

## INTERMUNICIPAL AGREEMENT

THIS AGREEMENT, made by and between the County of Broome, a municipal corporation organized and existing under the laws of the State of New York with offices at the Edwin L. Crawford County Office Building, PO Box 1766, Binghamton NY 13902 (hereinafter "County") and \_\_\_\_\_, a municipal corporation organized and existing under the laws of the State of New York with offices at \_\_\_\_\_ (hereinafter "Borrowing Municipality").

WITNESSETH that Borrowing Municipality, in consideration of the promises and the mutual covenants and agreements contained herein, do hereby mutually agree as follows:

1. Use of Equipment.

a) County hereby authorizes Borrowing Municipality to use the items of machinery, tools, and/or equipment (the "Equipment") owned by the County that are described on the schedule that is attached hereto and made a part hereof. Such use shall be subject to the terms and conditions of this Agreement. Borrowing Municipality shall, at their own cost and expense, pick up the Equipment and drive or move it to the Borrowing Municipality for its use hereunder. Borrowing Municipality represents that they have inspected the Equipment and are familiar with its use. Borrowing Municipality understands and agrees that the County is allowing the use of the Equipment "as is" and without any warranties or representation as to its condition or fitness for any intended use.

b) If the County does not have the Equipment requested by the Borrowing Municipality, the County may contact other municipalities (hereinafter loaning municipality) in the County to obtain the Equipment for the Borrowing Municipality. Borrowing Municipality understands and agrees that the County, or loaning municipality, is not making any warranty or representation as to the equipment's condition or fitness for any intended purposes. Borrowing Municipality shall work directly with the municipality leasing the equipment to arrange for the use of the equipment.

2. Term. Borrowing Municipality is authorized to use the Equipment for the term set forth on the attached schedule. In the event that the County, or loaning municipality, requires the return of the Equipment at any time prior to the termination date set forth in the attached schedule, the County, or loaning municipality, shall so notify the Borrowing Municipality, in which event Borrowing Municipality shall, at their own cost and expense, immediately return the Equipment to the County, or loaning municipality.

3. Consideration. Borrowing Municipality agrees that upon request by the County, Borrowing Municipality shall make available for use by the County the Equipment of the Borrowing Municipality which is not then needed by the Borrowing Municipality, upon terms and conditions similar to those set forth in this Agreement. If the attached schedule provides for payment by the Borrowing Municipality to the County for the use of the Equipment, Borrowing Municipality shall pay said stipulated payment which shall equal the FEMA rate for use of equipment within 30 days of the date when the governing board of the Borrowing Municipality audits and approves for payment the County's voucher with respect thereto.

4. Ownership and use.

(a) The Equipment shall at all times be owned by the County, or loaning municipality, and shall be the sole and exclusive property of the County, or loaning municipality. The Borrowing Municipality shall have no rights or property interest in the Equipment, except for the right to use the Equipment pursuant to this Agreement in the normal operation of the activities of the Borrowing Municipality. The Equipment is to be used by Borrowing Municipality only within the Borrowing Municipality.

(b) The Equipment is and shall remain personal property even if installed in or attached to real property. The County, or loaning municipality, shall be permitted to display notice of its-ownership on each article of Equipment by means of a suitable stencil, label, or plaque affixed thereto. The Borrowing Municipality shall promptly notify the County, or loaning municipality, if any stencil, label, or plaque becomes damaged or illegible, and shall permit access to the Equipment by the County, loaning municipality, or their officers, employees or its agents, to repair or replace any damaged or illegible item.

(c) The Borrowing Municipality shall keep the Equipment at all times free and clear from all claims, levies, liens, encumbrances, and process. The Borrowing Municipality shall give the County, or loaning municipality, immediate written notice of any such attachment or other judicial process affecting any article of Equipment subject to this Agreement.

(d) The Borrowing Municipality shall not pledge, lend, create a security interest in, sublet or part possession with the Equipment or any part thereof or attempt in any other manner to dispose of the Equipment, or remove the Equipment or any part thereof from the Borrowing Municipality, without prior written permission of the County, or loaning municipality.

(e) The Borrowing Municipality shall cause the Equipment to be operated and maintained in accordance with the applicable vendor's or manufacturer's manual of instructions; by competent and qualified personnel employed by the Borrowing Municipality. The Borrowing Municipality shall, at their own cost and expense, provide fuel, lubrication, oil, minor repairs and materials as needed for the safe and efficient operation of the Equipment.

(f) The Borrowing Municipality shall maintain accurate written records of the (1) days and hours that the Equipment is used hereunder, (2) the names of the operators, (3) the locations where the Equipment is used, and (4) any accidents arising during such operation or damage to the Equipment. The Borrowing Municipality shall promptly furnish a copy of said records to the County, or loaning municipality, upon request therefor.

(g) Borrowing Municipality shall at all times comply with any applicable statutes, local laws, codes, rules and regulations in connection with the use and repair of the Equipment and shall take reasonable steps to assure similar compliance by the officers and employees of the Borrowing Municipality who use or repair the Equipment.

5. Repairs and replacements. The Borrowing Municipality shall keep the Equipment in good condition; and, Borrowing Municipality shall, at the cost and expense of the Borrowing Municipality,

make all repairs and replacements necessary for preservation of the Equipment. All such replacements shall immediately become property of the County, or loaning municipality.

6. Insurance. The Borrowing Municipality, if requested to do so by the County, and/or loaning municipality, shall, at its own cost and expense, insure the Equipment against burglary, theft, fire, and vandalism in such amounts as shall be specified by the County, or loaning municipality, in such form and with such insurance company as shall be satisfactory to the County, or loaning municipality. All insurance policies shall name the Borrowing Municipality, the County and loaning municipality as insured, and copies of the policies shall be furnished to the County and loaning municipality. The Borrowing Municipality shall also provide such other insurance as set forth on the attached insurance requirement form.

7. Indemnity. The Borrowing Municipality assumes liability for, and shall defend, indemnify, protect, save and keep harmless the County, loaning municipality, and their officers, employees, and agents from and against all losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal expenses of any kind and nature imposed upon, incurred by, or asserted against the County, or loaning municipality, in any way relating to or arising out of this Agreement or the use of the Equipment under paragraphs 1(a) and (b). The indemnities contained in this section shall continue in full force and effect, notwithstanding the termination of this Agreement or the return of the Equipment.

8. Inspection. The County, loaning municipality, or its officers, employees, and agents may, at any time, inspect the Equipment, and, upon prior notification enter the Borrowing Municipality's property or storage area for the purpose of inspecting the Equipment and the manner in which it is being used.

9. Workers' Compensation Insurance. In accordance with the provisions of section 108 of the General Municipal Law, this Agreement shall be void and of no effect unless the Borrowing Municipality shall secure compensation for the benefit of, and keep insured during the life of this Agreement, such of the employees of the Borrowing Municipality engaged thereon as are required to be insured under the provisions of the Workers' Compensation Law.

10. Operators. Unless specifically set forth on the attached schedule, no officers, employees or agents of the County or loaning municipality, shall be furnished by the County, or loaning municipality, to operate the Equipment pursuant to this Agreement. If the attached schedule does provide that the County, or loaning municipality, shall furnish certain County, or loaning municipality, officers, employees or agents to operate the Equipment hereunder, the Borrowing Municipality shall pay to the County, or loaning municipality, (1) the applicable rate for such operators, as is set forth in the attached schedule, and (2) the sum representing any additional workers' compensation costs hereafter incurred by the County, or loaning municipality (in excess of the workers' compensation costs normally incurred by the County, or loaning municipality) in the event that any officer, employee or agent of the County, or loaning municipality, is injured in the course of the operation of the Equipment hereunder and a workers' compensation award is made to such officer, employee or agent of the County, or loaning municipality, as a result thereof.

11. Payments and reimbursements. In the event the County, or loaning municipality, is entitled to any payments or reimbursements from the Borrowing Municipality hereunder, the Borrowing Municipality shall pay the County, or loaning municipality, in full, for any such payments or reimbursements within 30 days after the governing board of the Borrowing Municipality has audited the County's, or loaning municipality's, voucher for payment. Such auditing and payment approval shall not be unnecessarily delayed or withheld by the governing board of the Borrowing Municipality.

12. Return. At the end of the term set forth on the attached schedule, the Borrowing Municipality shall, at the cost and expense of the Borrowing Municipality, return the Equipment to the County, or loaning municipality, at the address designated by the County, or loaning municipality, in as good condition as when received, reasonable wear and tear excepted.

13. Liability for damage. The Borrowing Municipality shall be responsible for any damage to the Equipment while in the Borrowing Municipality's possession, and shall pay to the County, or loaning municipality, the value of so much of the Equipment, or any part thereof, as may be damaged or destroyed. Such payment shall be made within 30 days after the governing board of the Borrowing Municipality audits and approves for payment the County's, or loaning municipality's, voucher with respect thereto.

14. Breach. Upon default in the payment of any payment required hereunder, or upon a breach of any other condition of this Agreement to be performed or observed by the Borrowing Municipality, the County shall have the right without notice or demand to terminate this Agreement, but such termination shall not release the Borrowing Municipality from the payment of damages sustained by the County, or loaning municipality. If upon any termination of this Agreement the Borrowing Municipality fails or refuses to forthwith deliver the Equipment to the County, or loaning municipality, the County, or loaning municipality, shall have the right to enter the property of the Borrowing Municipality, or any other premises where the Equipment may be found, upon prior notice to the Borrowing Municipality, and to take possession of and remove the Equipment without legal process. The Borrowing Municipality releases any claim or right of action from trespass or damages caused by reason of such entry and removal; nor shall the County, or loaning municipality, be prejudiced from pursuing any other remedies to which they otherwise might be entitled on account of arrears of payments or breach of any other conditions of this Agreement.

15. Prohibition against assignment. In accordance with the provisions of section 109 of the General Municipal Law, the Borrowing Municipality are hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of their right, title or interest in this Agreement, or their power to execute this Agreement to any other municipality, officer, person or corporation without the previous consent in writing of the County.

16. Binding effect. The covenants, terms and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and legal representatives.

17. Construction of Agreement. This Agreement shall be construed in accordance with the laws of the State of New York.

18. Notices. All notices hereunder shall be in writing, mailed first class, certified, registered or delivered by hand to the address of the other party as set forth on page 1 of this Agreement or to such other address as such party may designate from time to time by such notice and shall take effect when mailed, or when received if delivered by hand.

19. Amendments. This Agreement may only be amended, varied, modified or waived by written agreement executed by authorized signatories of the parties.

20. Independent contractors. It is understood that Borrowing Municipality is an independent contractor, and is not to be considered an agent, employee, or partner of the County for any purpose whatsoever.

21. Sharing information. The parties hereto agree that they shall periodically share such information with each other, hold such meetings and study such potential cooperative services between them as are likely to result in (1) increased efficiencies, (2) better service to the public, and (3) cost savings to the taxpayers.

22. Entire Agreement. This Agreement constitutes the entire agreement between the parties with reference to the subject matter hereof. There are no terms, conditions, or obligations other than those contained herein and there are no written or verbal statements or representations, warranties, or agreements with respect to this Agreement which have not been embodied herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

County of Broome:

Borrowing Municipality:

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

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

Jason T. Garnar

[Name, Title]

SCHEDULE OF EQUIPMENT SUBJECT  
TO THE ATTACHED AGREEMENT:

Term of Agreement and date when the Equipment is to be returned to the County:

Payments to be made by the Borrowing Municipality to the County for the use of the Equipment:

Operators to be furnished by the County to the Borrowing Municipality:

Payments to be made by the Borrowing Municipality to the County for such operators: