

MEMORANDUM OF UNDERSTANDING FOR THE SHARING OF HIGHWAY
EQUIPMENT STORAGE BUILDING AND FUEL DISPENSING SYSTEM

THIS AGREEMENT made and entered into this _____ day of _____, 2018,
by and between the **TOWN OF NORTH EAST**, a municipal corporation, with offices
located at 19 North Maple Avenue, Millerton, New York 12546 (hereinafter the "Town"),
and the **VILLAGE OF MILLERTON**, a municipal corporation, with offices located at
21 Dutchess Avenue, Millerton, New York 12546 (hereinafter the "Village")

WHEREAS, the Town is the owner of a 3.7 acre parcel of land located on Route 22,
identified as Tax Parcel No. 950854 (hereinafter "Town Property"); and

WHEREAS, the Town intends to construct on the Town Property a highway equipment
Storage Building consisting of, among other things, four bays for the storage, maintenance and
repair of highway vehicles and equipment (hereinafter "Storage Building"); and

WHEREAS, the Town also intends to install on the said Town Property fuel storage
tanks from which its vehicles will obtain gas and diesel fuel from a FuelMaster fuel distribution
system (hereinafter "Fuel Storage Tanks"); and

WHEREAS, the Village owns and operates highway vehicles and equipment to provide
its residents with services such as snow removal, and highway repairs and maintenance but does
not possess sufficient highway garage facilities to store, maintain and repair all of its vehicles
and equipment; and

WHEREAS, the Village does not presently have adequate fuel storage and distribution
facilities sufficient to serve the needs of its highway vehicles and equipment; and

WHEREAS, the Town agrees to allow the Village to make joint use of the Fuel
Storage Tanks and the fuel stored in the tanks via the FuelMaster fuel distribution,
or similar, pumps; and

WHEREAS, the Town agrees to allow the Village to make use of a portion of the Storage Building for the storage of Village highway vehicles and equipment; and

WHEREAS, the Board members of the Town and the Board of Trustees of the Village deem it in the best interest of the residents of the respective municipalities to enter into this Agreement to permit the Village to obtain fuel from the Town's Fuel Storage Tanks and to store its highway vehicles and equipment in a dedicated portion of the Storage Building; and

WHEREAS, pursuant to Article 5-G of the General Municipal Law, the Town and the Village are authorized to enter into a Municipal Cooperation Agreement with respect to storage and removal of fuel and the storage and utilization of the portion of the storage building.

NOW, THEREFORE, it is hereby agreed by the Town and the Village as follows:

1. **Scope of Services — Fuel Distribution.** The Town hereby authorizes the Village, to utilize the Fuel Storage Tanks.
 - 1.1 **Access to Tanks.** The Town shall provide the Village with a means of twenty-four (24) hours a day, seven (7) days a week, access to the Fuel Storage Tanks in order to obtain fuel.
 - 1.2 **Delivery of Fuel.** The Town will have fuel delivered to the Fuel Storage Tanks when reasonably requested by the Town Highway Superintendent in quantities and specifications established by the Town Highway Superintendent.
 - 1.3 **Determination of Fuel Used.** The Town Highway Superintendent shall use the FuelMaster fuel delivery, or similar, system to determine the amount of fuel used by the Village upon removal from the tanks. It shall be the responsibility of the Village to check the accuracy of any reports accounting for the amount of fuel obtained by the Village from the tanks.
 - 1.4 **Billing Cost.** The Town will periodically bill the Village for fuel used at cost.

2. **Scope of Services — Use of Storage Building.** The Town hereby authorizes the Village, at its own expense, to store highway trucks and/or other equipment in one (1) of the four (4) bays of the Storage Building to be designated by the Town.

2.1 **Access to the Building.** The Town shall provide the Village with a means of twenty-four (24) hours a day, seven (7) days a week, access to the Storage Building and the one (1) bay in order to store, and remove, said equipment.

2.2 **Other Uses of Bay.** The Village shall be permitted to utilize the one (1) bay of the Storage Building for the storage of said Village highway equipment.

3. **Certain Definitions.**

a. **"Contract Year"** means a period of twelve months beginning with the Effective Date and each twelve-month period thereafter until this Agreement is terminated.

b. **"Agreement"** means this Agreement and any amendments hereto as may from time to time be adopted as hereinafter provided.

c. **"Effective Date"** means the effective date of the Agreement which is _____, 2018.

d. **"Term"** means the period of time that this Agreement is in effect.

4. **Payment.** The Village will pay the Town the sum of **\$1.00** per Contract Year. As provided in Section 9, upon such termination, an appropriate adjustment for fuel oil shall also be made to adjust for fuel from the Fuel Storage Tanks used by the Village but not paid for by the Village or for fuel in the Fuel Storage Tanks paid for by the Village but not used by the Village, as the case may be.

5. **Standard of Care.** If and when Village employees, agents and contractors replace or remove fuel from the Fuel Storage Tanks, or utilize the Storage Building for the storage of their equipment, they shall perform such acts in a safe, reasonable and responsible manner.
6. **Records.** The Village shall maintain accurate written records of the fuel it removes from the Fuel Storage Tanks. The Town may, upon reasonable notice, review these records.

The Town shall maintain accurate written records of the fuel removed from the Fuel Storage Tanks by the Village. The Village may, upon reasonable notice, review these records.

7. **Sharing Information.** The Town and the Village agree that they shall periodically share such information with each other, hold such meetings, and study potential cooperative services in regards to the use of the Fuel Storage Tanks and Storage Building that are likely to result in increased efficiencies, better to service to the public and cost savings to the taxpayers.
8. **Condition of the Tanks and the Storage Building.** The Village employees and/or agents will have an opportunity to inspect the Fuel Storage Tanks and the Storage Building and will be familiar with their condition. The Village understands and agrees that the Town is allowing the Village to use the Fuel Storage Tanks and a portion of the Storage Building, as is, without warranties or representations as to the conditions or fitness of the Fuel Storage Tanks and a portion of the Storage Building for their intended use. Each party will notify the other if their respective personnel become aware of any conditions which might cause the Fuel Storage Tanks or the Storage Building to be unfit for the purposes for which they are intended.

9. **Term.** This Agreement shall continue in force for a period of one (1) Contract Year from the Effective Date, and thereafter it shall be renewed automatically for successive periods of one (1) Contract Year each, until terminated as herein provided. Either Party shall have the right, as its option, to terminate this Agreement at any time, with or without cause, upon giving at least 90 days prior written notice to the other party and termination shall be effective on the last day of such notice period.
10. **Payment for Services.** Except as provided herein, the Village shall not pay any fees to the Town for the Village's right to utilize fuel from the Fuel Storage Tanks and to store vehicles and equipment and utilize the designated bay in the Storage Building.
11. **Ownership of the Tanks and Building.** Ownership of the Fuel Storage Tanks and the Storage Building shall, at all times, remain that of the Town and such Fuel Storage Tanks and Storage Building shall be the sole and exclusive property of the Town. Except for the rights set forth herein, the Village shall have no rights to the Town Property and the Fuel Storage Tanks and/or the Storage Building.
12. **Insurance.** During the Term of this Agreement, and for a period of three (3) years after the termination of the same, the Village shall indemnify and hold harmless the Town from any claims, damages or liabilities made, or asserted, against the Town by reason of the Village's acts or omissions or the acts or omissions of its employees or agents in exercising its rights pursuant to this Agreement, including the payment of reasonable attorneys fees incurred by the Town in defending such action. During the Term, the Village shall maintain liability insurance in the amount of \$2,000,000 covering the storage of fuel in the tanks and removal of fuel from the tanks and use of the Storage Building and such liability insurance policy or policies shall name the Town as an additional insured. Certificates of insurance shall be provided by the Village to the

Town Clerk. During the Term of this Agreement, and for a period of three (3) years after the termination of the same, the Town shall indemnify and hold harmless the Village from any claims, damages, or liabilities made, or asserted, against the Village by reason of the Town's acts or omissions or the acts or omissions of its employees or agents in exercising its rights pursuant to this Agreement, including the payment of reasonable attorneys fees incurred by the Village in defending such action. During the Term, the Town shall maintain liability insurance in the amount of \$2,000,000 covering the storage of fuel in the tanks and removal of fuel from the tanks and use of the Storage Building and such liability insurance policy or policies shall name the Village as an additional insured. Certificates of insurance shall be provided by the Town to the Village Clerk.

13. **Damage to the Tanks or the Building.** The Village shall be responsible for any damage to the Fuel Storage Tanks or the Storage Building caused by the acts or omissions of the Village or its agents or employees.
14. **Authority for Execution on Behalf of the Village.** The Mayor of the Village has executed this Agreement pursuant to a Resolution adopted by the Board of Trustees of the Village of Millerton, at a meeting thereof held on _____, 2018. Mayor Debra Middlebrook, whose signature appears hereafter, is fully authorized and empowered to execute this Agreement and enter into such an Agreement on behalf of the Village of Millerton. This Agreement shall be executed in duplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the Village Clerk.
15. **Authority for Execution on Behalf of the Town.** The Town Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of The Town of North East, at a meeting thereof held on _____, 2018. George Kaye,

Town Supervisor, whose signature appears hereafter, is fully authorized and empowered to execute this Agreement and enter into such Agreement on behalf of the Town of North East. This Agreement shall be executed in duplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the Town Clerk.

16. **Notices.** Any and all notices and payments, if any, required hereunder shall be addressed to the parties at the following respective addresses, or to such other addresses as may hereafter be designated in writing by either party hereto:

To the Village: 21 Dutchess Avenue, Millerton, NY 12546

To the Town: 19 North Maple Avenue, Millerton, NY 12546

17. **Waiver.** No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.
18. **Assignment, etc.** In accordance with the provision of §109 of the General Municipal Law, both parties hereto are hereby prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this Agreement, or of its rights, title or interest in this Agreement to any other person or corporation without the previous consent in writing of the other party.
19. **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.
20. **Modification.** This Agreement constitutes the complete understanding of the parties. No modification of any provision shall be valid unless in writing and signed by both parties.

21. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Town and Village 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.
22. **Required Provisions of Law.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to have been inserted herein. If any such provision is not inserted, through mistake or otherwise, then, upon the application of either party, this Agreement shall be physically amended forthwith to make such insertion.
23. **Previous Agreements.** This Agreement supersedes and replaces any previous agreement between the Town and Village for the purchase and distribution of fuel from the tanks.

TOWN OF NORTH EAST

DATED: _____

BY: _____
GEORGE KAYE, Supervisor

VILLAGE OF MILLERTON

DATED: _____

BY: _____
DEBRA MIDDLEBROOK, Mayor