

RESOLUTION #18 OF 2020

**RESOLUTION AUTHORIZING THE CHIEF EXECUTIVE OFFICER  
TO SIGN A CONTRACT FOR SHARED HIGHWAY SERVICES ON  
BEHALF OF THE TOWN OF MIDDLETOWN.**

At the regular meeting of the Town Board of the Town of Middletown duly held at the Town Hall, 42339 State Hwy 28, Margaretville, NY on the 8<sup>th</sup> day of July, 2020.

Present:	Carl P. Davis	Town Supervisor
	Brian Sweeney	Council Member
	Julia Reischel	Council Member
	Christopher Dabritz	Council Member
	Nelson Delameter	Council Member

The following resolution was offered for adoption by Christopher Dabritz, which resolution was seconded by Julia Reischel.

Resolution authorizing the Town Supervisor to sign a contract on behalf of the Town of Middletown to permit the highway department head to share services with the highway department head in other municipalities who possess similar authorization for borrowing or lending of materials and supplies and the exchanging, leasing, renting or maintaining of machinery and equipment, including the operators thereof, for the purpose of aiding the highway department head in the performance of his duties.

**WHEREAS**, all municipalities, including the Town of Middletown have power and authority to contract for the purpose of renting, leasing, exchanging, borrowing or maintaining of machinery and equipment, with or without operators, with other municipalities, and;

**WHEREAS**, all municipalities, including the Town of Middletown, have power and authority to borrow or lend materials and supplies to other municipalities, and;

**WHEREAS**, it is hereby determined that the Town of Middletown and other municipalities have machinery and equipment which is not used during certain periods, and;

**WHEREAS**, it is determined that the Town of Middletown and other municipalities often have materials and supplies on hand which are not immediately needed, and;

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

**WHEREAS**, it is recognized and determined, from a practical working arrangement, that no program of borrowing, exchanging, leasing, renting or maintaining of Highway machinery and equipment or borrowing or lending of materials can be successful if each individual arrangement or agreement has to receive prior approval by the Board of the Town of Middletown and the governing board of each of the other municipalities which may be parties to such agreements, since such agreements must often be made on short notice and at times when governing boards are not in session, and;

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

**WHEREAS**, it is the intent of the Town of Middletown to give the Highway Superintendent the authority to enter into renting, exchanging, borrowing, lending or maintaining arrangements with persons serving in similar capacities in other municipalities without the necessity of obtaining approval of the Board of the Town of Middletown prior to the making of each individual arrangements, and;

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

**WHEREAS**, it is hereby determined that it will be in the best interest of the Town of Middletown to be a party to such shared services arrangements:

**NOW, THEREFORE BE IT RESOLVED**, that the Town Supervisor is hereby authorized to sign on behalf of the Town of Middletown, the following contract:

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

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

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

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

- i. the renting, exchanging, or lending of highway machinery, tools and equipment, with or without operators;
- ii. the borrowing or lending of supplies between municipalities on a temporary basis conditioned upon the replacement of such supplies or conditioned upon the obtaining of equal value through the provision of a service by the borrower, or by the lending of equipment by the borrower, the value of which is equal to the borrowed supplies;
- iii. the providing of a specific service for another municipality, conditioned on such other municipality providing a similar service, or a service of equal value, in exchange;
- iv. the maintenance of machinery or equipment by a municipality for other municipalities.

d. "Superintendent" shall mean, in the case of a city, the head of the Department of Public Works; in the case of a county, the County Superintendent of Highways, or the person having the power and authority to perform the duties generally performed by County Superintendents of Highways; in the case of a town, the Town Superintendent of Highways and in the case of a village, the Superintendent of Public Works.

2. The undersigned municipality has caused this agreement to be executed and to bind itself to the terms of this contract and it will consider this contract to be applicable to any municipality which has approved a similar contract and filed such contract with the Clerk of the undersigned municipality.

3. The undersigned municipality by this agreement grants unto the Superintendent, the authority to enter into any shared service arrangements with any other municipality or other municipalities subject to the following terms and conditions:

a. The Town of Middletown agrees to rent or exchange or borrow from any municipality any and all materials, machinery and equipment, with or without operators, which it may need for the purposes of the Town of Middletown. The determination as to

whether such machinery, with or without operators, is needed by the Town of Middletown, shall be made by the Superintendent. The value of the materials or supplies borrowed from another municipality under this agreement may be returned in the form of similar types and amounts of materials or supplies, or by the supply of equipment or the giving of services of equal value, to be determined by mutual agreement of the respective Superintendents.

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

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

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

e. When receiving the services of an operator with a machine or equipment, the receiving Superintendent shall make no request of any operator which would be inconsistent with any labor agreement. All machinery and the operator, for purposes of Workers Compensation, liability and any other relationship with third parties, shall be considered the machinery of, and the employee of, the municipality owning the machinery and equipment.

f. The lending municipality shall be liable for any negligent acts resulting from the operation of its machinery or equipment by its own operator. In the event damages are caused as a result of directions given to perform work, then the lending municipality shall be held harmless by the borrowing municipality.

g. Each municipality shall remain fully responsible for its own employees, including but not limited to salary, benefits and Workers Compensation.

4. The renting, borrowing or leasing, repairing or maintaining of any particular piece of machinery or equipment, or the exchange or borrowing of materials or supplies, or the providing of a specific service shall be evidenced by the signing of a

Memorandum by the Superintendent. Such Memorandum may be delivered to the other party via mail, personal delivery, facsimile machine, or any other method of transmission agreed upon. In the event there is no written acceptance of the Memorandum, the receipt of the materials or supplies or the acceptance of a service shall be evidence of the acceptance of the offer to rent, exchange or lend.

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

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

7. All machinery and the operator, for the purposes of workers compensation, liability and any other relationship with third parties, except as provided in paragraph e of Section 3 of this agreement, shall be considered the machinery of, and the employee of, the municipality owning the machinery and equipment.

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

9. Records shall be maintained by each municipality setting forth all machinery rentals, exchanges, borrowings, repair or maintenance and other shared services. Such records will be available for inspection by any municipality which has shared services with such municipality.

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

11. Any municipality which is a party to this contract may revoke such contract by filing a notice of such revocation. Upon the revocation of such contract, any outstanding obligations shall be submitted within thirty days of such revocation unless the parties with whom an obligation is due agree in writing to extend such date of settlement.

12. Any action taken by the Superintendent pursuant to the provisions of this contract shall be consistent with the duties of such official and expenditures incurred shall not exceed the amounts set forth in the Town budget for highway purposes.

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

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

15. This contract shall be reviewed each year by the Town of Middletown and shall expire five years from the date of its signing by the Chief Executive Officer. The Town of Middletown Board may extend or renew this contract at the termination thereof for another five year period.

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

IN WITNESS THEREOF, the Town of Middletown has by order of the Town Board, caused these presents to be subscribed by the Chief Executive Officer, and the seal of the Town of Middletown to be affixed and attested by the Clerk thereof, this 8th day of July, 2020.

Town of Middletown:

BY: Carl P. Davis  
Carl P. Davis, Town Supervisor

ATTEST: Patricia F. Kelly  
Patricia F. Kelly, Town Clerk

SEAL

The Town Clerk is authorized and directed to file a copy of the contract set forth in this resolution with the Chief Executive Officer of the following municipalities:

- Delaware County DPW
- Margaretville Central School
- Town of Andes
- Town of Bovina
- Town of Hardenburgh
- Town of Halcott
- Town of Roxbury
- Town of Stamford
- Town of Walton
- Village of Delhi
- Village of Fleischmanns
- Village of Margaretville

This resolution shall take effective immediately.

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

Council Member	Yes	No
Julia Reischel	<u>X</u>	_____
Brian Sweeney	<u>X</u>	_____
Christopher Dabritz	<u>X</u>	_____
Nelson Delameter	<u>X</u>	_____
 Town Supervisor		
Carl P. Davis	<u>X</u>	_____

There being a majority of the Town Board voting to approve the resolution, the resolution was declared by the Town Supervisor to have been adopted. I, Patricia F. Kelly, Clerk of the Town of Middletown, hereby certify that the above is correct text of the resolution adopted by the Town Board of the Town of Middletown on the 8th day of July, 2020 and that the above is the complete and whole text of such resolution.

*Patricia F. Kelly*  
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 Patricia F. Kelly  
 Town Clerk

SEAL

