contractual services.

The agreement, contained in the appendices, also includes a sharing of information technology personnel, as well as a county commitment to collect city taxes.

Authority to Contract with the State

New York State statute provides authority for municipalities to contract with state entities for highway services. Article 5 of General Municipal Law (Section 99-r) specifically notes that the “governing body” of a municipality may contract with *any state agency for ...street sweeping and maintenance, sidewalk maintenance, drainage...* Cooperative agreements entered into pursuant to Section 99-r should specify the scope of the services provided and are subject to state and municipality approval. That section states:

Notwithstanding any other provisions of law to the contrary, the governing board of any municipal corporation may enter into agreements and/or contracts with any state agency including any department, board, bureau, commission, division, office, council, committee, or officer of the state, whether permanent or temporary, or a public benefit corporation or public authority, or a soil and water conservation district, and any unit of the state university of New York, pursuant to and consistent with sections three hundred fifty-five and sixty-three hundred one

of the education law within or without such municipal corporation to provide water supply, street sweeping or maintenance, sidewalk maintenance, drainage, sewage disposal or any other services of government not regularly provided to the public as a part of general government services. Such state agency, soil and water conservation district, or unit of the state university of New York, within the limits of any specific statutory appropriation authorized and made available therefore by the legislature or by the governing body responsible for the operation of such state agency, soil and water conservation district, or unit of the state university of New York may contract with any municipal corporation for such services as herein provided. Any such contract may be entered into by direct negotiations and shall not be subject to the provisions of section one hundred three of this chapter.

Additionally, Highway Law, Section 10, Subdivision 34-b, authorizes cooperative agreements among the New York State Department of Transportation and municipalities for the operation and maintenance of computerized traffic control signal systems.

Authority to Contract with Local Governments Out-of-State

Statute authorizes New York State's local governments to enter into cooperative agreements for highway services with local government units of other states. Section 462 of Article 140-G of General Municipal Law specifically notes that,

Any public agency of this state may enter into interlocal agreements with any public agency or agencies of any other state or states providing for any of the following:

The exchange, furnishing or providing by one or more of the contracting public agencies to one or more of the other contracting public agencies of services, personnel, facilities, equipment, or any other property or resources for any one or more of the following purposes or uses:

... (23) Roads and highways...

Section 462 defines public agency as ...any county, city, town, village, school district, improvement district or district corporation of the state of New York; and any local government unit, subdivision, or special district of another state.

It is important to note that Section 463 requires that agreements entered into pursuant to this article be authorized and approved by the municipality's governing body. Additionally, the local government unit must hold a public hearing prior to approving the agreement.

Other Resources

- *Making Government Work: Intergovernmental Cooperation, Partnering and Consolidation in New York State*, NYS Office of Attorney General, April 2005, available on the Department's website at http://www.oag.state.ny.us/press/reports/making_government_work.pdf. This document provides a detailed summary of the provisions of General Municipal Law Article 5-G regarding intermunicipal agreements and Article 14-G regarding agreements with the local government units of other states. It also provides a list of examples of cooperative arrangements for highway equipment and maintenance.
- The laws of New York State are available in their entirety on the Web at <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

Conducting a Cooperative Study

One of the first steps to considering a cooperative arrangement for highway services is to conduct a study to identify aspects of your operation that lend themselves to a sharing agreement and to assess the feasibility of potential projects. The breadth and depth of your study will depend on the intended scope of your effort. For example, the analysis necessary to assess the benefits of contracting for a single service (e.g., roadside maintenance, snow plowing, etc.) will be more limited in nature than one that considers merging the highway departments of two local governments.

There are three common components to a cooperative study: developing procedures for undertaking a study; identifying and collecting data; and analyzing data and determining feasibility. These and some other considerations are discussed below. The appendices provide detailed information on collecting and analyzing highway operations data.

Develop Procedures for Undertaking a Study

Developing procedures for undertaking a study entails formulating a plan for completing the study that establishes the:

- Individual or group responsible for the study. For smaller efforts you may want to have internal staff do the bulk of the data collection and analysis. An intermunicipal committee may be more appropriate for cooperative studies that are broad in scope and include many local governments. A citizen's group or third party, such as a consultant from an academic institution, think tank, or private firm, may also be appropriate. In all cases, one should clearly establish the decision-making authority of the party conducting the study and to whom they report.
- Scope of the study and goal of the cooperative arrangement. It is important to establish upfront the breadth and depth of the study as this will dictate the type of data collected and analysis performed. Where the main purpose of the study is to identify as many opportunities as possible to share highway services, examining all aspects of the highway function is initially necessary to identify those areas that warrant deeper investigation.

Equally important is to establish the goal or what you hope to achieve by entering into a cooperative arrangement as this will guide the analysis performed. For example, if your goal is to achieve fiscal savings or generate revenue, analysts will focus their efforts on the aspects of your operations that show promise in these areas and avoid others. If your goal is to increase cooperative arrangements with a specific local government, analysts will collect data for only the government under consideration.

- Timeline for completing data collection and analysis. As with most projects, a work schedule will increase the likelihood that the specific tasks of the

cooperative study will be completed in a timely manner. You may want to include in your timeline a schedule of regular progress reports (written or oral), and deadlines for completing data collection, analyses and analytical reports. The timeline should take into consideration the budget cycle and fiscal year of each participating municipality, and the regularly scheduled meetings of decision-making bodies.

- Reporting requirements. It is helpful to establish early in the study how the findings of the analysis will be presented to decision makers. Your options range from an informal oral presentation or internal memo to a detailed report that is made available in electronic form on your website. In addition to a report detailing the study's findings, you may want to consider requiring progress reports throughout the project that provide updates on work completed and also describe obstacles and delays encountered.

Identify and Collect Data

If your cooperative study is broad in scope, you may want to start by conducting a comprehensive review of all the factors that affect your highway program and budget. These factors include, but are not limited to, the condition of your infrastructure, capital facilities, and equipment, as well as current staffing levels and technical expertise. This exercise will help you identify not only the direct and indirect costs associated with your department, but also areas where your current operation is not fully utilizing its capacity or where cost increases are expected. This information should form the basis of any plan for sharing services with a neighboring community or communities.

Appendix A provides detailed information on completing a comprehensive inventory of your highway services and costs.

In addition to conducting this exercise for your highway department, you may want to examine the full range of highway and related services your government provides outside of your department. Many local governments are responsible not only for highway services, but they also have some responsibility for parks, sewer and water, etc. Although these services are certainly different, they all may require some of the same factors that add to local costs. For example, all of these services may involve: trucks; equipment to cut/mow grass; heavy equipment such as graders and backhoes; personnel with a broad range of skills; garages to house equipment; specialized computer systems; and supplies such as asphalt, dirt, sand, etc.

As you begin to think about consolidating your highway services with those of a neighboring community, don't miss the opportunity to re-examine all of the related services your municipality already provides. Where these services are provided by separate departments within your local government, you should include them in your assessment. Even if you decide not to pursue a sharing arrangement with a neighboring community, you should consider consolidating certain core services within your government to take advantage of efficiencies and economies of scale.

Analyze Data and Determine Feasibility

Performing a thorough analysis of data on the significant aspects of your operation will help identify areas where entering a cooperative arrangement will be realistic and help to evaluate the outcomes of such an arrangement. It is important to note that, even when your analysis shows a particular project will result in no fiscal benefits (no savings or new revenue); the particular agreement under consideration may be worth pursuing should it increase the quality or level of services you currently provide.

Appendix B provides detailed information on assessing the costs and benefits of cooperative agreements in the following areas:

- Sharing equipment – Many local governments share equipment with either a neighboring community or another level of government. This includes sharing existing equipment or jointly purchasing new equipment.
- Sharing facilities – Local governments also may share facilities such as salt sheds, garages, fuel storage facilities, etc. It is especially prudent to consider sharing a facility when your locality needs to replace an existing facility or acquire one for the first time.
- Sharing highway services – Combining services such as roadside maintenance, plowing, street lighting, engineering studies, etc. with another local unit may be economically beneficial. The most straightforward approach would be for one community to contract with another to either provide or receive the service.
- Sharing administrative services – Combining back office or administrative functions with another local unit may reduce administrative costs or generate revenue. Functions for consideration include, but are not limited to, customer service operations, payroll, information technology, etc.

When examining broad-based sharing arrangements such as the consolidation or merger of two highway departments, you should consider conducting a cost per mile analysis. This entails comparing the cost per mile of providing highway services as you currently operate with the projected cost of services under the arrangement being considered. Appendix B provides more information on this type of analysis.

Other Considerations

Your findings from data collection and analysis should provide an indication of those areas of your operations that, at a minimum, lend themselves to a sharing arrangement and warrant further investigation. For these areas, you may want to expand your study to include gathering information on the following:

- Stakeholders – It is important to identify individuals and groups that would benefit from and potentially support a cooperative arrangement. Equally important is to identify those that may be disadvantaged or oppose the arrangement on other

grounds. These could include citizens; public employees and the groups that represent them; and appointed and elected officials.

- Workforce impacts – You may want to have study staff establish the extent each potential sharing arrangement will impact staff. For example, you may need to transfer employees, reduce/increase your workforce, or provide training/retraining. Additionally, efforts should be made as early as possible to identify the extent implementation of each arrangement will trigger collective bargaining requirements under the State’s Public Employees’ Fair Employment Act (Taylor Law) and the requirements of State Civil Service Law (see Section Three: Personnel).
- Allocating costs – In most cases, a cooperative agreement will include two or more governments exchanging money for services. Those conducting your cooperative study may be in a good position to analyze possible methods for allocating expenses to the participating governments.
- Legal agreements and citizen input – Those conducting your cooperative study may be able to establish and recommend the types of legal agreements necessary to implement your sharing arrangement. They may also be positioned to identify whether implementation will require citizen input such as a referendum.

Other Resources

- *Intermunicipal Cooperation: Local Government Management Guide*, NYS Office of State Comptroller, November 2003, available on the Web at <http://www.osc.state.ny.us/localgov/pubs/lgmg/intermunicipal.pdf>. This document provides recommended practices for conducting a study of potential opportunities for inter-municipal cooperation. Additionally, it provides helpful hints on maintaining a cooperative spirit and keeping the momentum going throughout your effort.
- Dr. Michael Hattery, a senior research associate in Department of Public Administration of Binghamton University, completed several analyses of local government efforts to share highway services in the late 1990s, and studied Chemung County's more recent efforts in 2004-07. Dr. Hattery can be contacted at the Governance and Management Initiative (<http://ccpa.binghamton.edu/community/cacrd.html>) by telephone (607-777-9185) or by email: mhattery@binhamton.edu. The following are examples of completed cooperative studies for sharing winter road maintenance:
 - *Chemung County Winter Road Maintenance Assessment*, Michael Hattery, Cornell University, November 2004. This document is a preliminary assessment of the current winter road maintenance practices in Chemung County with recommendations for further examination to improve services through inter-municipal cooperation.
 - *Chemung County Winter Road Maintenance: Final Report*, Michael Hattery, Cornell University, (June 2005), available on the Web at http://www.nyslocalgov.org/pdf/Chemung_County_Winter_Roads.pdf. This report includes analyses of and implementation suggestions for the recommendations in the November 2004 assessment document noted above.

Personnel

Most intermunicipal sharing arrangements, whether they involve one government unit providing a single service to another or consolidating the highway departments of two local governments, have workforce implications. For example, implementation of a cooperative agreement may necessitate changing the responsibilities of certain positions, training or retraining staff, reducing your workforce, or transferring/reassigning employees to new positions within your municipality or another local government unit. Therefore, it is important to include employees and their representative organizations who may be uncertain about potential workforce changes resulting from the agreement.

As you explore a cooperative highway agreement, you may want to address the concerns of these important stakeholders by communicating with employees and their representative organizations early and often. Including these groups in the development of your proposal brings their wealth of experience and expertise to the table and allows them to voice their concerns early in the process. Employees in particular may be helpful in identifying the areas of your operation where a sharing arrangement makes sense or assessing the impact of a specific proposal on day-to-day operations. Representative organizations may be able to identify areas of collective bargaining agreements pertinent to your proposal. Ultimately, early and frequent communication with these groups provides reassurance and their voices will be heard and concerns considered.

You might also consider using attrition to achieve staff reductions. The loss of jobs is far and away the biggest concern for employees and their representing organizations when municipalities consider sharing services. Local officials should consider using attrition or phased in reductions if a cooperative arrangement results in the ability to reduce staff.

The employees impacted by your cooperative arrangement may have certain protection under state statute. The remaining part of this section provides a brief description of major state laws with workforce implications. The extent these laws apply to your efforts will vary depending on the nature and scope of the sharing arrangement under consideration. The best course of action is to seek assistance from your local civil service agency and municipal lawyer early in your planning.

Civil Service Law

Civil Service Law provides organized and unorganized employees of New York State and its municipalities certain protection when there are workforce changes.

Section 70(2)

Section 70(2) governs the transfer of personnel upon the transfer of a function from one unit of government to another. It includes a number of requirements regarding identifying employees for transfer, and the manner in which employee protests are submitted and processed. It also provides the rights of employees transferred and those not transferred. Appendix C provides detailed information on the provisions of Section 70(2).

Section 80

Section 80 provides that, where positions in the *competitive class are abolished or reduced in rank or salary grade*, suspension or demotion among incumbents shall be made in inverse order based on original permanent appointment in a position in the classified service to the municipality.

It also establishes that *...suspension or demotion shall be made from among employees holding the same or similar positions in the entire department or agency within which such abolition or reduction of positions occurs.*

Finally, Section 80 and local civil service rules provide rights to incumbents in positions that are abolished. The rights include displacement to lower level positions and placement on preferred lists.

It is important to note that the requirements of Section 80 do not apply to non-competitive and labor class positions.

Have Questions Regarding Civil Service Law?

The Municipal Services Division of the NYS Department of Civil Service provides guidance and close technical assistance to local officials in implementing the provisions of Civil Service Law. Division staff:

- Meet with local officials to discuss the steps necessary in considering or planning a proposed transfer of function.
- Clarify the role of local civil service administration in consolidation efforts. This is particularly important when there is confusion on issues that must be negotiated and are outside of local civil service jurisdiction, e.g., benefits and contractual matters.
- Provide assistance on position and jurisdictional classification issues for local positions affected by consolidation or intermunicipal cooperation agreements pursuant to the General Municipal Law.
- Conduct training for local officials on the transfer of personnel when considering consolidation and/or government dissolution.
- Conduct meetings with employees to provide information pertaining to their civil service rights.

For more information, contact the Division at (518) 473-5022.

Section 81

Section 81 requires the local civil service agencies to place individuals suspended or demoted in accordance with Section 80 on a preferred list for reinstatement. The preferred list is to be certified for filling vacancies in the same jurisdictional class for the same or similar position, any position in a lower grade in line of promotion or any comparable position.

Section 86

Section 86 requires that U.S. veterans of war and exempt volunteer firemen employed in a non-competitive or labor class position to be eliminated shall be transferred to a similar position, should a vacancy exist.

In addition to Civil Service Law, local officials should consult collective bargaining agreements where they exist as they may detail additional protection and benefits to employees.

Public Employees' Fair Employment Act (Taylor Law)

The Public Employees' Fair Employment Act, also known as the Taylor Law, is a labor relations statute covering the employees of New York State and its municipalities that are organized and represented by unions. Among other things, it requires public employers to negotiate and enter into agreements with public employee organizations regarding the terms and conditions of employment and prohibits public employees from striking. It also establishes the Public Employment Relations Board (PERB) which hears and decides disputes arising under the Taylor Law, including those regarding representation.³

Cooperative arrangements that entail the employees of one department of a municipality doing the work of another department of the same or different local government unit may have Taylor Law implications depending on the specifics of the case. The following are general considerations related to Taylor Law requirements. You should explore these and other related issues with legal counsel early in your planning process.

- Does the transfer of work being performed by bargaining unit members to non-bargaining unit members trigger the statutory duty of the local government to negotiate the decision to transfer that work with the employees' bargaining representative prior to the transfer? The Taylor Law requires negotiation prior to the transfer of exclusive bargaining unit work to non-unit members under certain circumstances.
- Does the transfer of work being performed by bargaining unit members to non-unit members trigger the statutory duty of the local government to negotiate the

³ For more information see the Governor's Office of Employee Relations website at <http://www.goer.state.ny.us/CNA/bucenter/taylor.html>.

impact of the decision to transfer on employees' terms and conditions of employment? For example, if the transfer resulted in a reduction in employment, does the Taylor Law require the local government to negotiate with the employees' representing organization such things as severance pay, benefits, etc.?

- Does the transfer of bargaining unit work result in an increase in workload, as defined by the Taylor Law, so that such increase would have to be bargained with the bargaining representative of the employees to which such work will be transferred?
- There may be a successor employer. If so, does the successor employer have to honor the collective bargaining agreement entered into by the previous employer and the employees' bargaining representative?
- Which bargaining representative should the successor employer recognize for negotiations when multiple bargaining units are involved?

The Position of Highway Superintendent

In addition to Civil Service and Taylor Law implications, state statute also includes provisions regarding the municipal highway superintendent position that may impact your cooperative arrangement.

Towns

State statute requires that all towns have a superintendent of highways, either elected or appointed.⁴ A town can abolish the office of elected town highway superintendent and make it an appointive one by local law.⁵ Both actions are subject to approval by mandatory referendum. However, Section 20.1(k) of Town Law provides that towns with a contract with another municipality to provide highway maintenance and repair that is in effect for five years may adopt a local law subject to *permissive* referendum to abolish the office of town highway superintendent. Out of 932 town highway superintendents, only 59 are appointive rather than elected.

Counties

County Law Section 400(4)(a) and Highway Law Section 100 provide that the county board of supervisors appoints the county highway superintendent.

Cities and Villages

State statute does not specifically require villages and cities to have a highway superintendent. Village streets are under the control of the village board of trustees.⁶

⁴ Town Law, Section 20.1(a).

⁵ Municipal Home Rule Law §10 and §23(2)(e).

⁶ Village Law, Section 6-602.

City charters establish personnel requirements such as who appoints the highway superintendent or commissioner of public works if one is required.

Legal Agreements

In most cooperative arrangements, a formal written agreement that outlines the duties and obligations of each party is necessary to appropriately protect the interests of the municipalities involved. This section provides the basic elements to service agreements and joint agreements. Appendix D provides sample contract clauses for illustrative purposes. The information presented below and in Appendix D is from a NYS Department of State document entitled, *Intergovernmental Cooperation* (March 2007), available on the Web at <http://www.dos.state.ny.us/lgss/pdfs/intergovt.pdf>. The Department suggests that the information presented may only be applicable to and effective in specific situations. Legal counsel should be consulted during every stage of developing, negotiating and executing a legal agreement that will govern an inter-municipal shared service arrangement.

Formal cooperative agreements can be divided into two categories:

1. ***Service agreements*** are formal written agreements between governments in which one local government contracts with another to provide a service at a stated price. Service agreements may be more appropriate where the participants are substantially different in size or capability and/or a readily definable commodity is being provided.
2. ***Joint agreements*** are formal written agreements in which participating governments agree to share in the performance of a function or the construction and operation of a facility. Such an agreement usually provides for significant participation by each of the local governments. Joint agreements usually imply a rough equality among the participants with regard to resources and facilities, so that the potential contribution of each is similar.

Service Agreements

Although contracts must be tailored to specific local requirements, most will contain basic elements:

- **Nature of the agreement.** The first sections of a contract will often identify the governments involved, describe the type of service to be performed, explain the reasons for entering into the contract and cite the statutory authority for the arrangement. It is often helpful to include definitions of key terms in the contract language.
- **Scope of service.** Performance standards for the proposed service and limitations on the service's availability should be clearly stated.
- **Service charges.** Service contracts should clearly spell out the amount, times and manner of payments, as well as the manner in which charges will be developed. Governments enjoy wide latitude in developing fees or charges. Charges may, for example, be levied as flat rates (daily, weekly or otherwise),

actual “out-of pocket” expenses, population or assessed valuation based or a combination of these and other factors.

- **Liabilities of the parties.** Contracts should specify the extent to which either or both of the contracting parties are liable for damage to persons or property.
- **Contract term, amendment and termination.** Contracts should clearly state the duration of the agreement, circumstances under which it may be terminated, and procedures for amendment. Although the term of a contract may be influenced by a number of factors such as the type of service involved or the financial and operating condition of the parties, a long-term contract may prove to be advantageous if adequate provision is made for amendment. A long-term contract might provide for mandatory consideration of amendments or complete renegotiation after a specified period of time or under specified conditions.

If a long-term contract is not desired, consideration might be given to provisions allowing automatic renewal so that the arrangement would terminate only when one party notifies the other in writing that it wishes to end the agreement. Such a provision allows a continuity of service, as long as it is mutually advantageous, without “locking in” either party to a situation which may become undesirable. In either case, the supplier government should ensure that the capital costs associated with providing the service outside its boundaries are met.

Joint Agreements

All counties outside the City of New York and all cities, villages, towns and school districts are empowered to enter joint operating agreements. Agreement requires a majority vote of the governing body of each participant, and any referendum or special consent required by law for an individual government to provide a service is also required for joint operation of the service (see presentation of Article 5-G of General Municipal Law in *Statutory Authority for Intermunicipal Agreements*).

Because an agreement for joint service delivery is a contract, the previous discussion of service contract elements should prove helpful in drafting appropriate sections of a joint agreement. In addition, a number of other considerations are unique to joint agreements.

- **Governing body.** Where a joint governing body is created to administer a joint service, the agreement should specify the composition of the governing body, method of selection of its members, and selection and duties of its officers. The contract should also spell out the authority and responsibilities of the governing body, number and frequency of meetings, and procedures for calling special meetings.
- **Personnel.** Staffing a joint enterprise may be accomplished by two general methods. In the first, each of the participating municipalities employs an appropriate portion of the work force of the joint agency. This alternative is quite simple, and does not disturb existing personnel practices. But it does have

significant disadvantages where the salary scales and benefits offered employees vary widely among the participants.

The second alternative is designation of one government as employer for all staff of the joint agency. This option, while somewhat more difficult to construct, provides a uniform personnel system.

- **Financial considerations.** Allocating service costs among participating municipalities can be the most significant difficulty faced in implementing a joint agreement. Accordingly, the formal agreement should clearly spell out the method or methods of apportioning costs.

The statutes authorizing intergovernmental agreements provide a number of options for apportioning costs, including basing charge-backs upon full value of real property, services received or rendered, benefits received or rendered, or a combination of these. The statutes further provide that *any other equitable basis* may be used for allocating costs.

Where the apportionment of capital and operating costs differ, the agreement should state both methods of computing charge-backs. If service charges are utilized to defray all or part of the expenses of the joint operation, the agreement should specify the role service charges play in financing the operation. Further, the agreement should detail how and when service charges will be levied, and against whom. In all cases, the contract should state the basis for developing the service charges structure.

The contract also should detail fiscal procedures for administering the joint service. The fiscal officer of one of the participating municipalities should be designated as fiscal officer for the joint agency. The fiscal officer should have custody of all funds made available for expenditure by the agency, as well as authority to make payments subsequent to audit by the appropriate auditing official or body. The contract should state the means by which the fiscal officer is chosen, and should delegate necessary powers with respect to receipt, custody, audit, and disbursement of funds. These powers, and the agency's accounting system, should be in compliance with the requirements of the State Department of Audit and Control.

The contract should define: timing and methods for preparing and adopting a budget for a joint agency; number of votes required for the governing body to recommend the budget to participating governments; responsibilities of participating governments for reviewing, revising and approving the proposed budget; and procedures for amending the budget and transferring funds.

If the joint agreement requires incurring debt, the contract should specify the type of obligations to be issued. Debt may be incurred in two basic ways. First, one or more of the participating governments may issue its own obligations to finance the required capital expenses, and turn the proceeds over to the fiscal officer of the joint agency. Under this arrangement, the issuing governments are

responsible for the debt and debt service charges. The debt so incurred is charged against the debt limit of the issuing government, even though the debt was incurred for a joint activity. If this arrangement is chosen, the joint agreement should clearly specify obligations of the parties to reimburse the issuing municipality for debt service charges.

A second alternative is for the participating governments to jointly contract required debt. Under this option, the debt would be allocated among the participants according to the terms of the joint agreement. In this arrangement all parties are jointly liable for the full amount of the obligations, although only a government's allocated portion will appear on its debt statement. Although not required, governments can seek approval of the debt allocation formula from the State Comptroller. This approval makes the allocation conclusive.

- **Property considerations.** Joint agreements should describe property arrangements. There are three basic ways to handle property:
 1. Property may be acquired by the participants, each holding title as tenants in common. Each may have an interest proportional to its contribution, as specified in the agreement;
 2. Property may be acquired by one of the participants, and leased to the joint agency;
 3. Participants may hold title to the property as joint tenants. This latter arrangement may have utility where not all of the participants are eligible for tax exemption. Since joint tenancy involves an undivided interest in the entire property, a tax exemption available to one participant would extend to the entire value of the property.

In addition to defining ownership of property, the agreement should provide for its disposition upon termination of the agreement, as well as for disposition of portions in the event one or more participants terminate the contract.

Sample Contracts and Best Practices

1. *Promoting Inter-municipal Cooperation for Shared Highway Services*, NYS Legislative Commission on Rural Resources, Summer 2005, available on the Web at <http://www.dos.state.ny.us/lgss/pdfs/SharedHighway1.pdf>

This document presents issues of legality, liability and accountability associated with informal arrangements (e.g., handshake agreements) for sharing highway services, maintenance, equipment and materials. It advocates for developing legally formalized arrangements to protect all parties from possible liability and accountability concerns. It includes samples of the following legal documents:

- Resolution authorizing the chief executive officer to sign a contract for shared highway services on behalf of the municipality
 - Contract for sharing highway services
 - Memorandum relating to sharing highway services
2. Monroe County's All Seasons Agreement – Monroe County has standing all seasons contracts with the towns within its borders and two villages that allow the local governments to perform work for the county besides snow plowing and ice control. Examples of work performed include mowing; dead animal pick up; highway resurfacing and reconstruction; and bridge rehabilitation and replacement. The agreements have proven especially beneficial in times of emergency and have fostered a good working relationship between the municipalities. See Appendix E for a copy of the Monroe County agreement.

Agencies and Organizations Offering Assistance

NYS Department of State Division of Local Government Services
www.dos.state.ny.us

NYS Department of Transportation
www.dot.state.ny.us

NYS Office of State Comptroller Division of Local Government and School
Accountability
www.osc.state.ny.us/localgov/index.htm

New York State County Highway Superintendents Association
www.countyhwys.org

New York State Association of Town Superintendents of Highways
www.nystownhwys.org

Association of Towns of NYS
www.nytowns.org

NYS Association of Counties
www.nysac.org

NYS Conference of Mayors
www.nycom.org

Cornell University's Local Roads Program
www.clrp.cornell.edu

Appendix A: Comprehensive Survey of Highway Services and Costs

To assist you in completing an inventory of your highway program, this appendix provides a checklist of the major types of information you should consider gathering and a template for compiling the data. Much of the information discussed should be available internally, although potential state and federal government sources are provided where applicable. Developing this data set will enable you to complete analyses of basic cost, personnel, efficiency, and other factors, and identify possible advantages to entering into a sharing arrangement.

The following data checklist and template were developed by staff of the Nelson A. Rockefeller Institute of Government under a grant provided by the Government Law Center SMSI Technical Assistance Project.

1. **Highway and Bridge Inventory:** You should review and update your inventory of all highways and bridges in your locality (and complete one if it doesn't exist). This inventory should include:
 - a. **Highways:** List the segments of all highways currently located and planned for construction in your jurisdiction. Identify whether they are/will be maintained by:
 - **New York State Department of Transportation (NYS DOT)**
 - **County**
 - **Town**
 - **Village**
 - **City**
 - Where to find information: A useful source for this information is the Highway Mileage Report for New York State produced by NYS DOT. This report provides mileage by governmental jurisdiction (state, county, cities, towns, and villages) and is available at <https://www.nysdot.gov/portal/page/portal/divisions/engineering/technical-services/highway-data-services/highway-mileage-summary>. Detailed information on the segments of specific highways in a jurisdiction can be obtained by contacting NYS DOT at Highway Data Service Bureau, POD 3-2, NYS DOT, 50 Wolf Road, Albany, New York 12205, Attention: Anthony Torre.
 - b. **Bridges:** List all bridges currently located and planned for construction in your jurisdiction. Identify whether they are/will be maintained by:
 - **New York State Department of Transportation (NYS DOT)**
 - **County**
 - **Town**

- **Village**
- **City**
- Where to find information: NYS DOT collects information on all bridges in the state using a “Bridge Inventory System.” For more information, contact Dr. Srenivas Alampalli of the Office of Structures, NYS DOT at (518) 457-5498.

2. **Highway and Bridge Condition Assessment:** If you have completed a systematic assessment of the condition of all your highway and bridge systems, you should include that information on the Highway and Bridge Inventory, with as fine a detail as possible. If you have not completed such an assessment, you should do a preliminary one.

NYS DOT conducts an annual survey of state highway pavement conditions using two measures: a surface condition rating (a 1 to 10 point scale) and the dominant distress indicator, which is a specific symptom (e.g., falting, spalling, alligator cracking, widening drop off) that will trigger a different treatment category than suggested by surface condition alone. For more information on the methods used by NYS DOT to assess and track pavement conditions see *Pavement Condition of New York’s Highways: 2006* available at <https://www.nysdot.gov/portal/page/portal/divisions/engineering/technical-services/pavement-management>.

- Where to find information: NYS DOT collects information on bridge inspections including ratings and conditions using the “Bridge Inventory System.” For more information, contact Dr. Srenivas Alampalli of the Office of Structures, NYS DOT at (518) 457-5498.

3. **Capital Facilities:** List all buildings, garages, salt sheds, and other structures under the responsibility of the highway department. For each structure, include the following information:

- a. **Description**, such as “garage” and type of construction
- b. **Size**, in square feet
- c. **Capacity**, measured in number of trucks, cars, etc. Include whether there is excess physical capacity (i.e., the structure can accommodate additional vehicles) or insufficient capacity (the department uses other facilities, including owned and rented space, to house department vehicles)
- d. **Age/condition** of facility, including year built, projected remaining useful life, and a general assessment of the adequacy of the facility for equipment and employees, as well as OSHA and ADA issues
- e. **Replacement/expansion needs**, including any plans to rehab, update or replace the facility, or obtain additional facilities
- f. **Other significant issues**, including proximity to other similar facilities of your municipality and neighboring localities, operating concerns such as high utility costs, etc.

4. **Equipment:** Prepare an inventory of all moveable equipment used by the department, such as trucks, plows, pavers, graders, etc. For each piece, include the following:
 - a. **Description**, such as type of vehicle, make, and size or capacity, as appropriate. Include information regarding special uses of the equipment, such as the need for smaller size to navigate congested streets or even sidewalks.
 - b. **Age**, including year of manufacture, and year purchased
 - c. **Utilization data**, such as miles driven in total and average per year or weeks in use
 - d. **Maintenance costs**, including repairs, supplies
 - e. **Replacement/acquisition needs**, including identified requirements and new purchases that may be planned within the next several years

5. **Maintenance shop:** Document if your department provides routine maintenance for its vehicles, and identify cost factors, including:
 - a. **Staff**, such as mechanics
 - b. **Supplies used**, including oil, grease, motor fuel
 - c. **Average number of services**, including routine/scheduled maintenance, and repairs

6. **Agreements with other departments:** Document your contracts or other arrangements with the NYS DOT and/or other local governments for certain highway maintenance activities. This includes arrangements where your department provides services or where other entities provide services to your locality. Also describe situations where conditions may warrant an agreement, for example, a snowplow from your department or another highway department “lifts the plow” while it traverses a road before it resumes plowing in its own jurisdiction. This type of situation is quite common and often presents the simplest opportunity for sharing services efficiently. If possible, you should determine what percentage of your snowplows’ usage is on roads where they are not actually plowing.

7. **Asset Management System:** Do you have any sort of system, automated or not, to help you manage your infrastructure, equipment, and facilities? These systems may include an inventory of assets, detailed maintenance schedules, replacement or lease expiration dates for equipment, etc. For a primer on asset management, see the U.S. Department of Transportation (US DOT) website at <http://www.fhwa.dot.gov/infrastructure/asstmgmt/assetman.htm>

8. **Capital budget:** Conduct a frank assessment of your department’s multi-year capital plan:
 - a. How many years does it cover?
 - b. Does it include adequate provision for street repaving, major repairs and replacements, equipment replacement, a reserve for emergency repairs, etc.?

- 9. Human resources:** Prepare a schedule listing department staff patterns by position type (not the names of employees). For example, show the number of staff by category, including foreman, driver, engineer, dispatcher, etc. Also include information about work patterns and rules, including:
- a. Typical staffing patterns (1 or 2 persons per truck)
 - b. Work assignments (snowplows, pothole repair, repaving, shoulder work, grass/brush cutting, traffic signal maintenance, etc.)
 - c. Work schedules
 - d. Salary scale
 - e. Employee benefits
 - f. Average overtime needed for each payroll period

It is important to note that these variables may be different across local governments. For example, the work schedule, salary scale, and benefits for the same position may be different from one municipality to the next, which may increase or decrease the cost of services under a shared services agreement for your local government. An agreement that includes merging staff from two municipalities would require, to a certain extent, efforts to harmonize differences in these variables.

- 10. Indirect costs:** What other costs are involved in running your department? These may be visible charges to your department's budget (such as fringe benefits for employees) or costs incurred by other departments or the municipality as a whole but not charged, such as office space for the highway department in the town hall.
- 11. Other factors:** Take note of any other relevant factors affecting your department. These may include insurance on vehicles, informal ("handshake") arrangements with neighboring communities to exchange work or equipment, potential revenue generated from selling equipment and facilities, and so on.

**Comprehensive Inventory of Highway Services and Costs
Data Template**

Highway and Bridge Inventory												
a. Highways: List segments currently located and planned in your locality with responsible level of government and condition assessment												
										Total Miles by Responsible Government		
			Roadway		State	County	Town	Village	City		Condition Assessment	Date of Assessment
		1										
		2										
		3										
		4										
		5										
b. Bridges: List bridges currently located and planned in your locality with responsible level of government and condition assessment												
										Responsible Government		
			Bridge		State	County	Town	Village	City		Condition Assessment	Date of Assessment
		1										
		2										
		3										
		4										
		5										

Capital Facilities							
List all buildings, garages, salt sheds, and other structures under the responsibility of the highway department							
		Building/Description	Location	Size & Capacity	Age/Condition	Replacement/Expansion Needs	Other
	1						
	2						
	3						
	4						
	5						
	6						
	7						

Equipment						
List all moveable equipment such as trucks, plows, pavers, graders, etc.						
		Equipment/Description	Age	Utilization Data	Maintenance Costs	Replacement/Acquisition Needs
	1					
	2					
	3					
	4					
	5					
	6					
	7					

Agreements With Other Departments					
List current and potential arrangements to provide or receive highway services					
		Agreement (Party and Dates)	Existing/Potential	Services	Annual Value
	1				
	2				
	3				
	4				
	5				
	6				
	7				

Asset Management System and Capital Plan	
	a. Asset Management System
	Do you have an automated asset management system?
	Does it include data on your infrastructure?
	Does it include data on your equipment?
	Does it include data on your facilities?
	b. Capital Plan (Budget)
	How many years does your capital plan cover?
	Does it include adequate provision for street paving, major repairs and replacements, etc.?

Human Resources						
Prepare a schedule of staff patterns by work assignment						
		Work Assignment	# and Type of Staff	Work Schedule	Salary Scale/Benefits	Average Overtime Per Payroll

	1					
	2					
	3					
	4					
	5					
	6					
	7					

Indirect Costs and Other Factors	
a. Indirect Costs	
What other costs are involved in running your department?	
Are there visible charges (e.g., fringe benefits) not yet included?	
Are there costs incurred by other departments such as uncharged office space?	
b. Other Factors	
Are there other factors that affect your department's budget?	
For example, do you have handshake agreements that either save or cost you money?	
Do you expect potential revenue from selling equipment or facilities?	

Appendix B: Analyzing Potential Areas for Sharing Services

Once you have accumulated the information items included in Appendix A, you can begin identifying areas where you can improve the efficiency and productivity of your department through cooperative arrangements with other communities. Even if certain elements noted in Appendix A are not available (e.g., you can not estimate some indirect costs), or are not applicable (e.g., you do not have a highway condition assessment or automated asset management system), these are important facts to know. For example, by consolidating services with another locality you may be able to implement an asset management system cooperatively.

Performing a thorough analysis will improve the likelihood that the goals you have in entering a service sharing arrangement will be realistic and your ability to evaluate the results of the arrangement (i.e., did it achieve your goals) will be strengthened.

The following is a list of areas where consolidation or sharing may make sense. This list was developed by staff of the Nelson A. Rockefeller Institute of Government under a grant provided by the Government Law Center SMSI Technical Assistance Project.

Sharing Equipment: Sharing existing equipment with another local government unit, or jointly purchasing new equipment when you need to replace your own, presents several benefits and costs:

1. Savings on acquisition cost _____

Estimate savings from sharing purchase price with another municipality. Take total net savings and divide by expected useful life to determine annual savings

2. Savings from special supplies _____

You may save on joint purchases of special supplies shared with another locality

3. Savings from insurance _____

Premiums can be shared

4. Revenue from sale of unneeded equipment _____

Some existing equipment may be sold as surplus. Take revenue from the sale and minus cost of outstanding debt on the equipment to determine net revenue

5. Other savings/revenue _____

You may want to explore the possibility of renting rather than purchasing equipment. For more information on state approved contractors and rental rates for heavy equipment, see the NYS Office of General Services website at

<http://www.ogs.state.ny.us/purchase/snt/awardnotes/7200702872can.HTM>. For the NYS DOT hourly rental rate schedule for equipment used to control snow and ice on NYS highways, see

<https://www.nysdot.gov/portal/page/portal/main/publications/publications-repository/equirates.pdf>.

Sharing Facilities: As with equipment, sharing facilities (e.g., salt sheds, garages, fuel storage facilities, etc.) presents several benefits and costs. It is especially prudent to consider sharing a facility when your locality needs to replace an existing facility or acquire one for the first time. One joint facility may well be smaller than two separate facilities and entail lower annual costs.

1. Savings on acquisition cost _____

Estimate savings from sharing the facility's construction/purchase price with another municipality. The net saving equals what you would have spent on your own facility, minus what you will spend on a shared one. Take total net savings and divide by the expected useful life to determine annual savings.

2. Building utility savings _____

These savings alone may be considerable

3. Building maintenance savings _____

Smaller storage space should make it possible to reduce maintenance costs, including personnel, supplies and materials, etc.

4. Savings on insurance _____

One shared facility should make it possible to save on insurance

5. Revenue from selling existing facility _____

If one locality has a facility that will no longer be needed, perhaps that facility can be sold. Proceeds (minus outstanding debt on the facility) should be included in the list of "savings" and either shared or netted against other costs.

6. Revenue from property taxes _____

If your locality can sell an unneeded building and its land, this will go on the tax rolls yielding annual revenue. Include continuing revenue from private land that will not be purchased if you share a facility.

7. Other savings/revenue _____

Sharing Highway Services: You should identify services where combining them with another local unit may be economically beneficial. Identify examples of services that are

most easily combined because they are similar between or among neighboring governments. The most straightforward way of achieving this consolidation is for one community to contract with another to provide the service. Town A could contract with Town B or the county to plow streets in winter, or mow grass in summer.

In evaluating the potential costs and benefits of merging services, you should conduct a frank appraisal of your department's needs and capabilities. For example, if a particular activity is not being done well now, or there is a need to expand or enhance the service, it may be a good candidate to consolidate. Here are some basic factors to consider:

1. Personnel savings _____
You may be able to avoid hiring staff for your department, or not fill open jobs
2. Fringe benefit savings _____
3. Savings on equipment and supplies _____
See the above sections for suggestions
4. Cost sharing _____

It is imperative that the parties work out a reasonable and fair system to allocate and share costs. For example, if Town A provides a service to Town B, Town A's costs for the service could be apportioned on the basis of time spent doing the activity in each town, or miles of highway maintained in each town as a percentage to the combined mileage, or actual units of work (such as the number of storm drains cleaned in each town).

5. New Revenue _____
You should consider potential revenue generated from providing services outside your jurisdiction. For example, it may make sense for you to contract with a neighboring community or another level of government to provide snowplowing services if the snowplows from your department routinely travel highways under the jurisdiction of a neighboring community or another level of government with their plows up. The revenue generated from this contract would offset your current operating costs.

The projected savings less the estimated cost of the shared service yields the estimated net benefit to each jurisdiction.

Sharing Administrative Services: You should identify administrative functions where combining them with another department within your locality or another local government would reduce administrative costs, generate revenue, or increase the quality and level of customer service. Consider all of the administrative functions currently performed by staff including customer service, payroll, etc., as well as your department's information technology resources and needs.

The basic factors to consider are somewhat similar to those listed previously for sharing highway services:

1. Personnel savings _____
2. Fringe benefit savings _____
3. Savings on equipment (including information technology) and supplies _____
4. Cost sharing _____
5. New Revenue _____

Cost per mile analysis

When considering broad-based sharing agreements, such as those that would merge two highway departments or significant portions of two departments, you should consider comparing the cost per mile of providing highway services as you currently operate (current annual expenditures for highway services divided by number of miles of road) with the projected cost of services under a shared agreement (projected annual expenditures for highway services, taking into consideration savings/costs from the agreement under consideration, divided by the number of miles of road).

Include the cost factors in major categories such as labor, equipment, and supplies. Try to isolate any unusual factors that might have inflated or even deflated this figure. Also, break down the labor costs, at minimum, to the extent possible, by:

- a. Winter vs. summer season; and
- b. Functional area (e.g., snow plowing, road construction, road paving, road repairs, etc.)

If data on your government’s total expenditures for highways services for a recent fiscal year is not readily available, you may want to consider using data on total transportation expenditures from the NYS Office of the State Comptroller’s (NYS OSC) website at http://www.osc.state.ny.us/localgov/datanstat/findata/index_choice.htm. Note that the transportation data provided by NYS OSC includes spending for mass transit and other services that are not related to maintaining and repairing roads and bridges. As a result, using this data will exaggerate costs per mile for those localities with significant transportation expenditures other than highway services’ spending.

Appendix C: Civil Service Law, Section 70(2) – Transfer of Personnel upon Transfer of Function

This appendix provides a summary of the provisions of Civil Service Law, Section 70(2). The bulk of the information presented is from the NYS Department of Civil Service document entitled, *Consolidation of Local Government Services: A Guide to the Rights of Civil Service Employees (December 2007)*, available on the Department's Website at <http://www.cs.state.ny.us/pio/publications/consolidation-guide.pdf>.

A transfer of function can be mandated by law, rule, order, or other action. Section 70(2) of the NYS Civil Service Law details certain procedures that must be followed by governmental jurisdictions prior to the effective date of the transfer. The law also identifies the civil service rights of those employees who are impacted by a transfer of function. Transfers of function subject to the provisions of section 70(2) are those from:

- One department or agency of the State to another department or agency of the State, or
- One department or agency of a civil division of the State to another department or agency of such civil division, or
- One civil division of the State to another civil division of the State, or
- From a civil division of the State to the State, or vice versa.

The term "civil division" is typically interpreted to include many types of local government entities including counties, towns, villages, and cities.

The municipal civil service agency plays a vital role in the administration of a transfer of function in local government. Management should initiate contact with the municipal civil service agency early and maintain contact throughout the transfer process. The municipal civil service agency knows the laws and rules governing transfers of function, has the official employment history record for each employee, and can assist with identifying the employees for transfer and determining their rights.

Process for Identifying Employees for Transfer

The governmental entity losing the function must determine which employees in which titles are "substantially engaged in the performance of the function" to be transferred.

The governmental entity gaining the function must determine the number of employees in each of the titles identified who will be offered transfer.

The agency losing the function must publicly and conspicuously post the list of the names and titles of all the employees who have been identified as being "substantially engaged in the performance of the function to be transferred" and indicate on this list which employees will be offered transfer to the gaining agency. A copy of section 70(2)

must be posted with the list. The list must also be certified to the head of the department or agency that will be gaining the function.

While the law requires that copies of the list of names and titles of employees identified for transfer be posted conspicuously in the losing agency a minimum of 20 days prior to the effective date of the transfer of function, administrative necessity suggests that agencies post a minimum of 30 days prior to the actual date of transfer. This is necessary to meet the time required for the protest process, and the time required for employee acceptance of the offer of transfer, both of which are specified in section 70(2).

Where the posted list indicates that not all of the employees in a title will be transferred, the law provides that permanent competitive class employees must be ranked by seniority within each grade of each class of positions, and transfer offered to those employees having greater seniority, with due regard given to the right of preference in retention of disabled and non-disabled veterans. Employees who are serving probation in the title are offered transfer only after employees in the same title who have completed their probation. After probationers, other non-tenured employees (e.g. provisional appointees) may be selected in any order.

Employee Protests

Employees from the losing agency may, prior to the effective date of the transfer, protest their inclusion in or exclusion from the posted list. Protests must be submitted in writing to the heads of both agencies and must include the reasons for the protest. Employees who do not protest are considered to have consented to being included or excluded from the certified list.

Processing Employee Protests

The head of the gaining agency reviews the protests that have been filed and discusses them with the head of the losing agency. It is the responsibility of the head of the gaining agency to notify the protesting employee of his/her determination on the matter protested. By law this determination must be given to the employee within 10 days of the receipt of the protest and it constitutes the final determination, not subject to further administrative review or appeal.

Offers of Transfer

After all protests have been determined, those employees who have been selected for transfer must receive a final individual written notice that they are being offered transfer. Such notice must inform the employee about the necessity of responding within 10 days and his/her layoff rights, if any, should he/she decline the transfer and should his/her position be simultaneously or subsequently abolished.

By law, employees who wish to transfer must respond and accept this offer of transfer within 10 days after receipt of the written notice of transfer. Employees who decline or fail to reply will have their names removed from the list of employees to be transferred.

Where employees decline or fail to reply, the gaining agency may offer transfer to additional employees in the title in seniority order.

Rights of Employees Not Transferred

Employees who are not transferred, or who decline transfer, and whose positions will remain in their current agency will be deemed to have waived entitlement to transfer and will have no further rights pursuant to section 70(2). However, where their positions are subsequently or simultaneously abolished, employees who meet the requirements of section 80 will be treated according to that section. They will have their names placed on a preferred list for reinstatement to the same or similar position in the governmental jurisdiction from which the function was transferred and the office or agency to which the function was transferred.

Rights of Employees Who Are Transferred

Employees who are transferred will retain their same title and salary grade, their same appointment status and their original seniority dates without further examination or qualification. Following transfer such employees will be subject to the rules of the civil service commission having jurisdiction over the gaining agency.

Except where transferred employees are entitled pursuant to special law or rule, to credit of unused vacation, annual or sick leave upon transfer, the officer or body having authority to adopt provisions governing vacation, annual or sick leave applicable to the gaining agency, may allow the transferred employees credit for all or part of the unused vacation, annual or sick leave standing to their credit at the time of transfer, as may be determined equitable, but not in excess of the maximum accumulation permitted in the gaining agency. Unused vacation or annual leave not credited by the gaining agency may be compensated to the extent, if any, such compensation is authorized by other law.

Appendix D: Sample Contract Clauses

This appendix presents various elements of cooperative agreements and gives examples of contract language illustrating each point. The information presented below is from a NYS Department of State document entitled, *Intergovernmental Cooperation* (March 2007), available on the Web at <http://www.dos.state.ny.us/lgss/pdfs/intergovt.pdf>.

The municipality's legal staff should always be consulted at every stage of developing a cooperative agreement. Under no circumstances should these sample clauses be used without legal consultation.

Introductory Clauses

The first part of an agreement commonly consists of "whereas" clauses which identify the parties, the rationale for entering into the agreement, the problem and its proposed solution, and the statutory authority under which the particular type of agreement is authorized. Following are examples of introductory clauses, which set the stage for the more technical operative clauses of the agreement.

Parties

- Agreement made (date), by and between the Town of _____, hereinafter called the "Town" and the Village of _____, a municipal corporation, hereinafter called the "Village";
- WHEREAS, the Board of Trustees of the Village of _____ and the town boards of the Towns of _____ and _____, all located in the County of _____, New York, deem it in the best interest of the residents of the respective governments to jointly provide a _____ operation for use by and for their respective residences;
- This Agreement entered into this (date) between the Town of _____ hereinafter known as the Party of the First Part and the County of _____ hereinafter known as the Party of the Second Part;
- An Agreement between the County of _____ and certain municipalities located therein for the establishment of a cooperative means of conducting _____ activities;
- This Agreement made and entered into this (date) by and between the following municipalities, the Village of _____, the Village of _____ and the Town of _____ hereinafter referred to as Parties, all municipal corporations of the State of New York;

Rationale

Often, other rationale appear to set forth the reason for which the agreement is entered into or the problem which the agreement hopes to solve.

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

Statutory Authority

The contract's statutory source should be set forth to avoid confusion about the authority under which local governments are acting.

- WHEREAS, pursuant to Article 5-G of the General Municipal Law the Village and Town are authorized to enter into a Municipal Cooperation Agreement with respect to...;
- WHEREAS, Section 135-a of the Highway Law provides that a County or its Superintendent of Highways may contract with any Town for the removal of snow from roads or for sanding or otherwise treating them for the purpose of removing the danger of snow and ice;

Service Provided or Jointly Performed

Planned services should be set forth as specifically as possible so that each of the parties is fully aware of its duties and responsibilities under the agreement.

- The Town agrees to remove the snow from, apply sand and salt, or other material on, and where the (Highway) Superintendent deems it necessary, erect snow fences within the right-of-way of county roads during the period September 1 to April 20 of each year that this contract is in effect.
- The Town agrees to supply all labor, machinery, tools and equipment in the performance of the work under this contract.

WHEREAS, all parties hereto have certain highway, non-highway and specialty equipment which is not always being used, and

(Whereas) it is possible to make such equipment available for use by the other Parties, and

(Whereas) such exchange of equipment may result in more effective work performance at minimal extra cost, and

(Whereas) all parties will have authorized their respective highway, public works and/or fire alarm superintendents as the case may be, hereinafter referred to as the Superintendents, to act pursuant to this Agreement;

Financial Arrangements

Financial duties and obligations should be set forth specifically in all intergovernmental agreements.

- The formula for allocating the costs of said capital acquisition shall be on an equal fifty percent basis; the levying of taxes or assessments to pay such costs and whether said cost shall be borne by the entire area of the respective municipality or on a part thereof which is to benefit shall be determined upon the adoption of any appropriate resolution.
- The Town of _____ will annually contribute the sum of \$_____ to said program.
- The Village of _____ will annually contribute the sum of \$_____ to said program.
- The Village Treasurer of the Village of _____ will be the custodian of the funds for said program and provide annually an account of said fund to each of the parties.
- The Town agrees to keep, during the period of this contract, an itemized record of daily operations, on a form to be provided by the Superintendent of Highways, and to submit such completed form together with a certified voucher noting the cost of labor, machinery, tools and equipment herein to the Superintendent between April 20 and July 1 of each year that this contract is in effect. It is understood by the Town that no payment will be made pursuant to this contract until said form and voucher are approved by the Superintendent. It is further understood by the Town that payment will only be made for those costs which are determined by the Superintendent to be within the intent and scope of this contract.

Indemnification

Finally, the agreement should spell out provisions for insurance or for the indemnification of one or more of the parties.

- The Village hereby agrees to save the Town harmless from any claim or cause of action which may arise out of this Agreement and the Town in like manner agrees to hold the Village harmless.
- Party of the First Part covenants and agrees that it will obtain and maintain in full force and effect throughout the term of this agreement, or any extension thereof, insurance providing benefits under the Workers' Compensation Law of the State of New York for the benefit of the Party of the Second Part, or in the alternative,

Party of the First Part will by virtue of participation in a county plan, or otherwise, cause to be obtained and maintained in full force and effect throughout the term of this agreement, or any extension thereof, insurance providing benefits under the Workers' Compensation Law of the State of New York for the benefit of the Party of the Second Part.

- Each Party shall carry liability insurance covering its own equipment, including the operator. Such insurance shall protect both the owner of the equipment and the Party receiving or accepting service from any liability in the event of any claim arising during any exchange pursuant to this Agreement.
- The Village of _____ shall save and hold harmless the County of _____ and shall assume all risk and liability for such signs, signals and markings installed by the County and for the use and operation thereof and for damage for injuries or death to persons or property however arising therefrom or because thereof, excepting the active negligence of the County.

- **Appendix E: Chemung County – City of Elmira Cooperative Services Agreement**

PROPOSED SHARED SERVICES AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2007 by and between **THE CITY OF ELMIRA, NEW YORK**, a municipal corporation with its principal office at 317 East Church Street, Elmira, New York 14901, and **THE COUNTY OF CHEMUNG, NEW YORK**, a municipal corporation with its principal office at 203 Lake Street, Elmira, New York 14901.

WITNESSETH:

WHEREAS, the State of New York initiated The Shared Municipal Services Incentive (SMSI) Grant Program in 2005 by allocating \$2.75 million “to improve the efficiency of local governments through cooperation, consolidation, dissolution or merger”, and

WHEREAS, in April 2007, the Governor of the State of New York, by Executive Order 11, established The Commission on Local Government Efficiency and Competitiveness and directed the Commission to “conduct a review and analysis of New York’s local government structure and operations” and to make recommendations for “...(a) strengthening and streamlining the structure and operation of local governments; (b) reducing the costs and improving the effectiveness of local government operations and services; (c) facilitating the merger, consolidation and partnering in the delivery of services and between local governments; (and) promoting and facilitating regional government and the regionalized delivery of public services...” (hereinafter “Goals”), and

WHEREAS, the State has pledged to work with interested communities by providing leadership, technical assistance and financial incentives to help promote and facilitate cooperative agreements between units of government, and

WHEREAS, the City of Elmira and County of Chemung have a history of collaboration by means of intermunicipal agreements which have saved taxpayer dollars while maintaining the same quality of service, and

WHEREAS, the City and the County are desirous of pursuing the "Goals" hereinabove set forth and towards that objective representatives of the parties have been meeting to consider the options and means for improving the effectiveness and efficiency of City and County governments, and

WHEREAS, as a result of said meetings, the parties have identified certain administrative support and public services categories which potentially are conducive to a collaborative effort through intermunicipal agreements and which may eventually result in the merger or consolidation of such services, and

WHEREAS, the nature of administrative support services renders these services more conducive to immediate implementation while the nature of certain types of public services, especially the uniform services, requires a more detailed analysis as to the nature and feasibility of cooperative or consolidated services, and

WHEREAS, in recognizing and acknowledging that the initiatives set forth herein affect current employees, the City and the County are committed to minimizing any negative impact on their employees, and

WHEREAS, while the City and the County each enter into this Agreement with a good faith commitment to succeed in attaining one or more of the "Goals", the parties believe that it is prudent to identify the strategy to be implemented in the event of termination of this Agreement and any related intermunicipal agreements without merger or consolidation,

NOW, THEREFORE, the City and County mutually agree as follows:

SECTION I

PROJECT/PLAN. The parties have identified governmental service categories hereinafter set forth that are amenable to the initiative of "shared services" and eventually to merger or consolidation. The timing of the implementation of intermunicipal agreements regarding these different service categories varies with the nature of the specific service. Accordingly, the parties have classified the various initiatives as "Immediate", "Short Term", and "Long Term".

SECTION II

IMMEDIATE INITIATIVES. These initiatives focus on the elimination of duplicative services thereby "streamlining government", increasing municipal efficiency, reducing costs and improving the effectiveness of government. The parties agree that the sharing of the following services can be implemented at the present time without further analysis:

1. **Streets/Highways.** The parties agree that the City, by and through its Director of Public Services in addition to his City responsibilities, shall undertake and provide supervision of the County's highway department. The parties further agree that no later than sixty (60) days prior to the expiration of fifteen months immediately following the implementation of this arrangement (Transition Period), they will make a final evaluation of the effectiveness of this shared service and if mutually determined to be successful, the City's Director of Public Services, shall become an employee of the County with the Director continuing thereafter to provide all supervision services for the City's public works department without further charge or cost to the City.

In consideration for the services provided to the County by the City's Director of Public

Services, the County shall pay to the City, on the first day of each month of the Transition Period, in advance, the sum of Eight Thousand Three Hundred Thirty-three and no/100ths Dollars (\$8,333.00).

2. Information Technology. The parties acknowledge that the City's information technology specialist (to be known as Internet Systems Administrator effective 1/1/2008) possesses certain knowledge and skills which the County desires to obtain and that the County's informational technology staff can provide services to augment the City's need for informational services. Therefore, for the first fifteen months immediately following commencement of this service (Transition Period), the City agrees that the County may utilize the services of the City's information technology specialist at no cost to the County and the County agrees that the City may utilize the services of the County's information technology personnel at no cost to the City. No later than sixty (60) days prior to the expiration of the Transition Period, the parties agree to evaluate the effectiveness of the shared service and if mutually acceptable, the City's Internet Systems Administrator shall become an employee of the County and the County shall charge the City the equivalent of the administrator's salary and benefits as follows: 100% for the first year after the transition period with such charge decreasing by 20% each year thereafter until such time as there is no charge. The City agrees that it shall not diminish the current monies committed to information technology contractual services during the transition period and that the City and County shall discuss the continuation of this City financial obligation as part of the evaluation of this service during the transition period.

3. Tax Collection. The County agrees to provide to the City, at no cost to the City except as hereinafter provided, all services necessary for the collection and accounting

of all city taxes, assessments and user fees for a period of twelve months from January 1, 2008 through December 31, 2008 and covering the 2008 City property tax collections. The parties agree that during the this period the County will remit to the City, on a monthly basis, a predetermined amount of the City Levy including assessments and user fees in accordance with a "Remittance Schedule" agreed to by the parties. The City agrees to reimburse the County for the following expenses on a quarterly basis: (1) all expenses incurred by the County in obtaining a revenue anticipation note, if necessary, including interest on any RAN; (2) expenses incurred by the County with any third party providers of all or part of said services; (3) expenses incurred by the County in printing and mailing tax bills; and (4) lost investment income on the funds advanced to the City. No later than sixty (60) days prior to the expiration of the Transition period, the parties agree to evaluate the effectiveness of this shared service and if mutually acceptable, the City then will eliminate its tax collector position and thereafter, the County agrees to provide such services in the same manner as in effect during the original Transition Period, subject to reimbursement of expenses by the City, as outlined above.

SECTION III

SHORT TERM INITIATIVES. The initiatives within this category, as set forth below, offer significant cost savings by the elimination of duplicative services and more efficient use of personnel. However, further analysis of the potential impact of sharing these services with respect to the quality and effectiveness of the service to the public is required. The City and County agree to continue to analyze and evaluate the concept of shared services for the following initiatives with a final determination to be made no later than eighteen months from the effective date of this Agreement: Department of Buildings and Grounds, enhanced financial/accounting support services, joint records

management/retention services and co-location of City and County Clerks' offices.

SECTION IV

LONG TERM INITIATIVES. The initiatives within this category offer substantial cost savings. Yet, the parties agree that these initiatives are the most complex given the multiple factors of feasibility, implementation, and determination of cost savings, quality and effectiveness of the service, public acceptability and potential conflicts of interest. The City and County agree to engage in substantive discussions and analysis and to mutually request and utilize technical assistance by and through the New York State Commission on Local Government Efficiency and Competitiveness and other State departments and agencies regarding the following shared, merged or consolidated service initiatives: fire services, police services, personnel services and legal services.

The parties agree that the criteria to be used in analyzing these initiatives shall include, but are not limited to:

1. Potential cost savings;
2. Potential service improvements;
3. Legal feasibility; and
4. Community support.

SECTION V

EMPLOYEE IMPACT. The parties recognize that the initiatives discussed herein have or will have an impact on certain City employees. The City and County agree that those employees directly impacted by the "Immediate Initiatives" will be offered continued employment by the City or County at a salary or hourly rate not less than the employee's City salary or hourly rate in effect immediately prior to becoming a County employee. The City and County agree that salaries of employees impacted by this agreement will not be increased (except for general wages increases) during the transition period unless agreed to

by both parties. In addition, the County agrees to recognize the City employee(s)' years of service in determining the employee(s)' eligibility for retirement benefits under any County provided plan or practice.

The parties also agree to work cooperatively with respect to issues, if any, involving collective bargaining units and the impact, if any, of the "Taylor Law" when implementing any of the initiatives under this Agreement.

SECTION VI

TERMINATION OF INITIATIVE(S). Each shared service intermunicipal agreement between the parties shall contain a "Section" pertaining to the rights and responsibilities of each party upon the expiration of the initial transition period without continuance of the shared service or upon termination of the shared service at any time after expiration of the initial transition period with continuance thereafter. The "Section" shall provide that if the parties have mutually agreed to continue the shared service after the initial transition period, then each party, at any time, shall have the right to terminate the intermunicipal agreement upon prior written notice to the other. In no event shall the effective date of the termination be earlier than three years from the date of the termination notice (Separation Period). During the Separation Period, the parties will work cooperatively to insure an orderly and efficient transition and the party providing the service(s) shall continue to provide service to the date of termination equivalent to that provided prior to the notice of termination. During and following the Separation Period, the party providing the service(s) will timely deliver to the other party all records and documents (including but not limited to electronic records and source codes if permitted by law) pertaining to the service(s) rendered under the intermunicipal agreement. The monetary obligations of each party to the other party pursuant to the intermunicipal agreement shall remain in full force and effect during the

Separation Period. Each party shall be solely responsible for costs it incurs in fulfilling its responsibilities in affecting the termination in excess of its costs incurred pursuant to the intermunicipal agreement.

SECTION VII

Mutual Cooperation. The City and the County recognize that in the performance of this Agreement, the greatest benefits will be derived by promoting the interest of both parties and each of the parties does, therefore, enter into this Agreement with the intention of loyally cooperating with the other in carrying out the terms of this Agreement and each party agrees to interpret its provisions insofar as it may legally do, in such manner as will thus promote the interest of both and render the highest service to the public and in accordance with the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date set forth for each signature.

Dated: _____

THE CITY OF ELMIRA, NEW YORK

By: _____
John S. Tonello,
Mayor
Resolution No.

Dated: _____

THE COUNTY OF CHEMUNG, NEW YORK

By: _____
Thomas J. Santulli,
County Executive
Resolution No.

Appendix F: Monroe County's All Seasons Contract

ALL SEASONS COUNTY/TOWN WORK AGREEMENT

THIS AGREEMENT, this _____ day of _____, 2006, by and between the COUNTY OF MONROE, a municipal corporation having its office and place of business in the County Office Building, 39 West Main Street, Rochester, New York 14614, hereinafter referred to as the "County", and the Town of _____-a municipal corporation within the County of Monroe, having its office and place of business at « _____ », « _____ », _____ » « _____ », hereinafter referred to as the "Town".

WITNESSETH:

WHEREAS, the County owns, operates, and maintains a highway system in the towns and villages of the County, and

WHEREAS, the County Superintendent of Highways has authorized this Intermunicipal Agreement under the provisions of Monroe County Code, Article C6-19(B)(7), and

WHEREAS, the Supervisor of the Town has authorized this Intermunicipal Agreement pursuant to the Town Board Resolution No. _____ of 2006, and

WHEREAS, the County Superintendent of Highways has general charge and supervision of the work of constructing, improving, repairing and maintaining all County roads, and

WHEREAS, the County funds may be expended for maintenance and repair of County roads, and

WHEREAS, the County desires to contract with the Town for planned county road and bridge work, including highway resurfacing and reconstruction, bridge rehabilitation and replacement, and other planned construction work to be paid on an hourly labor and cost of Equipment basis ("Planned Work"), and

WHEREAS, the County desires to contract with the Town for unplanned road repairs and service responses, and snow and ice build-up removal, to be paid on an hourly Labor and Equipment basis ("Unplanned Work"), and

WHEREAS, the parties shall refer to Planned Work and Unplanned Work collectively as "Hourly Work", and

WHEREAS, the County may contract with the Town for roadside mowing, dead animal pickup and right of way/roadside pickup, all of which shall be paid on a unit cost per the rates of Appendix "B" ("MAR Services"), and

WHEREAS, the parties shall refer to Hourly Work and MAR Services collectively as "County Work", and

WHEREAS, the Town represents that it has appropriate equipment, personnel, and support to perform County Work,

NOW THEREFORE, in consideration of the mutual covenants, agreements, and consideration hereinafter set forth, and pursuant to Sections 135, 135-a and 142-d of the New York State Highway Law, the parties hereto mutually agree that the Town will perform County Work on County roads, and that the County will reimburse the Town in the manner described herein.

GENERAL CONDITIONS

1. The term of this Agreement shall be January 1, 2007 through December 31, 2007. However, the Agreement may be renewed upon the mutual written consent of the parties for additional one-year terms, for a maximum Agreement term of ten (10) years.
2. The Town hereby agrees to perform County Work on designated County roads according to the terms described herein, and according to project agreements and work orders to be executed between the parties for County Work.
3. The Town in which County work on designated County Roads is required shall have the first right to perform said County Work. In the event the Town is unable or unwilling to perform the necessary County Work the County shall have the right to subcontract with any other town or village it shall choose.
4. From time to time, the parties may use one another's equipment and machinery (hereafter "Equipment") for County Work. In exchange for payment according to the Current New York State Department of Transportation Equipment Rental Rate Schedule ("NYSDOT Schedule"), and subject to availability, the Town agrees to provide the County with Equipment listed on the latest Town Equipment inventory at any time and place within Monroe County, upon reasonable request of the County Superintendent of Highways, or designee. In the event that the Town should request and obtain County Equipment for County Work, the Town shall not be paid rental fees according to the NYSDOT Schedule for such borrowed Equipment. If the Town does not possess Equipment necessary to perform County Work, the Town or County may obtain Equipment from another town or village to complete County Work, and the County shall tender payment to the other town or village for the use of such Equipment.
5. The Town will maintain its Equipment in serviceable condition at its own expense during the term of this Agreement. The Town will furnish and pay for all supplies, including but not limited to petroleum products and tires necessary for the operation of the Equipment. The Town shall utilize the appropriate Equipment for all tasks required to perform the County Work. The County shall have no responsibility for the care, maintenance or repair of such Equipment.
6. The Town shall furnish qualified and licensed operators for such Equipment that require operators, and will provide additional labor as requested and as approved by the County. The operators and other labor shall be paid by the Town, which shall also carry State required workers' compensation insurance for such personnel.
7. The Town shall furnish and make available for the performance of County Work: small tools, including picks, shovels, and other implements necessary for County Work. The use of small tools shall not be the subject of any additional charge to the County.
8. The Town shall mark all sites for County Work with the proper warning lights, barricades and signs in accordance with the most recent ADOPTED MANUAL OF UNIFORM

TRAFFIC CONTROL DEVICES BY NEW YORK STATE, or as required by the County Superintendent of Highways, or designee. No work shall commence until required traffic measures and controls are in place. Signs shall remain in place until directed to be removed by the County Superintendent of Highways or designee.

9. The Town shall equip all trucks, tractors and other vehicles working in or along the roads with hazard or warning signs and/or lights as required by law, and these lights must be used when vehicles are parked or standing, or moving at slow speed along the road.
10. The Town shall equip and require its employees working in or along the County right-of-way to wear long pants, shirts with sleeves, and personal safety protective gear, including but not limited to hard hats, reflective vests, and protective footwear which shall comply with ANSI standards.
11. The Town shall be fully responsible for compliance with all applicable safety rules, regulations, laws, statutes and ordinances which pertain to the performance of County Work, and shall indemnify the County pursuant to paragraph 36 for any failure to so comply.
12. If the Town has insufficient Town labor crews to perform Planned County Work, the Town may sub-contract Planned County Work to another town or village, (hereinafter referred to as "Sub",) in Monroe County to complete a portion of the Planned County Work. However, except as described in paragraph 21, the Town shall remain responsible to the County for the obligations delegated to the Sub under this Agreement.
13. If the parties cannot agree to the terms of a project agreement or work order, the County shall perform the work with County forces or contract with another town or village for such services.

HOURLY WORK

14. The County shall issue a Project Agreement or Work Order for all Hourly Work which shall be paid on an hourly basis (Labor and Equipment) according to rates described in Sections 4 and 23, and in Appendix "A". The Town shall not commence work until a project agreement or work order has been executed by the County and the Town Highway Superintendent or Commissioner of Public Works.
15. The County shall furnish the Town with a list of approved purchase orders in a timely fashion. The Town shall use these purchase orders when obtaining material for authorized Hourly Work. The County shall be responsible for payment to vendors only for authorized purchases by the Town. The County shall not reimburse the Town for unauthorized purchases. In the event material is removed from the Town inventory, the County shall pay the reasonable cost of such material. If the Town must purchase material for Hourly Work, the County shall reimburse the Town at a rate to be agreed upon by the parties.
16. Pursuant to Labor Law Section 220, the normal workday shall be eight (8) hours. In all cases in which the Town performs Hourly Work, the Town shall establish its own hours and procedures subject to the requirements of the New York Labor Law. Travel time up to a maximum of fifteen (15) minutes to and from the work site will be reimbursed by the County for work within the Town, and adjusted accordingly for work in other towns by actual measurement. Any additional travel time shall not be at the County's expense.

Except as provided in Section 17, payment shall be made for actual hours worked per day, including authorized travel time. PRIOR APPROVAL FROM THE COUNTY HIGHWAY MAINTENANCE MANAGER IS REQUIRED FOR AUTHORIZATION OF OVERTIME HOURS. In cases in which the Town performs MAR Services, the Town shall establish its own hours consistent with the New York Labor Law.

17. In the event inclement weather disrupts the normal work operations for Hourly Work, the County shall reimburse the Town for labor at the rate of four (4) hours of pay for the first four (4) hours or less of actual work, unless other County Work can be found for Town forces to complete for the remainder of the four hour period. Equipment shall be reimbursed only for actual hours of operation.
18. The Town that executes the project agreement or work order (the "Lead Town"), hereinafter referred to as "Lead", shall collect, organize, code, and provide materials tickets to the County on at least a weekly basis for review and approval by the County Highway Superintendent or designee.
19. The Lead shall complete daily maintenance reports of all authorized projects in process and provide an original on at least a weekly basis to the County for review and approval by the County Highway Superintendent or designee. The daily maintenance reports must indicate daily labor, equipment/machinery, and materials costs, including unit costs, extensions and total costs, and totals costs to date.
20. The County Highway Superintendent or designee shall pick up the materials tickets and the original daily maintenance reports from the Lead on a weekly basis.
21. If the Lead has subcontracted Labor and Equipment to a Sub, the Lead shall include the Sub's daily maintenance reports in the Lead's submittal to the County in accordance with Sections 19 and 20 of this Agreement. If a Lead has subcontracted Labor and Equipment to a Sub, the Sub shall complete the daily maintenance reports and either deliver the original signed daily maintenance report or fax a copy of the report to the Lead for signature by the Lead's foreman.
22. The Lead and Subs are required to produce and submit to the County, a bill/invoice for reimbursement of their Labor and Equipment expenses. In no event shall the Lead be responsible for preparing and submitting a bill/invoice for the work of the Sub. The Sub shall submit its claims to the County in accordance with Section 34 of this Agreement.
23. The County shall reimburse the Lead for labor costs for authorized Hourly Work. Such labor costs shall include the hourly labor rate, increased by an additional amount for fringe rates ("Loaded Labor Rate"). (MAR Services shall be paid on a unit cost basis per the rates in Appendix "B" pursuant to Section 33.)
24. For each year of this Agreement, the County shall pay a fringe benefit rate for all full and part time Town employees working regular and overtime hours for Hourly Work according to the applicable section of Appendix A attached hereto. The Town shall submit fringe benefit information to the County on an annual basis.
25. On an annual basis, the County shall prepare a list of Town employees and submit the list to the Town for corrections. The Town shall review the list, add and delete employees, and update the labor rates. The County shall revise the employee roster

and labor rates in accordance with the Town's corrections. The County shall apply a fringe rate to each employee's labor rate and calculate Loaded Labor Rates for each full time and part time employee, including regular and overtime rates. The County shall provide the Town with the updated Loaded Labor Rates.

26. The County shall update the Town labor rates throughout each year of the Agreement to record Town labor rate changes, such as merit increases and cost of living increases. The Town is required to notify the County of changes in the employee roster or labor rates as of the effective date of such roster or labor rate changes.
27. The County shall issue work orders for snow and ice build-up removal when conditions warrant such measures, and only in situations in which the removal was not the result of the Town's failure to properly perform the basic services required under the Agreement between the Town and the County for Snow Removal and Ice control Services dated October 12, 2002.
28. With respect to snow and ice removal, the Town shall push back and haul snow from County highway rights-of-way, remove ice build-ups from pavements, and open culvert crossings or drainage ways obstructed by ice build-ups as authorized by a written work order issued by the County.
29. From time to time, the County may request services of the Town for 'Unplanned Work' such as repair to County roads caused by storms, flooding, or other acts of God, customer services responses and other services requested by the County.
30. All 'Unplanned Work' shall require prior approval by the Monroe County Superintendent of Highways or designee. The County shall orally approve 'Unplanned Work', and shall confirm with a written work order which shall identify the location and scope of work to be performed and which shall be signed by the parties.
31. The Town shall provide daily Labor and Equipment costs of 'Unplanned Work' on the County Daily Maintenance Report form. These time records must include the work order number and the rates for Loaded Labor and Equipment currently in effect, and shall be reported by the Town to the County. The Town shall submit these forms to Monroe County Department of Transportation on a weekly basis.
32. 'Unplanned Work' shall be reimbursed based on actual costs of Town Labor and Equipment used to perform the Work. Payment for 'Unplanned Work' shall require a properly completed County claim voucher, a copy of the issued work order(s) and the daily time and cost records. The County shall reimburse the Town in accordance with the County's payment schedule (bi-weekly) during the term of the Agreement.

MAR SERVICES

33. Dead Animal Pickup shall be paid by the centerline mile according to the rate set forth in Appendix "B". Roadside pickup and roadside mowing shall be paid on a lump sum basis according to Appendix "B". Roadside mowing, roadside pickup and dead animal pickup shall be paid according to the terms of Project Agreements which must be approved and signed between the County and Town prior to the commencement of MAR Services during the term of this Agreement. Rates for roadside mowing, roadside pickup and dead animal pickup shall be negotiated by the parties for any renewal of this Agreement.

GENERAL TERMS

34. Except for MAR Services under paragraph 32, the County shall process Town claims for payment for work performed on a Labor and Equipment basis upon submission (to the Finance Division of the Department of Transportation) of a properly completed Monroe County claim voucher and a Town generated bill/invoice in a form acceptable to the County. The bill/invoice shall include project name and number and daily information regarding Labor and Equipment used.

The suggested format and required information included on the bill/invoice are as follows:

A columnar format with headings for employee number, name, date(s) worked, total hours worked, loaded labor rates, extensions. The Town should record the name and number of each employee working during the claim period, and record corresponding information for the dates and hours worked, total hours worked, loaded labor rates, extensions (total hours X loaded labor rates), and a grand total of the extensions. Overtime hours worked by an employee(s) should be recorded on a separate row with the actual hours worked and the loaded over time rate listed. The extensions should be totaled and recorded as Total Labor Costs at the bottom of the labor bill/invoice.

Town Equipment should also be in a columnar format with headings for Equipment number, date(s) used, total hours used, rental rates, and extensions. The Town should record the Equipment number used during the claim period, and record corresponding information for the dates and hours used, total hours used, rental rates for the piece of Equipment, extensions (total hours X rental rates), and a grand total of the extensions. The extensions should be totaled and recorded as Total Equipment Costs at the bottom of the Equipment bill/invoice. The County shall pay no overtime costs for Equipment.

35. In the event the Town receives through this Agreement, directly or indirectly, any funds of or from the United States Government, Town agrees to comply fully with the terms and requirements of Federal Single Audit Act [Title 31 United States Code, Chapter 75], as amended from time to time. The Town shall comply with all requirements stated in Federal Office of Management and Budget Circulars A-102, A-110 and A-133, and such other circulars, interpretations, opinions, rules or regulations that may be issued in connection with the Federal Single Audit Act.

If on a cumulative basis the Town expends Five Hundred Thousand and no/100 Dollars (\$500,000.00) or more in federal funds in any fiscal year, it shall cause to have a single audit conducted, the Data Collection Form (defined in Federal Office of Management and Budget Circular A-133) shall be submitted to the County; however, if there are findings or questioned costs related to the program that is federally funded by the County, the Town shall submit the complete reporting package (defined in Federal Office of Management and Budget Circular A-133) to the County.

If on a cumulative basis the Town expends less than Five Hundred Thousand and no/100 Dollars (\$500,000.00) in federal funds in any fiscal year, it shall retain all documents relating to the federal programs for three (3) years after the close of the Town's fiscal year in which any payment was received from such federal programs.

All required documents must be submitted within nine (9) months of the close of the Town's fiscal year end to:

Monroe County Internal Audit Unit
304 County Office Building
39 West Main Street
Rochester, New York 14614

Monroe County Department of Transportation
CityPlace, Suite 6100
50 West Main Street
Rochester, New York 14614

The Town shall, upon request of the County, provide the County such documentation, records, information and data and response to such inquiries as the County may deem necessary or appropriate and shall fully cooperate with internal and independent auditors designated by the County and permit such auditors to examine and copy all records, documents, reports and financial statements that the County deems necessary to assure and monitor payments to the Town under this Agreement.

The County's right of inspection and audit pursuant to this Agreement shall survive the payment of monies due to Town and shall remain in full force and effect for a period of three (3) years after the close of the Town's fiscal year in which any funds or payment was received from the County under this Agreement.

36. The Town shall, at its own expense, indemnify and hold harmless the County, its officers, agents and employees from any and all fines, fees, penalties, attorney's fees, liabilities, judgments, costs, claims, causes of action, damages and expense arising out of the Town's negligence in performance of such work, labor or services by the Town, its agents, servants or employees under this Agreement, PROVIDING, however, that timely notice shall be given to the Town by the County of any claim, action or proceeding which may be filed or commenced against the County by reason of the performance of such work.

As a part of its obligation to indemnify and hold harmless the County, its officers, agents and employees, as set forth above, the Town agrees to obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage as described below:

A. Workers' Compensation Insurance: A policy covering the operations of the Town in accordance with the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Workers' Compensation Law, covering all operations under the Agreement, whether performed by the Town or by its subcontractors. The Agreement shall be void and of no effect unless the Town making or executing same shall secure workers' compensation coverage for the benefits or, and keep insured during the life of said Agreement, such employees in compliance with the provisions of the Workers' Compensation Law. A certificate of insurance or other proof that workers' compensation coverage is in effect shall be provided before the start date of this Agreement.

B. Liability And Property Damage Insurance:

1. Contractor's Liability Insurance issued to the Town and covering the liability for damages imposed by law upon the Town with respect to all work performed by the Town under this Agreement naming the County as additional insured and in the amount of \$2,000,000 for each occurrence is required. All of the following coverage shall be included:

Comprehensive Form
 Premises Operations
 Products Completed Operations
 Contractual Insurance covering the Hold Harmless Provision
 Broad Form Property Damage
 Independent Contractors
 Personal Injury

2. Owner's and Contractor's Protective Liability Insurance Policy issued to the Town and naming Monroe County as an additional insured and covering the liability for damages imposed by law upon the Town for the acts or neglect of each of the Town subcontractors with respect to all work performed by said subcontractors under the Agreement.
3. Unless otherwise specifically required by special specifications, each policy shall have limits of not less than the following:

BODILY INJURY LIABILITY Single Limit	PROPERTY DAMAGE Single Limit
\$2,000,000 each person \$2,000,000 each occurrence	\$2,000,000 each occurrence
OR COMBINED SINGLE LIMIT	
\$2,000,000	

4. The limits of liability set forth above shall be per occurrence. A claims made policy is not acceptable.

C. Motor Vehicle Insurance:

Motor Vehicle Insurance issued to the Town and covering public liability and property damage on the Town's vehicles in the amount of:

BODILY INJURY LIABILITY	PROPERTY DAMAGE
\$2,000,000 each person \$2,000,000 each occurrence	\$2,000,000 each occurrence
OR COMBINED SINGLE LIMIT	
\$2,000,000	

D. A currently and properly executed County-provided Certificate of Insurance, naming Monroe County as additional insured under the general liability policy covering all services to be provided by the Town pursuant to the Work Agreement, shall be submitted prior to issuance of payments, to the Office of the Monroe County Director of Transportation. This Certificate of Insurance shall be subject to the approval of the County Attorney.

All said insurance policies and certificates shall contain the following clause:

"In the event of any change or a cancellation of this policy, at least thirty (30) days notice thereof shall be given to the County Director of Transportation, at the Director's office."

E. In the event a Certificate of Insurance is not available, the County will accept a self-insurance document on appropriate letterhead containing the following language:

"This is to advise you that the Town of _____ is self-insured for worker's compensation, general liability and auto liability insurance and therefore cannot provide a certificate of insurance. If there is a change in the self-insured status of the Town of _____, the County of Monroe will be notified.

In any contract requiring indemnification of the County by the Town of _____, this letter is to represent that the Town of _____ will hold harmless and indemnify the County for losses sustained resulting from such contracts.

The Town of _____ will defend and indemnify the County for each such contract, for the period _____, 200__ through _____, 200__, through the Town of _____'s self-insurance reserve.

F. The initial term of this Agreement is one (1) year, January 1, 2007 through December 31, 2007. For every required insurance coverage that is for a period of time less than the full term, the Town shall provide proof of adequate insurance coverage at least forty-five (45) days before the expiration of the previous coverage.

37. The Town recognizes the continuing commitment on the part of the County to assist those receiving temporary assistance to become employed in jobs for which they are qualified, and the County's need to know when jobs become available in the community.

The Town agrees to notify the County when the Town has or is about to have a job opening within Monroe County. Such notice shall be given as soon as practicable after the Town has knowledge that a job opening will occur. The notice shall contain information that will facilitate the identification and referral of appropriate candidates in a form and as required by the Employment Coordinator. This would include at least a description of conditions for employment, including the job title and information concerning wages, hours per work week, location and qualifications (education and experience).

Notice shall be given in writing to:

Employment Coordinator
Monroe County Department of Social Services
111 Westfall Road
Rochester, New York 14620
Fax: (585) 753-6322
Telephone: (585) 753-6308

The Town recognizes that this is an opportunity to make a good faith effort to work with Monroe County for the benefit of the community. Nothing contained in this provision, however, shall be interpreted as an obligation on the part of the Town to employ any individual who may be referred by or through the above notice. Any decisions made by the Town to hire any individual referred by or through the County shall be voluntary and based solely upon the Town's job requirements and the individual's qualifications for the job, as determined by the Town.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written

Town of

By _____
Supervisor

COUNTY OF MONROE

By _____
TERRENCE J. RICE, P.E.
County Superintendent of Highways

State of New York)
County of Monroe) ss:

On the ____ day of _____, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)
County of Monroe) ss:

On the ____ day of _____, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared TERRENCE J. RICE, P.E., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public