

SHARED SERVICES AGREEMENT

BETWEEN

COUNTY OF BERGEN

AND

BOROUGH OF CARLSTADT

FOR:

**THE SHARING OF COUNTY-OWNED
EMERGENCY AND NON-EMERGENCY EQUIPMENT**

BERGEN COUNTY OFFICE OF EMERGENCY MANAGEMENT

**BERGEN COUNTY DEPARTMENT OF PUBLIC WORKS
DIVISION OF SHARED SERVICES**

Approved by Bergen County Resolution No. _____
Approved by Carlstadt Resolution No. 2018-288

DATE: January 16, 2019

PREPARED BY:

**BERGEN COUNTY COUNSEL
ONE BERGEN COUNTY PLAZA
HACKENSACK, NJ 07601-7076
(201) 336-6950**

**SHARED SERVICES AGREEMENT
SHARING OF COUNTY-OWNED
EMERGENCY AND NON-EMERGENCY EQUIPMENT**

THIS AGREEMENT is made by and between:

COUNTY OF BERGEN, a body politic and corporate of the State of New Jersey, with administrative offices located at One Bergen County Plaza, Fifth Floor, Hackensack, New Jersey 07601-7076 hereinafter referred to as the "County" and

BOROUGH OF CARLSTADT, a body politic and corporate of the State of New Jersey, with administrative offices located at 500 Madison Street, Carlstadt, New Jersey 07072-1549 hereinafter referred to as the "Municipality."

WITNESSETH:

WHEREAS, the County of Bergen owns certain vehicles and equipment (the "Equipment") that it could make available to the Municipality, subject to the operational needs of the County; and

WHEREAS, some of the Equipment was acquired by the County's Office of Emergency Management pursuant to State and Federal grants for the express purpose of making same available to the municipalities within Bergen County, and is controlled by the County's Office of Emergency Management ("OEM"); and

WHEREAS, other equipment is controlled by other departments of the County, such as Public Works and Parks; and

WHEREAS, due to emergencies, mechanical breakdown or budgetary restrictions, the need arises occasionally for which the Municipality does not possess the required equipment; and

WHEREAS, the County and Municipality recognize the need to enter into a written agreement between the County and the Municipality in advance of the actual need, to govern the terms under which the County will make the County's Equipment available for the use of the Municipality; and

WHEREAS, the County and Municipality have determined that by entering into this Shared Services Agreement governing the terms for sharing of County owned Equipment, the parties will be able to facilitate the prompt availability of such Equipment at such time as Municipality has a need to utilize it; and

WHEREAS, this Agreement is established in accordance with the Uniform Shared Services and Consolidation Act, P.L.2007, c.63 (N.J.S.A. 40A:65-1, *et seq.*); and

WHEREAS, the County has authorized this agreement by adoption of Resolution No. _____ on January 16, 2019; and

WHEREAS, the Municipality has authorized this agreement by adoption of Resolution No. 2018-288 on November 8, 2018.

NOW THEREFORE BE IT AGREED AS FOLLOWS:

1. Scope of Services.

- A. This Agreement is intended to cover the sharing of equipment controlled by the County's Office of Emergency Management or Division of Emergency Management as appropriate, as well as equipment controlled by other Departments and Divisions of the County.
- B. The purpose of this Agreement is to provide the basic terms under which the Municipality may borrow Equipment from the County for short-term use should the County, in its sole discretion, determine that such Equipment is available for use by the Municipality. By entry into this Agreement, the County does not commit to loan any particular piece of Equipment to Municipality.
- C. It is clearly understood by all the parties concerned that the Equipment must be available to the County for County projects, whenever needed, and that the County is entering into this Agreement with other Municipalities in the County. Consequently, any particular piece of Equipment will only be available whenever not in use or scheduled to be used for a County project or another municipality, and even then, it will only be made available at the sole discretion of the County.
- D. The County anticipates entering into this agreement with all of the municipalities in Bergen County. Therefore, the Municipality agrees to notify the County as far in advance of the Municipality's need for Equipment as possible, to permit the County to determine if the County has available equipment to loan and, if so, to coordinate among possible requests from various municipalities.
- E. While the County will make every effort to make Equipment available to any municipality seeking to borrow Equipment where doing so does not compromise the County's operations, the County shall not be deemed in breach of this Agreement, and shall have no liability to the Municipality in the event the County denies Municipality's request to borrow any particular piece of Equipment.
- F. This Agreement shall not apply to any Equipment for which the County requires execution of a separate agreement, or payment of a fee to borrow or use. Nor shall anything in this Agreement preclude the County from requiring execution of a separate agreement or payment of a fee to borrow or use any Equipment.

2. Term; Termination.

- A. The term of this Agreement shall commence upon adoption of authorizing resolutions by both the County and the Municipality, and execution by authorized officials of both entities, and shall continue for a period of one year.
- B. This Agreement shall automatically renew for successive one-year terms unless either party notifies the other in writing of intent to terminate.
- C. This Agreement may be terminated by either party upon thirty days' written notice, for any reason, including administrative convenience.
- D. Termination of this Agreement does not relieve the Municipality from any responsibility for defense or indemnification of any claims against the County or the Municipality's obligations for maintenance or repair of the Equipment occasioned by Municipality's use thereof.
- E. The County shall have no liability to the Municipality for any losses or additional costs that may be incurred by the Municipality as a result of the County's termination of this Agreement.

3. Compensation.

- A. The Equipment loaned under this Agreement shall be loaned by the County to the Municipality free of charge. In the event any reimbursement is available from State or Federal sources (e.g. FEMA reimbursement) for use of such Equipment, Municipality agrees and acknowledges that the County is entitled to such reimbursement.
- B. In the event any payment is due from the Municipality to the County (e.g. for damage to the Equipment resulting from the Municipality's use), the Municipality agrees to pay the County within 45 days after submission of the invoice by the County to the Municipality.

4. County's Contact Person.

- A. For purposes of Equipment controlled by the County's Office of Emergency Management, the County's Contact Person shall be the Director of the County's Division of Emergency Management, the County Emergency Management Coordinator, or either of their designees.
- B. For purposes of Equipment not controlled by the County's Office of Emergency Management, the County's designated Contact Person shall be the Director of the Division of Shared Services within the Department of Public Works.
- C. The Municipality shall designate one or more Contact Persons, and shall advise the County accordingly.

5. Responsibilities of the Parties.

- A. When and if the Municipality wishes to borrow Equipment from the County, the Municipality's Contact Person shall submit to the County's appropriate Contact Person a written request to borrow the Equipment. The request shall include:
 - 1. The piece of Equipment requested;
 - 2. The reason for the request, and the use to which the Equipment will be put;
 - 3. The approximate dates or duration for which the Municipality wishes to borrow the Equipment;
 - 4. Any other information the Municipality wishes to include with its request; and
 - 5. Any other information required by the County, in its discretion, to evaluate the Municipality's request.
- B. Requests for Equipment controlled by the County's Office of Emergency Management shall, unless otherwise permitted by the County, be submitted through the online system utilized by the County's Office of Emergency Management called "WEBEOC," or such other system that the County's Office of Emergency Management may choose to use in the future.
- C. Requests for Equipment not controlled by the County's Office of Emergency Management may be submitted to the Director of the Division of Shared Services within the Department of Public Works, who shall coordinate with the directors of the various County departments and the Administration to determine whether the requested Equipment is available for loan.
- D. The County anticipates entering into this agreement with several municipalities. Therefore, the Municipality agrees to notify the County as far in advance of the Municipality's need for the Equipment, to permit the County to schedule use among the Municipalities seeking to borrow the Equipment.
- E. The County, upon review of the written request, shall:
 - 1. Notify the Municipality's Contact Person of the Equipment's availability, and coordinate a time for the Municipality to take custody of the Equipment; or
 - 2. Notify the Municipality's Contact Person that the requested Equipment cannot be loaned; or
 - 3. If the Equipment can be loaned, but is unavailable for the date(s) requested by the Municipality, the County will notify the Municipality accordingly, and, attempt to coordinate an alternate date or set of dates for the Municipality to borrow the Equipment.
- F. The Municipality shall be responsible in most instances for retrieving the Equipment from the County's storage location, which will vary depending upon the piece of Equipment.

- G. The representative of the Municipality taking custody of the Equipment shall sign a statement prior to removing the Equipment from the County's property, indicating and agreeing to the following:
1. Identifying the Equipment, including the make, model, vehicle identification number, serial number, or other Equipment-specific identification;
 2. The date on which the Municipality takes custody of the Equipment;
 3. The date by which the Equipment will be returned;
 4. That the Municipality has inspected the Equipment and independently determined that the Equipment is acceptable for the Municipality's purposes; and
 5. Any operational requirements specific to the Equipment, of which the Municipality should not reasonably be aware.
- H. The Municipality shall return the Equipment no later than the date set forth in the foregoing statement, unless the Municipality requests to keep the Equipment for a longer period, and the County consents.
- I. The Municipality shall take custody of and return the Equipment to the County at the storage location designated by the County. The County shall not be required to deliver the Equipment to or retrieve the Equipment from another location.
- J. Prior to taking custody of the Equipment, the Municipality shall provide the County with one or more certificates of insurance meeting the requirements of Paragraph 9, "Insurance," below.
- K. The Municipality agrees that persons assigned to operate the Equipment ("operators") will possess all required licenses to operate the Equipment and will have fulfilled all training requirements for such operation, prior to operating said Equipment.
- L. The Municipality agrees to utilize the Equipment in full and complete compliance with all Federal, State, and Local laws, standards and requirements as well as any requirements imposed by the County. In the event the County determines that the Municipality has failed to utilize the Equipment in conformance with all Federal, State, and Local laws, standards and requirements, or any requirements imposed by the County, the Municipality shall immediately return the Equipment to the County in the manner directed by the County.
- M. Where the Equipment requires fuel (e.g. vehicles, generators, etc.), Municipality shall be responsible for all fuel utilized while borrowing the Equipment, and shall return the Equipment with a full fuel tank.
- N. The Municipality shall be responsible for inspecting the Equipment before taking custody, and before each operation of the Equipment to ensure the Equipment is in operational condition.

- O. The Municipality shall maintain written records regarding receipt, possession, inspection, and use of the Equipment, and provide them to the County upon return of the Equipment.
- P. The Municipality shall be responsible for the cost of repairing any damage to the Equipment occurring while the Equipment is in the Municipality's custody. In the event that the equipment is damaged during the Municipality's possession of same, the County will provide an itemized bill to the Borough and the Municipality will pay same within forty five days of presentment of the itemized bill.
- Q. Depending upon the length of time the Municipality will be borrowing a piece of Equipment, the County may determine that Municipality must be responsible for the cost of regular scheduled maintenance. The County shall advise Municipality of any regular scheduled maintenance due during the period Municipality is expected to have custody of the Equipment, and whether the Municipality shall be responsible for the cost of such regular scheduled maintenance. The Municipality shall return the Equipment to the County for regular scheduled maintenance in accordance with the manufacturer's recommended maintenance schedule.
- R. All maintenance and repair, including regular scheduled maintenance, of the Equipment shall be conducted by the County at the County's vehicle maintenance facility, currently located at the Bergen County Annex in Paramus, or by such other service provider as the County may determine. If Municipality is responsible for the cost of any maintenance or repair, same shall be charged at the County's then current rates charged under the County's vehicle maintenance shared services agreement, or the County's actual cost where repair or maintenance must be performed by an outside vendor.
- S. The Municipality shall return the Equipment to the County in the same condition as when the Municipality borrowed it, normal wear and tear excepted.
- T. Notwithstanding any other provision of this agreement, the Municipality will return the Equipment to the County upon the County's request within twenty four (24) hours under normal operations. If an emergent circumstance should occur while the equipment is in the custody of the Municipality, the emergent circumstance shall take precedence, and the Municipality shall mobilize the equipment at the direction of the County Office of Emergency Management.

6. Other Agreements.

The County and the Municipality reserve the right to enter into any other contract with other public or private entities for the performance of any service or services which may be included within the scope of services provided in this Agreement. Nothing in this Agreement shall prohibit the County from entering into agreements to purchase, maintain, borrow, loan, sell, or otherwise dispose of the Equipment to other public or private entities.

7. Dispute Regarding Payment.

As provided in N.J.S.A. 40A:65-1, et seq., in the event of any dispute as to the amount to be paid under the terms of this Agreement, the full amount to be paid in accordance with this Agreement shall be paid. If through subsequent negotiation, litigation, or settlement, the amount due shall be determined agreed to or adjudicated to be less than was actually so paid, the County shall promptly repay the excess.

8. Risk of Loss; Indemnification.

The Municipality acknowledges and agrees that County has made no representation regarding the condition of the Equipment, and the Equipment is being loaned strictly in “as is” and “where is” condition with no warranties, either expressed or implied. The Municipality hereby assumes all risk of damage, injury, liability or loss, including but not limited to damage to any property whatsoever and injury to, or death of, any person whomsoever, occurring by reason of, or in connection with, or as a result of, the Municipality’s use of the Equipment, including any loss occasioned by failure of the Equipment to perform as intended.

The Municipality agrees to defend, indemnify and hold harmless the County, including its officers, employees, volunteers, and agents (“County Indemnified Parties”), from any and all liability and claims for damages or injury to persons or property, including death, caused by, or resulting from, or arising out of this Agreement or any of the obligations assumed by the County or the Municipality hereunder. Specifically included in this obligation is the Municipality’s agreement to defend, indemnify and hold harmless the County Indemnified Parties from any and all claims asserting failure on the part of the County to properly maintain the Equipment, including but not limited to any claim alleging liability based upon any known or unknown defective, malfunctioning, or nonfunctioning part of the Equipment.

The Municipality, upon notice from the County, shall resist and defend, at the expense of the Municipality, such action or proceeding with counsel satisfactory to the County. In addition, the County may engage separate counsel to appear on its behalf in such action or proceeding without waiving its rights or the Municipality’s obligation to defend, indemnify, and hold harmless the County, including its officers, employees, and agents, under this paragraph.

The Municipality shall be solely responsible for any and all theft and/or damage which shall be occasioned by the Municipality’s use, or occur while the Equipment is being utilized or in the custody of the Municipality, and all such costs shall be borne solely by the Municipality.

9. Insurance.

During the term of this Agreement, the Municipality shall maintain workers’ compensation insurance with statutory limits and a minimum of \$1,000,000/\$1,000,000/\$1,000,000 Employers Liability limits, and automobile liability insurance with a minimum liability limit of \$1,000,000.00 Combined Single Limit in full force and effect, covering all employees in the Equipment used in this performance hereunder. In addition, the Municipality shall maintain general liability insurance at limits not less than one million

(\$1,000,000.00) dollars covering any claims arising out of the use of the Equipment other than those claims covered by the aforementioned automobile liability insurance. The Municipality shall not take any action to cancel or materially change any of the insurance requirements under this Agreement without the County's prior written approval of such cancellation or change. The County shall be listed as Additional Insured on all policies of insurance. The certificates of insurance must provide for thirty (30) days' notice of cancellation in the event that a Municipality's policy is cancelled for any reason. The Municipality expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit the Municipality's obligations assumed in this Agreement and shall not be construed to relieve the Municipality from liability in excess of such coverage.

It is understood that, while the County of Bergen is the titled owner to the Equipment, the Municipality, being responsible for the operator of the Equipment, will be solely responsible for the provision of motor vehicle liability insurance coverage for the Equipment during such time as the Municipality has custody of the Equipment, with said insurance providing defense and indemnification to the County Indemnified Parties, as Additional Insureds.

10. Dispute Resolution.

In the event a dispute shall arise concerning the terms and conditions of this Agreement, the parties hereto agree to first meet informally. If informal discussion cannot resolve the dispute, the parties agree to pursue mediation prior to commencing court action. Nothing set forth herein shall be construed as relieving the Municipality of returning the Equipment to the County immediately upon demand, regardless of the status of any dispute resolution process.

11. No Waiver.

The failure of a Party to insist on strict performance of any or all of the terms of this Agreement, or to exercise any right or remedy under this Agreement, shall not constitute a waiver or relinquishment of any nature regarding such right or remedy or any other right or remedy. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

12. Relationship of the Parties.

Except as otherwise provided herein, nothing shall create any association, joint venture, partnership, or agency relationship of any kind between the parties. Neither party may create or assume any liability, obligation or expense on behalf of the other, to use the other's monetary credit in conducting any activities under this Agreement.

13. Notices.

All notices, demands, consents, approvals, or requests, required or permitted to be given to or served upon the County, shall be in writing. Any such notice, demand, consent, approval, request, instrument or document shall be sufficiently given or served if sent by certified or registered mail, postage prepaid, addressed at the address set forth below, or at such other address as it shall designate by notice, as follows:

If to the Municipality: Hernan Lopez, OEM Coordinator
Joseph Crifasi, DPW Operations Manager
500 Madison Street
Carlstadt, NJ 07072

If to the County: Director, Division of Shared Services
Bergen County Department of Public Works
One Bergen County Plaza
Hackensack, NJ 07601

Or

Director, Division of Emergency Management
Bergen County Office of Emergency Management
Bergen County Public Safety Operations Center
285 Campgaw Road
Mahwah, NJ 07430

With a copy to: County Counsel
County of Bergen
One Bergen County Plaza – Room 580
Hackensack, NJ 07601

14. Miscellaneous.

This Agreement may only be modified in writing, duly authorized and signed by the County and Municipality. All notices, statements or other documents required by this Agreement shall be hand-delivered or mailed to the County Contact or Municipal Contact.

15. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

16. No Assignment.

This Agreement may not be assigned by either party without the written consent of the other. Under no circumstances shall the Municipality grant custody of the Equipment to any third party without the express written consent of the County.

17. No Third Party Beneficiaries.

This Agreement shall inure to the benefit of the Parties hereto and their successors and permitted assignees. No other person, corporation, company, partnership or other entity shall be deemed a third party or other beneficiary of this Agreement.

18. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Entire Agreement.

This Agreement sets forth the entire understanding of the parties hereto with respect to the transactions contemplated herein. No change or modification of this Agreement shall be valid unless the same shall be in writing and signed by all the parties hereto.

20. Severability.

If any clause, sentence, paragraph, section or part of this Agreement shall be adjudged to be invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof, directly involved in the controversy in which such judgment shall have been rendered.

21. Title and Headings.

Titles and headings to sections or paragraphs herein are inserted merely for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

22. Recitals.

The recitals set forth above are incorporated into the body of this Agreement as if set forth at length herein.

23. Effective Date.

This Agreement shall become effective upon passage of authorizing Resolutions by the Municipality and the County as required by the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq., and execution hereof by both the County Executive and the Authorized official of the Municipality.

IN WITNESS WHEREOF, the parties have executed this Shared Services Agreement for THE SHARING OF COUNTY-OWNED EMERGENCY AND NON-EMERGENCY EQUIPMENT (“Agreement”), and agree to be bound to the terms thereof, as of the Effective Date.

ATTEST:

COUNTY OF BERGEN

By: _____
James J. Tedesco, III, County Executive, or
Julien X. Neals, County Counsel/Acting County
Administrator

Dated: _____

ATTEST:

BOROUGH OF CARLSTADT

By: _____

Dated: _____

Title: _____