

**PUBLIC WORKS COMMITTEE**  
**AGENDA**  
**December 7, 2016**

1. **Approval of Minutes**
  - November 2, 2016
2. **Highway**
  - Renewal of Inter-municipal Agreement (County Attorney to prepare Resolution)
  - Request to fill Bridge Construction Supervisor
  - Request to transfer \$215,000 to purchase force feed sod loader
  - Request to award bid for Friendship Highway Roof Repair Work to Jamestown Roofing, Inc.
3. **Buildings and Grounds**
  - Request to award bid for Jail hot water boilers and storage tanks to D.V. Brown & Associates, Inc.
  - Request to create Building Maintenance Mechanic Position
  - Request to fill Building Maintenance Mechanic Position
  - Request to approve Direct Energy Agreement to provide Natural Gas
4. **Solid Waste**
5. **County Attorney, Tom Miner**
  - Request to cross County property
6. **Old Business**
7. **New Business**
8. **Good of the Order**
9. **Adjournment**

# MEMORANDUM OF EXPLANATION

INTRODUCTION NO: \_\_\_\_\_  
(CLERK'S USE ONLY)

COMMITTEE: PUBLIC WORKS

DATE: December 7, 2016

Requests a Resolution be prepared approving the County to enter into an Inter-Municipal Mutual Aid Agreement sponsored by the Allegany County Town Highway Superintendents Association. This agreement allows any participating municipality within the County of Allegany to assist another municipality with highway projects, maintenance and emergency road work, or any similar function and to allow the proper authorities to expedite the work flow as quickly as possible.

The terms of this agreement will be for 1-year, January 1, 2017 through December 31, 2017

FISCAL IMPACT: \$0.00

For further information regarding this matter, contact:

Guy R. James  
Superintendent

(585) 268-9230

GRJ:lrđ

**ALLEGANY COUNTY, NEW YORK**

**INTERMUNICIPAL**

**MUTUAL AID AGREEMENT**

For All Municipalities  
Within Allegany County, New York

*Sponsored by the Allegany County Town  
Highway Superintendents' Association*

*Original- 1996*

*Reviewed- 2001*

*Revised- 2010*

*Renewed- 2011*

*Renewed- 2012*

*Renewed- 2013*

*Renewed- 2014*

*Renewed- 2015*

*Renewed- 2016*

*Renewed- 2017*

Although Mutual Aid services have been occurring on an informal basis for years before this agreement was developed. The question of how to expedite assistance for highway projects, maintenance and emergency road work still arises. The Town and Village Superintendents have often encountered problems, such as needing several trucks for a short period of time to complete paving or chip seal projects, or to assist in the plowing and sanding of snow during localized accumulations or equipment failures. When that happened, the Town Board of the crisis town would call a Special Meeting; and a decision would be made either to call another municipality or to enlist outside contractors. If another municipality was called, then that Board would call a Special Meeting ; and decide whether they could assist. This process was time consuming. If outside contractors were frequently needed and utilized, the affected community would receive bills that far exceeded the municipality's budget funds.

Realizing the need for formal agreement the Allegany County Town Highway Superintendent's Association has prepared a mutual aid type of agreement, similar to that used in other counties, and worked to have it in place as of January 1, 1996.

The purpose of this agreement is to allow any participating municipality within the county of Allegany to assist another municipality with highway projects, maintenance and emergency road work, or any similar function and to allow the proper authorities to expedite the work flow as quickly as, and to the utmost extent possible. This assistance is to be used to maintain a level of service under adverse conditions and is not intended to act as a replacement for existing local needs for equipment and/or manpower.

Mutual Aid among departments in Allegany County immediately suggests snow emergencies. Assistance is not limited to this condition alone. Ice storms, fallen trees, flood emergencies, equipment break down and the need for several trucks or manpower for a short period of time all constitute "need".

The Mutual Aid agreement does not preclude the use of outside contractors. The agreement provides for each participating municipality to have a coordinator who has direct control over the actual operation of assigning equipment. When a coordinator canvasses the adjoining highway departments and no assistance is available, he then attempts to gain assistance from the other municipalities on the Mutual Aid listing of highway departments. If assistance is still not available or the distance between municipalities would make the rendering of assistance impractical, outside contractors would then be called.

## The Mutual Aid Agreement

The most outstanding features of the Mutual Aid Agreement is that it sets up prior approval for one municipality to help another "in time of need and to allow the proper authorities to expedite the work flow as quickly and to the utmost extent possible".

Reimbursement of services to the assisting municipality will be made by rendering assistance to that assisting municipality at a later date and at an equal value when requested to do so by that coordinator.

Each Municipality covers its own employees for Workers Compensation and liability insurance. If an employee from an assisting municipality damages private property, the assisting municipality is liable just as the employee were working in his own municipality.

Minor equipment repairs of under \$100.00 are the responsibility of the requesting municipality. Where extensive repairs are needed, responsibility for payment is negotiated between the respective municipalities. Consideration for age of equipment, its use by the requesting municipality and normal wear and tear are all taken into account.

This agreement had been initially reviewed in 1996 by an attorney whom gave his approval. It has also been reviewed by a local insurance company who suggested a rider to a town's existing policy to insure coverage at a minimal cost per year. This agreement has also been recently reviewed by our committee and a local attorney. Some changes were suggested and made by our review committee. If your municipality has any concern regarding this agreement, please have it reviewed by your attorney and/or insurance company and please let our association know of your opinions returned so we can consider them as needed changes.

If you should have any questions or need further information please feel free to contact the Allegany Co. Town Highway Superintendents Assoc. at the following address:

Allegany County Town Highway Superintendent's Association  
C/O Jesse Griffith  
10954 Mill Street  
Swain, New York 14884

Thank you for your cooperation,

Kevin "Fred" Demick  
Association President

# Section 1

## General Information

1. Qualifications
2. Acknowledgements
3. Definitions

I. Qualifications:

To participate in this Mutual Aid Agreement a municipality must be a member in good standing, of the Allegany County Town Highway Superintendent's Association, And the following enclosed material must be on file with the Secretary/Treasurer of the Superintendent's Association.

1. Properly signed, stamped with municipal seal and dated copy of the Agreement.
2. Certified Resolution of the Governing Board (Renewed Annually)
3. Names of two or more persons to be contacted. (Updated Annually)

II. Acknowledgements:

This document was prepared by the Allegany County Town Highway Superintendent's Association with the cooperation of the Allegany County Superintendent of Public Works and the Village Superintendents of Allegany County.

Development Committee: 1995

Chairman	1. David Wallace	T/O Andover
	2. Randy Roeske	T/O Wellsville
	3. Art Hecker	T/O Angelica
	4. Roger Billings	T/O Willing
	5. David Roeske	Allegany County DPW
	6. Monte Milligan	V/O Andover
	7. Doug Claire	T/O Alma-Secretary/Treasurer

Review Committee: 2001

- |                 |                                       |
|-----------------|---------------------------------------|
| 1. David Roeske | Allegany County Superintendent        |
| 2. Kevin Demick | T/V/O Angelica –Association President |
| 3. Paul Miller  | T/O Hume                              |
| 4. Mel Stebbins | T/O Independence                      |
| 5. Guy James    | Allegany County DPW                   |
| 6. Doug Claire  | T/O Alma-Secretary/Treasurer          |

Revise Committee: 2010

- |                   |                                      |
|-------------------|--------------------------------------|
| 1. Kevin Demick   | T/V/O Angelica-Association President |
| 2. David Roeske   | Allegany County Superintendent       |
| 3. Jesse Griffith | T/O Grove-Secretary/Treasurer        |
| 4. Guy James      | Allegany County DPW                  |
| 5. Mel Stebbins   | T/O Independence                     |
| 6. Brian Matteson | T/O Willing                          |

III. Definitions:

1. "County Superintendent" shall hereafter mean the Allegany County Department of Public Works.
2. "State Superintendent" shall hereafter mean the New York State Department of Transportation.
3. "Coordinator" shall hereafter mean Town Superintendent, Streets Commissioner, Director of Public Works, Village Streets Commissioner" or any person having direct control of the actual operation of assigning equipment.
4. "Governing Body" shall hereafter mean Town Board , Village Board. City Council, County Legislator, Supervisor, Mayor, or group or an individual having legislative powers within the municipality.
5. "Highway" shall hereafter mean any municipally accepted pavement and/or right-of-way.
6. "Normal Winter Conditions" shall hereafter mean a twenty-four period in which not more than six inches of snow falls and the winds do not exceed thirty miles per hour for more than six hours.

7. "Normal Work Conditions" shall hereafter mean the regular job routine of a department.
8. "Abnormal Work Conditions" shall hereafter mean an assignment that is not a regular type job that would be done by a municipality as part of a job that would be scheduled, or an equipment problem that could curtail a job in progress.
9. "Materials" shall hereafter mean salt, and cinders, blacktop, stones, etc.
10. "Minor Repairs" shall hereafter mean any repairs estimated to be One Hundred(\$100.00) Dollars or less.
11. "Workmen's Compensation Matter" shall hereafter mean any employee injury occurring on the job to either an employee of assisting municipality or a requesting municipality.
12. "Review Committee" shall hereafter mean a Committee of six(6) members consisting of the County Superintendent of Public Works, the President and Secretary/Treasurer of the Allegany County Association of Highway Superintendent's, and three other persons, two to be named by the Association President and one to be named by the County Superintendent.
13. "Requesting Municipality" shall hereafter mean any town, village, city or County DPW requesting assistance to another town, village, city or County DPW during a time of need.
14. "Assisting Municipality" shall hereafter mean any Town, Village, City, or County DPW lending assistance to another Town, Village, City or County DPW during a time of need.
15. "Major Repairs" shall hereafter mean any repair estimated to be more than one Hundred (\$100.00) Dollars.

# Section 2

## The Written Agreement

## **MUTUAL AID PROGRAM FOR HIGHWAY PROJECTS, MAINTENANCE AND EMERGENCY ROAD WORK**

**Whereas**, pursuant to General Municipal Law # 119-0 (1), local governments are authorized to enter into municipal cooperation agreements for the performance among themselves or one for the other of their respective functions.

**Whereas**, it has been proposed that municipalities within Allegany County enter into a county-wide "Mutual Aid" agreement for highway projects and maintenance.

1. **Purpose-** The purpose of this agreement is to allow the participating municipalities within the county of Allegany to assist one another with highway projects and maintenance to meet temporary demands for machinery and manpower. This Mutual Aid program shall not be used to establish long term or permanent exchange or assumption of road maintenance or snowplowing obligations or long term or permanent obligations relating to bridges.
  
2. **Mutual-Aid Review Committee-** There shall be a Review Committee consisting of (6) members who will be the County Superintendent of Public Works, the President and Secretary/Treasurer of the Allegany County Association of Town Highway Superintendents, and three other persons, two to be named by the Association President and one to be named by the County Superintendent.  
The Review committee will review all agreements and distribute lists of municipalities which have agreed to participate in the Mutual Aid on an annual basis.  
The Review Committee will also review and make recommendations to settle any disputes concerning equipment break downs and/or other disagreements.
  
3. **Minor Repairs-** Minor Repairs shall not be the responsibility of the assisting municipality(ies) but shall be the responsibility of the requesting municipality. Responsibility of payments for major repairs shall be negotiated between the respective municipalities, taking into consideration normal wear and tear. If municipalities cannot agree on responsibility for such payment, the matter shall be submitted to the Review Committee for recommendation.

4. **Employee Injuries-** All participants to this agreement shall provide Workman's Compensation coverage for their employees who shall cover employees responding to and participating in a Mutual Aid event hereunder. All injuries to an employee of an assisting municipality not covered by Workers Compensation shall be the responsibility of the assisting municipality.

5. **Mutual Aid shall be provided by an assisting municipality to a requesting municipality under the following conditions.**

- A. That an actual need exists as determined by the Coordinator requesting such Mutual Aid assistance using guidelines found under the definitions portions of this agreement.
- B. That the request does not in any way hamper or delay work within the assisting municipality, thereby causing hardship to the residents thereof:
- C. That the requesting municipality has reciprocal Mutual Aid agreement in effect and on file with the names of participants and copies of such agreement to all participants in this program.
- D. That the requesting Coordinator assumes responsibility for assisting and implementing a Mutual Aid plan to utilize all manpower and equipment that their municipality requires in the best manner possible.
- E. That the Coordinator may contact the State Superintendent, the County Superintendent and other municipal subdivisions within the immediate area of the requesting municipality for first-line assistance. If no assistance can be rendered by such bodies, the Coordinator shall then canvass the other municipalities on the County Assoc. Mutual Aid list. It is not mandatory to utilize State and/or County forces before assigning forces from other municipalities.

**6. Upon activation of the Mutual Aid Plan, the requesting municipality shall:**

- A.** Enforce parking regulations within its boundaries and be responsible for removing illegally parked vehicles;
- B.** Designate two or more individuals, including the Coordinator and his immediate assistants, as being authorized to request or render Mutual Aid assistants;
- C.** Provide fuel, lubrication, oil minor repairs and materials as needed, and if necessary and practical, food and lodging;
- D.** Be responsible for coordinating the safe and efficient use of outside equipment and be responsible for releasing such equipment for it to be returned to its own municipality;
- E.** Provide a guide or supervisor (who may serve as a wingman) to direct the work flow, a route map for each piece of equipment if necessary, a telephone number for the Coordinator, and if available a radio on the local frequency for each crew assigned;
- F.** Upon request of the assisting municipality fund other major equipment loss as determined by negotiation between both parties; should no agreement be reached the Review Committee will negotiate a settlement;
- G.** Be responsible for notification and to have located any and all underground facilities and/or utilities in or near the work zone, prior to any excavation by an assisting municipality;
- H.** Be responsible for all work zone traffic control devices (i.e. signs, flag people, detour route etc.);
- I.** Shall provide reimbursement to the assisting municipality by : providing assistance at a later date and of an equal value , to the assisting municipality when requested to do so by the Coordinator;

7.) **Upon implementation of the plan, the assisting municipality shall:**

- A. Name the person having control of the operation (i.e. Town Superintendent, Commissioner, D.P.W. Head, or his designee):
- B. Determine what, if any equipment would be available and for what duration under Mutual Aid request;
- C. Reserve the right to refuse or withdraw manpower and equipment depending upon actual needs within the assisting municipality's own area;
- D. Provide relief to its own personal as required;
- E. After rendering assistance pursuant to this agreement, shall be entitled to receive services of equivalent value at a later date from the municipality receiving their assistance;
- F. Notify the respective governing body should the Mutual Aid go beyond a twenty four hour period;
- G. Be responsible for providing their employees with any required Personal Protective Equipment. (PPE) needed;
- H. Be liable for the negligence of their own employees occurring in the performance of their duties in the same manner and to the same extent as if such negligence occurred in the performance of their duties within the municipality regularly served by such employees;

8.) This agreement shall be effective upon approval by the Governing Body of the municipality and execution thereof by the duly authorized official, provided that the names of the responsible persons to be contacted under this agreement are also submitted therewith.

9.) **Terms -** The terms of this agreement shall be for 1-year, January 1 through December 31 for Towns and the County and from April 1 through March 31 for Villages. Agreements should be renewed at your annual municipal organizational meeting.

- 10.) Participation in the Mutual Aid Agreement shall be renewed by resolution at each municipalities yearly organizational meeting and is filed with the Secretary/Treasurer of the Superintendents Association of Allegany County. Any municipality may drop out of this agreement at any time provided thirty (30) days written notification is received by the Secretary/Treasurer of the Superintendents Association of Allegany County. Upon receipt of such notice the Secretary/Treasurer shall notify, in writing, to all participating in this Mutual Aid Agreement.

\_\_\_\_\_  
(Municipality)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Date)

(Official Seal)

# Section 3 Required Forms

RESOLUTION NO. \_\_\_\_\_ DATED \_\_\_\_\_

Title: **RESOLUTION APPROVING THE MUTUAL AID AGREEMENT  
BETWEEN THE MUNICIPALITIES OF ALLEGANY COUNTY, NEW YORK.**

Offered by: Allegany County Town Highway Superintendents Association

Whereas, the \_\_\_\_\_ of the \_\_\_\_\_ hereby  
(Governing Body) (Town, County, City, Village, etc.)  
agrees to allow \_\_\_\_\_ to  
(Town Superintendent, Commissioner of Public Works, Etc.)  
extend Mutual Aid assistance to another participating municipality within the County  
of Allegany when requested to do so by such municipality in time of abnormal snow or  
work conditions. This agreement is subject to the conditions listed in the written  
agreement.

Supervisor/Mayor \_\_\_\_\_

Councilman/Trustee \_\_\_\_\_

Councilman/Trustee \_\_\_\_\_

Councilman/Trustee \_\_\_\_\_

Councilman/Trustee \_\_\_\_\_

Clerk \_\_\_\_\_

(Official Seal)

## INTER-MUNICIPAL AID AGREEMENT

To: Allegany County Town Highway Superintendent's Association  
C/O Jesse Griffith  
10954 Mill Street  
Swain, NY 14884

From: Guy R. James, Superintendent  
Allegany County, Department of Public Works

The below listed persons shall be authorized to either render or ask assistance under this Mutual Aid Agreement.

**Guy R. James, Superintendent**

7 Court Street, Room 210  
Belmont, NY 14813  
Phone: 585-268-9234  
Home: 585-593-3111  
Cell: 585-808-3674

**Dean Scholes, Deputy Superintendent**

7 Court Street, Room 210  
Belmont, NY 14813  
Phone: 585-268-9231  
Cell: 585-307-0943

**A.J. Young, General Supervisor**

31 South Branch  
Friendship, NY 14739  
Phone: 585-973-3361  
Home: 585-296-3806  
Cell: 716-498-3322

**Wayne Enders, Equipment Supervisor**

31 South Branch  
Friendship, NY 14739  
Phone: 585-973-3361  
Cell: 585-307-8527

**Bill Rose, Supervisor- District 1**

8911 Upper Street (Not a Mailing Address)  
Rushford, NY 14777  
Phone: 585-437-5213  
Cell: 585-610-8427

**Cash Davison, Supervisor- District 2**

9417 County Road 15B (Not a Mailing Address)  
Canaseraga, NY 14822  
Phone: 607-545-8960  
Cell: 607-382-2469

**Randy Green, Supervisor- District 3**

97 Railroad Avenue (Not a Mailing Address)  
Phone: 585-466-3289  
Home: 585- 968-9120  
Cell: 585-307-5406

**Roy Billings, Supervisor- District 4**

3211 County Road 39 (Not a Mailing Address)  
Wellsville, NY 14895  
Phone: 585-593-3408  
Cell: 585-808-5321

**T.B.D., Supervisor, Bridge Construction**

31 South Branch  
Friendship, NY 14739  
Phone: 585-973-3361  
Home: 585-365-8115  
Cell: 585-808-3671

**Eugene "Bo" Schoen, Supervisor, Bridge Maintenance**

31 South Branch  
Friendship, NY 14739  
Phone: 585-973-3361  
Home: 585-610-8835  
Cell: 585-808-3644

Note: If there are any changes to the "Responsible Persons" list during the 1-year term of this agreement it is the responsibility of the municipality to rewrite an update "Municipal Resolution" and an "Inter-municipal Agreement" and file it with the Allegany County Town Highway Superintendent's Association as soon as possible. Thank you.

**Request to Fill Position Form**

Date: 12/07/16

Committee of Jurisdiction: PUBLIC WORKS

Request to Fill: Title of Position: Bridge Construction Supervisor  
Dept.: Public Works (County Road)

Will any positions be eliminated? No  
If yes, which position(s): \_\_\_\_\_

This position is an:  
Existing position?  Newly Created Position? \_\_\_\_\_ Created by Resolution #: \_\_\_\_\_

This position will be:  
Full Time?  Part Time? \_\_\_\_\_ Permanent? \_\_\_\_\_ Temporary? \_\_\_\_\_

This position will be:  
Non Union? \_\_\_\_\_ Union?  covered by the PEF bargaining unit.

Grade: 7 Step: \_\_\_\_\_ Hourly pay rate: \$19.5611 to \$27.0788  
Annual salary of position: \$40,687.09 to \$56,323.90  
Cost of benefits for position: \$19,155.48 to \$26,517.92

Does position support a mandated program/grant? \_\_\_\_\_ Name of program: \_\_\_\_\_

Source of funding for position: 100 % County \_\_\_\_\_ % State \_\_\_\_\_ % Federal \_\_\_\_\_ % Other

Source of funding for benefits: 100 % County \_\_\_\_\_ % State \_\_\_\_\_ % Federal \_\_\_\_\_ % Other

Amount in 2016 year's budget for this position: 100%

Rationale justifying the need to fill this position at this time. Please include in your rational where applicable:

1. **The specific duties that cannot be accomplished by another employee.**  
This employee exercised supervisory control over bridge construction and maintenance and repair of bridges and related structures.
2. **The goals your organization will not be able to accomplish as a result of not filling this position.**  
This employee exercised supervisory control over bridge construction and maintenance and repair of bridges and related structures.
3. **The funding available to fill the position from external sources.**  
None
4. **The benefit to the County generated by this specific position.**  
This employee exercised supervisory control over bridge construction and maintenance and repair of bridges and related structures.

Department Name: PUBLIC WORKS

Date: 12/07/2016

County Administrator Authorization: *Timothy J. Boyle*

Date: 11-29-2014

Approved by the Ways and Means Committee on \_\_\_\_\_

# MEMORANDUM OF EXPLANATION

INTRODUCTION NO: \_\_\_\_\_  
(CLERK'S USE ONLY)

COMMITTEE: PUBLIC WORKS

DATE: December 07, 2016

Public Works requests a Resolution be prepared transferring funds remaining in the 2016 County Road Fund to a Capital Project to purchase a Force Feed Loader.

This loader was requested in the 2017 budget and was cut from the budget. It will replace a 1981 Athey Loader.

**From:**

D5110.408 – County Road General Supplies	\$120,000.00
D5110.422 – County Road Fuel	\$ 95,000.00

**To:**

H5197.200	\$215,000.00
Highway Equipment & Capital Outlay	
Force Feed Loader	

FISCAL IMPACT: \$0

For further information regarding this matter, contact:

Guy R. James  
Superintendent

(585)268-9230

# LeeBoy

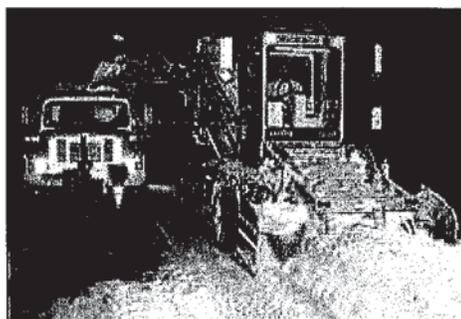
## Force Feed Loader

### 3000C Force Feed Loader



#### PERFORMANCE FEATURES INCLUDE:

- 130 hp (97 kw) Cummins Tier 4F Diesel Engine
- Choice of Tapered or Multipurpose Moldboard
- 2'6" (0.76 m) wide Variable Speed, Reversible, Cleated Conveyor Belt
- Fully Enclosed, Lockable Cab
- Two-speed Hydrostatic Transmission
- Fail-safe Braking System



#### *Year-Round Material Loading*

LeeBoy's versatile 3000C Force Feed Loader is a year-round workhorse, picking up soil, snow, milling or other windrowed material for fast, low cost material loading. The climate-controlled operator's platform and cab enhance safety and comfort while providing superior visibility to the front pickup feeder and rear discharge conveyor. The loader excels at continuous high capacity material loading and offers safe, single or double lane operation in roadway applications.



Designed with the Paving Professional in Mind.®

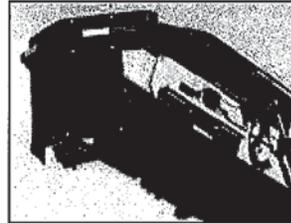
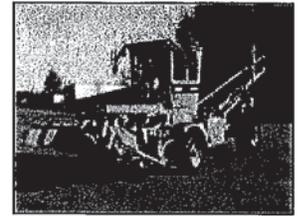
# SPECIFICATIONS

## 3000C Force Feed Loader

<b>ENGINE</b>	
Make	Cummins Tier 4F Diesel
Performance	130 hp (97 kw)
<b>DIMENSIONS</b>	
Weight	19,750 lbs (8,960 kg)
Weight w/Swivel	22,580 lbs (10,242 kg)
Length	34' (10.36 m)
Length w/Swivel	40' (12.19 m)
Width	8'6" (2.59 m)
Height	minimum 12' (3.66 m) maximum 14' (4.27 m)
<b>LOADING CAPACITY</b>	
Loose Material	up to 10 cu yds/min
Windrowed Snow	up to 20 cu yds/min
<b>TRANSMISSION</b>	
	2-speed Hydrostatic
<b>SPEED</b>	
Low Range	0-8 mph (0-12.87 kph)
High Range	0-20 mph (0-32.19 kph)
<b>CONVEYOR FLOATING &amp; REVERSIBLE</b>	
Belt Width	2'6" (0.76 m)
Belt Speed	0-650 fpm (0-198 mpm)
<b>TIRES</b>	
Front	9R x 22.5, 10-ply
Rear	14 - 24, 12-ply
<b>CAPACITIES</b>	
Fuel	52 gallons (106 l)
Hydraulic Oil	52 gallons (106 l)
Diesel Exhaust Fuel	5 gallons (19 l)

### Multipurpose or Tapered Moldboard

The tapered moldboard allows for efficient pick up of a variety of materials before they move to the feeder paddles that carry the material to the 28' (8.53 m) belt conveyor. The multipurpose moldboard features augers which push material to the feeder paddles. This increases efficiency for operations such as snow removal.



### Swivel Conveyor Attachment

The swivel conveyor attachment rotates 180° for discharge of materials to either side of the 3000C Force Feed Loader. This feature allows the receiving truck to travel next to the loader in the same direction as it receives material from the swivel conveyor.

## OPTIONS

- Heating & air conditioning
- 180° Swivel conveyor
- Night light package
- Rear wiper & washer
- Truck signal light

LeeBoy makes continuous improvements to all its products and reserves the right to change specifications without notice. Photos and illustrations may contain standard and optional equipment.

3000C FFL, UZ

# LeeBoy

VT LeeBoy, Inc.  
500 Lincoln County Pkwy. Ext.  
Lincolnton, NC 28092  
704.966.3300

www. **LeeBoy** .com



### Other Members of the LeeBoy Group of Products...



8616B Asphalt Paver



420 Pneumatic Roller



685C Motor Grader

Contact your LeeBoy dealer:

"LeeBoy is dedicated to providing top quality parts and service support on every unit sold."

**Department of Public Works  
Bid Opening  
November 18, 2016, 2016  
10:00 a.m.**

**Present:** Guy R. James, Lea Dorrett, Steve Brown, Jason Hoover (Gerster Trane), Kevin Kuhn (John Kuhn Plumbing), Scott Zyla (D.V. Brown), Tim Dominick (James Town Roofing)

Bids were opened on the following:

1. Removal, Repair and Replacement of the Friendship Highway Facility Roof
2. Replacement of Jail Boilers and Water Storage Tanks

1. Removal, Repair and Replacement of the Friendship Highway Facility Roof

<u>Bidder:</u>	<u>Bid Amount:</u>
<b>James Town Roofing, Inc.</b>	<b>\$96,700.00</b>
Price per sq. ft. if additional deck replacement is required:	\$3.80

All attachments were signed and executed.

2. Replacement of Jail Boilers and Water Storage Tanks

<u>Bidder:</u>	<u>Bid Amount:</u>
<b>D.V. Brown &amp; Associates, Inc.</b>	<b>\$148,000.00</b>
John Kuhn Plumbing Heating & Cooling, Inc.	\$157,240.00
Gerster Trane	\$186,690.00

All attachments were signed and executed.

Respectfully submitted:  
Lea Dorrett  
Secretary to the Superintendent

# MEMORANDUM OF EXPLANATION

INTRODUCTION NO: \_\_\_\_\_  
(CLERK'S USE ONLY)

COMMITTEE: PUBLIC WORKS

DATE: December 7, 2016

The Public Works Department requests a resolution be prepared creating 1 position of Building Maintenance Mechanic. (AFSCME Grade 15)

This position is budgeted in 2017.

FISCAL IMPACT: \$0

For further information regarding this matter, contact:

Guy R. James  
Superintendent

(585)268-9230

**Request to Fill Position Form**

Date: 12/7/16

Committee of Jurisdiction: PUBLIC WORKS

Request to Fill: Title of Position: Building Maintenance Mechanic BMM  
Dept.: Buildings & Grounds (Jail)

Will any positions be eliminated? No  
If yes, which position(s): \_\_\_\_\_

This position is an:  
Existing position? \_\_\_\_\_ Newly Created Position?  Created by Resolution #: \_\_\_\_\_

This position will be:  
Full Time?  Part Time? \_\_\_\_\_ Permanent? \_\_\_\_\_ Temporary? \_\_\_\_\_

This position will be:  
Non Union? \_\_\_\_\_ Union?  covered by the AFSCME bargaining unit.

Grade: 15 Step: \_\_\_\_\_ Hourly pay rate: \$19.1852 - \$23.9026  
Annual salary of position: \$34,917.06 - \$43,502.73  
Cost of benefits for position: \$16,438.95 - \$20,481.09

Does position support a mandated program/grant? \_\_\_\_\_ Name of program: \_\_\_\_\_

Source of funding for position: 100 % County \_\_\_\_\_ % State \_\_\_\_\_ % Federal \_\_\_\_\_ % Other

Source of funding for benefits: 100 % County \_\_\_\_\_ % State \_\_\_\_\_ % Federal \_\_\_\_\_ % Other

Amount in 2017 year's budget for this position: 100% (To Be Filled in 2017)

Rationale justifying the need to fill this position at this time. Please include in your rationale where applicable:

- The specific duties that cannot be accomplished by another employee.**  
Performs a variety of building maintenance and repair tasks at a skilled nature such as repairs to plumbing, electrical wiring, mechanical equipment and machinery: refrigeration, air conditioning, kitchen equipment, boilers, pumps, compressors and other jobs as needed to meet the goals of the department.
- The goals your organization will not be able to accomplish as a result of not filling this position.**  
The performance of skilled building maintenance will not be kept up to date as needed on the County Safety Complex which is a 24hr/7 day a week operation.
- The funding available to fill the position from external sources.**  
None
- The benefit to the County generated by this specific position.**  
The maintenance and upkeep of the County Safety Complex which is a 24hour/7 day a week operation.

Department Name: PUBLIC WORKS

Date: 12/07/2016

County Administrator Authorization: Timothy J. Pezall

Date: 11-29-2016

Approved by the Ways and Means Committee on \_\_\_\_\_

# MEMORANDUM OF EXPLANATION

Intro. No. \_\_\_\_\_  
(Clerk's Use Only)

**NAME OF COMMITTEE**

**MEETING DATE:**

**PUBLIC WORKS**

**DATE: December 7, 2016**

Public Works requests a Resolution be prepared approving an agreement with Direct Energy to provide Natural Gas for the years 2017 and 2018.

Municipal Electric & Gas Alliance (MEGA) has awarded Direct Energy as their natural gas supplier.

Fiscal Impact – \$

**For further information regarding this matter, contact:**

**Guy R. James, Superintendent**  
**Department of Public Works**

**X9234**  
**Telephone Number**



<b>Contract Quantity (Dth)</b>	<p>Buyer and Seller agree that the Contract Quantity purchased and received means a positive volume up to or greater than the estimated quantities listed below, provided, that for purposes of determining whether a Material Usage Deviation has occurred and for purposes of calculating Contract Quantities remaining to be delivered under Section 12 of the Agreement, Contract Quantity shall be determined by reference to the applicable estimated quantity(ies) listed below.</p>			
	Daily	x	Monthly	
	January	978	July	141
	February	871	August	148
	March	787	September	226
	April	525	October	435
	May	320	November	629
	June	180	December	869

**Tax Exemption**      [  Non-exempt      [  Exempt    If exempt, must attach certificate.

**Purchase Price**      Fixed Price: \$3.720 /Dth

**Special Provisions**

Change in Utility Account Numbers:  
The account number for a Service Location shall be the Utility Account Number set forth in the Service Locations section above or as attached, as applicable, or any replacement account number issued by the Utility from time to time.

Buyer acknowledges that it is acting for its own account, and that it has made its own independent decisions with respect to this Transaction Confirmation and that Seller is not acting as a fiduciary, financial, investment or commodity trading advisor for it in connection with the negotiation and execution of this Transaction.

Full Plant Requirement – No GSA

For inquiries related to your purchase, or for any other questions or complaints against Seller, please contact Seller at the address above. For general inquiries related to the sale and delivery of Gas you may contact the New York Public Service Commission, Department of Public Service ESCO hotline at 1-888-697-7728; write the PSC at the Office of Consumer Education & Advocacy, Three Empire State Plaza, Albany, NY 12223, or visit the PSC's website at <http://www.dps.state.ny.us>.

Buyer represents and acknowledges that: (a) any rights to a rescission period, longer grace periods or notice periods afforded to residential Buyers do not apply; and (b) upon any discontinuance of service by Seller, Seller will return Buyer to full Utility service by the next effective drop date permitted by the Utility, upon at least fifteen (15) days prior notice, provided that the utility has not already disconnected delivery of the service. If the Utility disconnects delivery of the service, then, effective immediately, Seller will not be responsible to provide Gas or any service under this Transaction.

Buyer represents and warrants that (i) it will provide, to Seller, information reasonably required to substantiate its Gas usage, including information regarding its business, locations, meter/account numbers, historical/projected usage, time of use, hours of operation, utility rate classes, agreements, schedules, which in substantial part form the basis for the calculation of charges for the Transaction hereunder; (ii) acceptance of this Transaction Confirmation constitutes an authorization for release of such usage information; (iii) it will assist Seller in taking all actions necessary to effectuate transactions, including, if requested, executing an authorization form permitting Seller to obtain its usage information from third parties; (iv) the usage information provided is true and accurate as of the date furnished and as of the effective date of the Transaction; (v) it may rescind the authorization for release of such information at any time, upon prior written notice; provided however, that such rescission will be considered an Event of Default by Buyer under Section 11(iv) of the CMA; and (vi) neither it, nor any transaction, has been solicited through "door-to-door sales" (as such term is defined under the Uniform Business Law § 349-d, and Buyer acknowledges that this representation is a material inducement to Seller entering into this Transaction.

Customer Disclosures:

A. Length of the agreement and end date: The Agreement may terminate upon notice (i) as a result of an Event of Default (except in the case of a Bankruptcy in which case no notice shall be required); or (ii) as further provided in the Agreement, subject to any notice provisions stated therein and provided the

Agreement remains in effect with respect to Transactions entered into prior to the effective date of the termination; or (iii) at the end of the above Delivery Period or any successive Renewal Term. For the exact length of the Transaction and end date, please see the "Delivery Period" Section above and/or this "Special Provisions" Section. For the specific text relating to the termination of the Agreement, please see Sections 12 and 14 of the Agreement.

B. Process Buyer may use to rescind the Agreement without penalty: There are no contractual rights to rescind the Agreement, including this Transaction without penalty or without calculation of a Close Out Value and/or Net Settlement Amount.\*

C. Net Settlement Amount and method of Calculation: In "Section 12. Remedies" of the CMA the non-defaulting Party has the right to terminate and liquidate all Transactions under the Agreement, calculate a settlement amount by calculating the Close Out Value for each Transaction and aggregate all amounts owing between the parties under the Agreement or any other agreements between the Parties and their affiliates. For the specific text contained in this provision, please see Section 12 of the Agreement.\*\*

D. Late Payment Fee and method of calculation: "Section 4. Billing and Payment" of the CMA sets forth the amount of days in which payment is due from the date of the invoice, the Interest Rate used to calculate late payments, and the calculation of any costs and expenses incurred in collecting payment, including reasonable attorney's fees. For the specific text contained in this provision, please see Section 4 of the Agreement.

\*According to the State of New York Public Service Commission's Uniform Business Practices residential Buyers have the right to cancel a sales agreement, without penalty, within three business days after its receipt.

\*\*According to the State of New York Public Service Commission's Uniform Business Practices and the State of New York General Business Law § 349-d for transactions solicited through "door-to-door sales" Buyers may not be charged a termination or early cancellation fee in excess of the greater of: (i) \$100 if the remaining term is 12 months or less and \$200 if the remaining term exceeds 12 months, or (ii) twice the estimated commodity supply bill for an average month, provided that an estimate of an average monthly bill was provided to the Buyer when the offer was made by the Seller along with the amount of any early termination fee based on such estimate.

Fixed Price: The Purchase Price for the Contract Quantity, unless otherwise specified in this Transaction Confirmation is \$3.720 /Dth.

PLEASE SIGN AND RETURN THIS TRANSACTION CONFIRMATION LETTER BY FACSIMILE TO 315-423-0964 .

BUYER: County of Allegany

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SELLER: Direct Energy Business Marketing, LLC  
d/b/a Direct Energy Business

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This Commodity Master Agreement ("CMA") among Direct Energy Business, LLC, Direct Energy Business Marketing, LLC d/b/a Direct Energy Business (Collectively "Seller"), each a Delaware limited liability company, and County of Allegany ("Buyer" or "Customer") (each a "Party" and collectively, the "Parties") is entered into and effective as of 12/07/2016 .

- 1. Transactions:** The terms of this CMA apply to all end-use sales of electric power ("Electricity") and/or natural gas ("Gas") as applicable (each a "Commodity" and collectively, the "Commodities") by the applicable Seller party to Buyer (each sale a "Transaction") which will be memorialized in a writing signed by both Parties (each a "Transaction Confirmation"). Each Transaction Confirmation shall set forth the Seller party providing service to Customer for such Transaction. If a conflict arises between the terms of this CMA and a Transaction Confirmation, the Transaction Confirmation will control with respect to that particular Transaction. This CMA, any amendments to this CMA and related Transaction Confirmation(s) (together, a single integrated, "Agreement") is the entire understanding between Parties with respect to the Commodities and supersedes all other communication and prior writings with respect thereto; no oral statements are effective.
- 2. Performance:** The Parties' obligations under this Agreement are firm. Buyer is obligated to purchase and receive, and Seller is obligated to sell and provide, the Contract Quantity of Commodity specified in a Transaction Confirmation in accordance with the terms of this Agreement. Buyer will only use the Commodity at the listed Service Locations in the applicable Transaction Confirmation and will not resell the Commodity or use it at other locations without Seller's prior written consent.
- 3. Purchase Price:** Buyer will pay the Purchase Price stated in each Transaction Confirmation. If the Purchase Price incorporates an index and the index is not announced or published on any day for any reason or if the Seller reasonably determines that a material change in the formula for or the method of determining the Purchase Price has occurred, then the Parties will use a commercially reasonable replacement price that is calculated by the Seller. If Seller concludes that a change in any Law(s) increases Seller's costs, the Purchase Price may be adjusted by Seller to reflect such costs. "Law(s)" mean all tariffs, laws, orders, rules, decisions, taxes, regulations, transmission rates and Utility changes to Buyer's monthly capacity and/or transmission obligations.
- 4. Billing and Payment:** Seller will invoice Buyer for the Actual Quantity of Commodity and for any other amounts incurred by Buyer under this Agreement. Payment is due within fifteen (15) days of the date of the invoice. If an invoice is issued and the Actual Quantity cannot be verified at the time, the invoice will be based on Seller's good faith estimate of the Actual Quantity. Seller will adjust Buyer's account following (i) confirmation of the Actual Quantity, (ii) any Utility discrepancy or adjustment or (iii) any other corrections or adjustments, including adjustments to, or re-calculation of, Taxes. Buyer will pay interest on late payments at 1.5% per month or, if lower, the maximum rate permitted by law ("Interest Rate"). Buyer is also responsible for all costs and fees, including reasonable attorney's fees, incurred in collecting payment. "Actual Quantity" means the actual quantity of Commodity that is either delivered or metered, as applicable, to Buyer's account. "Utility" means a state regulated entity engaged in the distribution of Gas or Electricity.
- 5. Taxes:** Buyer is responsible for paying any Taxes associated with the Actual Quantity of Commodity sold under this Agreement that may become due at and after the Delivery Point. The Purchase Price does not include Taxes that are or may be the responsibility of the Buyer, unless such inclusion is required by Law. Buyer will reimburse Seller for any Taxes that Seller is required to collect and pay on Buyer's behalf and will indemnify, defend and hold Seller harmless from any liability against all Buyer's Taxes. Buyer will furnish Seller with any necessary documentation showing its exemption from Taxes, if applicable, and Buyer will be liable for any Taxes assessed against Seller because of Buyer's failure to timely provide or properly complete any such documentation. "Taxes" means all applicable federal, state and local taxes, including any associated penalties and interest and any new taxes imposed in the future during the term of this Agreement. Liabilities imposed in this Section will survive the termination of this Agreement.
- 6. Disputes:** If either Party in good faith disputes amounts owed under Sections 3, 4, 5 and 8, the disputing Party will contact the non-disputing Party promptly and pay the undisputed amount by the payment due date. The Parties will negotiate in good faith regarding such dispute for a period of not more than fifteen (15) Business Days. In the event the Parties are unable to resolve such dispute, the disputing Party will pay the balance of the original invoice and either Party may exercise any remedy available to it in law or equity pursuant to this Agreement. In the event of a dispute other than for an invoiced amount, the Parties will use their best efforts to resolve the dispute promptly. Actions taken by a Party exercising its contractual rights will not be construed as a dispute for purposes of this Section. "Business Day" means any day on which banks are open for commercial business in New York, New York; any reference to "day(s)" means calendar days.
- 7. Title and Risk of Loss:** Title, possession of and risk of loss to the Commodity will pass to Buyer at the Delivery Point specified in the applicable Transaction Confirmation.
- 8. Buyer's Usage Obligations**
  - A. Material Usage Deviation:** If there is a Material Usage Deviation, Buyer will be

responsible for the losses and costs, including the costs of obtaining and/or liquidating the applicable volume, based upon the difference between the applicable Contract Quantity and Actual Quantity. Buyer will pay the amount of such losses and costs to Seller within fifteen (15) Business Days of Seller's invoice. "Material Usage Deviation" means any deviation in Actual Quantity at the Service Location(s) stated in the related Transaction Confirmation from Contract Quantity (or, as applicable, estimated Contract Quantities) stated in that Transaction Confirmation of +/- 25% or more, which is not caused by weather.

- B. Balancing Charges:** For Transactions involving the purchase and sale of Gas only, Buyer will be responsible for Balancing Charges unless Prior Notice of a material variation in usage is provided to Seller and actual usage is consistent with that Prior Notice. "Balancing Charges" means Utility fees, costs or charges and penalties assessed for failure to satisfy the Utility's balancing and/or nomination requirements. "Prior Notice" is defined as forty-eight (48) hours before the start of the Gas Day for which the material variation in usage will apply. "Gas Day" means a period of 24 consecutive hours as defined by the Utility. Buyer will make any payment due pursuant to this Section within five (5) Business Days of the date of Seller's invoice.

- C. Curtailments:** For Transactions involving the purchase and Sale of Gas only, if Buyer is directed by its Utility to curtail its usage, in whole or in part, Buyer will curtail as directed. If Buyer fails to curtail as directed, Buyer will pay or reimburse Seller for all Balancing Charges assessed by the Utility. Payment by Buyer of any Balancing Charges will be due within five (5) Business Days of the date of Seller's invoice.

- 9. Force Majeure:** A Party claiming Force Majeure will be excused from its obligations under Section 2 as long as it provides prompt notice of the Force Majeure and uses due diligence to remove its cause and resume performance as promptly as reasonably possible. During a Force Majeure, Buyer will not be excused from its responsibility for Balancing Charges nor from its responsibility to pay for Commodity received. "Force Majeure" means a material, unavoidable occurrence beyond a Party's control, and does not include inability to pay, an increase or decrease in Taxes or the cost of Commodity, the economic hardships of a Party, or the full or partial closure of Buyer's facilities, unless such closure itself is due to Force Majeure.

- 10. Financial Responsibility:** Seller's entry into this Agreement and each Transaction is conditioned on Buyer, its parent, any guarantor or any successor maintaining its creditworthiness during the Delivery Period and any Renewal Term. When Seller has reasonable grounds for insecurity regarding Buyer's ability or willingness to perform all of its outstanding obligations under any agreement between the Parties, Seller may require Buyer to provide adequate assurance, which may include, in the Seller's discretion, security in the form of cash deposits, prepayments, letters of credit or other guaranty of payment or performance ("Credit Assurance").

- 11. Default:** "Default" means: (i) failure of either Party to make payment by the applicable due date and the payment is not made within three (3) Business Days of a written demand; (ii) failure of Buyer to provide Credit Assurance within two (2) Business Days of Seller's demand; (iii) either Party, its parent or guarantor, becomes Bankrupt or fails to pay its debts generally as they become due; or (iv) failure of either Party to satisfy any representations and warranties applicable to it contained in Section 13A or 13B and the failure is not cured within fifteen (15) Business Days of a written demand, provided that no cure period or demand for cure applies to a breach of Section 13A(c). "Bankrupt" means an entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent, however evidenced, (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (e) has a secured party take possession of all or any substantial portion of its assets or (f) is dissolved or has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger).

- 12. Remedies:** In the event of a Default, the non-defaulting Party may: (i) withhold any payments or suspend performance; (ii) upon written notice, provided that no notice is required with respect to Section 11(iii) or a breach of Section 13A(c), accelerate any or all amounts owing between the Parties and terminate any or all Transactions and/or this Agreement; (iii) calculate a settlement amount by calculating all amounts due to Seller for Actual Quantity and the Close-out Value for each Transaction being terminated; and/or (iv) net or aggregate, as appropriate, all settlement amounts and all other amounts owing between the Parties and their affiliates under this Agreement and other energy-related agreements between them and their affiliates, whether or not then due and whether or not subject to any contingencies, plus costs incurred, into one single amount ("Net Settlement Amount"). Any Net Settlement Amount due from the defaulting Party to the non-defaulting Party will be paid within three (3) Business Days of written notice from the non-defaulting

Party. Interest on any unpaid portion of the Net Settlement Amount will accrue daily at the Interest Rate. "Close-out Value" is the sum of (a) the amount due to the non-defaulting Party regarding the Contract Quantities (or, as applicable, estimated Contract Quantities) remaining to be delivered as stated in the applicable Transaction Confirmation(s) during the Delivery Period or, if applicable, the current Renewal Term, calculated by determining the difference between the Purchase Price and the Market Price for such quantities; and (b) without duplication, any net losses or costs incurred by the non-defaulting Party for terminating the Transaction(s), including costs of obtaining, maintaining and/or liquidating commercially reasonable hedges, Balancing Charges and/or transaction costs. "Market Price" means the price for similar quantities of Commodity at the Delivery Point during the Delivery Period or Renewal Term, as applicable. For purposes of determining Close-out Value, (i) Market Price will be determined by the non-defaulting Party in good faith as of a date and time as close as reasonably practical to the date and time of termination or liquidation of the applicable Transaction(s), and (ii) Market Price may be ascertained through reference to quotations provided by recognized energy brokers or dealers, market indices, bona-fide offers from third-parties, or by reference to commercially reasonable forward pricing valuations. The Parties agree that the Close-out Value constitutes a reasonable approximation of damages, and is not a penalty or punitive in any respect. Seller may, but need not, physically liquidate a Transaction or enter into a replacement transaction to determine Close-out Value or Net Settlement Amount. The defaulting Party is responsible for all costs and fees incurred for collection of Net Settlement Amount, including, reasonable attorney's fees and expert witness fees.

**13. Representations and Warranties:** Each of the following are deemed to be repeated each time a Transaction is entered into:

**A.** Each Party represents that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform to this Agreement; (b) the execution of this Agreement is within its powers, has been duly authorized and does not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law applicable to it; and (c) it is not Bankrupt.

**B.** Buyer represents and warrants that: (a) it is not a residential customer; (b) it will immediately notify Seller of any change in its ownership; (c) execution of this Agreement initiates enrollment and service for the Delivery Period and any Renewal Term; (d) no communication, written or oral, received from the Seller will be deemed to be an assurance or guarantee as to any results expected from this Agreement; (e) if it is executing this Agreement in its capacity as an agent, such Party represents and warrants that it has the authority to bind the principal to all the provisions contained herein and agrees to provide documentation of such agency relationship, and (f) (i) it will provide, to Seller, information reasonably required to substantiate its usage requirements, including information regarding its business, locations, meter/account numbers, historical/projected usage, time of use, hours of operation, utility rate classes, agreements, schedules, which in substantial part form the basis for the calculation of charges for the transactions hereunder; (ii) acceptance of this Agreement constitutes an authorization for release of such usage information; (iii) it will assist Seller in taking all actions necessary to effectuate Transactions, including, if requested, executing an authorization form permitting Seller to obtain its usage information from third parties; and (iv) the usage information provided is true and accurate as of the date furnished and as of the effective date of the Agreement.

**C.** Each Party acknowledges that: (a) this Agreement is a forward contract and a master netting agreement as defined in the United States Bankruptcy Code ("Code"); (b) this Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Commodity; (c) Seller is not a "utility" as defined in the Code; (d) Commodity supply will be provided by Seller under this Agreement, but delivery will be provided by the Buyer's Utility; and (e) Buyer's Utility, and not Seller, is responsible for responding to leaks or emergencies should they occur.

**14. Other:**

(a) This Agreement, and any dispute arising hereunder, is governed by the law of the state in which the Service Locations are located, without regard to any conflict of rules doctrine. (b) Each Party waives its right to a jury trial regarding any litigation arising from this Agreement. (c) No delay or failure by a Party to exercise any right or remedy to which it may become entitled under this Agreement will constitute a waiver of that right or remedy. (d) Seller warrants that (i) it has good title to Commodity delivered, (ii) it has the right to sell the Commodity, and (iii) the Commodity will be free from all royalties, liens,

encumbrances, and claims. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED. (e) Buyer will be responsible for and indemnify Seller against all losses, costs and expenses, including court costs and reasonable attorney's fees, arising out of claims for personal injury, including death, or property damage from the Commodity or other charges which attach after title passes to Buyer. Seller will be responsible for and indemnify Buyer against any losses, costs and expenses, including court costs and reasonable attorneys' fees, arising out of claims of title, personal injury, including death, or property damage from the Commodity or other charges which attach before title passes to Buyer. (f) NEITHER PARTY WILL BE LIABLE TO THE OTHER UNDER THE AGREEMENT FOR CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, LOST PROFITS OR SPECIFIC PERFORMANCE, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT. (g) All notices and waivers will be made in writing and may be delivered by hand delivery, first class mail (postage prepaid), overnight courier service or by facsimile and will be effective upon receipt; provided, however, that any termination notice may only be sent by hand or by overnight courier service, and, if sent to Seller, a copy delivered to: Direct Energy Business, Attn: Customer Services Manager, 1001 Liberty Avenue, Pittsburgh, PA 15222; Phone: (888) 925-9115; Fax: (866) 421-0257; Email: CustomerRelations@directenergy.com. (h) If Buyer and Direct Energy Business Marketing, LLC entered into Commodity transactions prior to the execution of this Agreement ("Existing Transactions"), the Parties agree that these Existing Transactions shall be Transactions governed under the terms of this Agreement. This Agreement supersedes and replaces any other agreement that may have applied to the Existing Transactions. Note that this subsection (h) shall not apply to any Commodity transactions or agreements entered into between Buyer and Direct Energy Business, LLC. (i) No amendment to this Agreement will be enforceable unless reduced to writing and executed by both Parties. (j) Seller may assign this Agreement without Buyer's consent. Buyer may not assign this Agreement without Seller's consent; which consent will not be unreasonably withheld. In addition, Seller may pledge, encumber, or assign this Agreement or the accounts, revenues, or proceeds of this Agreement in connection with any financing or other financial arrangements without Buyer's consent; in which case Seller shall not be discharged from its obligations to Buyer under this Agreement. (k) This Agreement may be executed in separate counterparts by the Parties, including by facsimile, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. (l) Any capitalized terms not defined in this CMA are defined in the Transaction Confirmation or shall have the meaning set forth in the applicable Utility rules, tariffs or other governmental regulations, or if such term is not defined therein then it shall have the well-known and generally accepted technical or trade meanings customarily attributed to it in the natural gas or electricity generation industries, as applicable. (m) The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement. (n) Any executed copy of this Agreement and other related documents may be digitally copied, photocopied, or stored on computer tapes and disks ("Imaged Agreement"). The Imaged Agreement will be admissible in any judicial, arbitration, mediation or administrative proceedings between the Parties in accordance with the applicable rules of evidence; provided that neither Party will object to the admissibility of the Imaged Agreement on the basis that such were not originated or maintained in documentary form. (o) Where multiple parties are Party to this Agreement with Seller and are represented by the same agent, it is agreed that this Agreement will constitute a separate agreement with each such Party, as if each such Party had executed a separate Agreement, and that no such Party shall have any liability under this document for the obligations of any other Parties. (p) This CMA may be terminated by either Party upon at least thirty (30) days' prior written notice; provided, however, that this CMA will remain in effect with respect to Transactions entered into prior to the effective date of the termination until both Parties have fulfilled all of their obligations with respect to the outstanding Transactions. (q) Buyer will not disclose the terms of this Agreement, without prior written consent of the Seller, to any third party, other than Buyer's employees, affiliates, agents, auditors and counsel who are bound by substantially similar confidentiality obligations, trading exchanges, governmental authorities, courts, adjudicatory proceedings, pricing indices, and credit ratings agencies; provided that if Buyer receives a demand for disclosure pursuant to court order or other proceeding, it will first notify Seller, to the extent practicable, before making the disclosure.

IN WITNESS WHEREOF, this CMA is entered into and effective as of the date written above.

BUYER: County of Allegany

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SELLER: **Direct Energy Business, LLC**  
**Direct Energy Business Marketing, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_