

SHARED SERVICES AGREEMENT

BETWEEN

COUNTY OF BERGEN

AND

TOWNSHIP OF WASHINGTON

TO:

**PERMIT MUNICIPALITY TO PURCHASE AND OBTAIN
ROAD SALT STORED AT THE BERGEN COUNTY
ANNEX**

**BERGEN COUNTY DEPARTMENT OF PUBLIC WORKS
DIVISION OF OPERATIONS**

Approved by Bergen County Resolution No. 64-19
Approved by Washington Township Resolution No. 18-367

DATE: January 16, 2019

PREPARED BY:

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

SHARED SERVICES AGREEMENT – SALT

THIS AGREEMENT made this **16** day of **January 2018**, by and between:

COUNTY OF BERGEN, a body politic and corporate of the State of New Jersey, with administrative offices at One Bergen County Plaza, Room 580, Hackensack, New Jersey 07601-7076, hereinafter referred to as “COUNTY;” and

TOWNSHIP OF WASHINGTON, a body politic and corporate of the State of New Jersey, with administrative offices located at 350 Hudson Avenue, NJ 07676 hereinafter referred to as “MUNICIPALITY.”

WITNESSETH:

WHEREAS, COUNTY purchases rock salt (“Salt”) for salting roads within COUNTY’s borders in bulk, and operates its own Salt shed(s) for storing of Salt until needed; and

WHEREAS, MUNICIPALITY purchases rock salt (“Salt”) for salting roads within MUNICIPALITY’s borders in bulk, and until recently, operated its own Salt shed(s) for storing of Salt until needed; and

WHEREAS, MUNICIPALITY’s Salt shed recently became unavailable; and

WHEREAS, MUNICIPALITY has requested permission to obtain Salt directly from the COUNTY’s Salt shed at the Bergen County Annex in Paramus, paying the COUNTY for the Salt utilized by MUNICIPALITY; and

WHEREAS, the Uniform Shared Services and Consolidation Act (N.J.S.A. 40A:65-1 et seq.) promotes the broad use of shared services as a technique to reduce local expenses funded by property tax payers; and

WHEREAS, the Uniform Shared Services and Consolidation Act (N.J.S.A. 40A:65-1 et seq.) allows for any local unit to enter into an agreement with any other local unit or units to provide or receive any services that each local participating in the Agreement is empowered to provide or receive within its own jurisdiction, as set forth in N.J.S.A. 40A:65-7(4); and

WHEREAS, pursuant to N.J.S.A. 40A:65-5, the COUNTY and MUNICIPALITY have each adopted resolutions authorizing entry into this Agreement, copies of which are annexed hereto as exhibits,

NOW, THEREFORE, BE IT AGREED, in consideration of the promises and of the covenants, terms, and conditions hereinafter set forth, COUNTY and MUNICIPALITY agree to perform in accordance with the provisions, terms and conditions set forth in this Agreement as follows:

I. DEFINITIONS.

As used in this Agreement, unless the context indicates otherwise, the following terms shall have the following meanings and are to be interpreted consistent with the context of this Agreement in which each term is used.

- A. “Effective Date” means the date identified in this Agreement which reflects the date on which the last party to this Agreement executed this Agreement, following the adoption of resolutions by COUNTY and MUNICIPALITY authorizing entry into this Agreement.
- B. “Law” means any statute, regulation, executive order, procurement policy or rule of any department, subdivision, board, commission, agency or instrumentality of the State of New Jersey.
- C. “Shared Services Agreement” means this Agreement and document(s) executed herein by and between the County and the MUNICIPALITY as provided under N.J.S.A. 40A:65-1 et seq.

II. TERM.

- A. The term of this Agreement shall commence on the Effective Date, and shall continue for a period of one year, unless terminated sooner as provided in this agreement.
- B. This Agreement shall renew annually for successive one year terms, unless terminated sooner as provided in this agreement.

III. SERVICES AND COMPENSATION.

- A. The COUNTY, through its Division of Operations, shall permit MUNICIPALITY to obtain Salt from the COUNTY’s Salt shed located at the Bergen County Annex in Paramus (“Annex Shed”). The COUNTY shall provide personnel and equipment to load salt into vehicles operated by MUNICIPALITY. The COUNTY shall determine the quantity of Salt loaded, which shall be measured by multiplying the number of loads by the capacity of the COUNTY’s bucket loader.
- B. MUNICIPALITY shall pay the COUNTY for any Salt so loaded at the price paid by the COUNTY plus an administrative fee of fifteen percent (15%).
- C. MUNICIPALITY has provided the COUNTY with a written estimate of the total amount of Salt needed by MUNICIPALITY for this upcoming winter. In subsequent calendar years, MUNICIPALITY will provide the estimate to the COUNTY annually not later than July 31 to permit the COUNTY time to order a sufficient quantity of Salt to meet both the COUNTY’s and MUNICIPALITY’s needs.

- D. MUNICIPALITY shall notify the COUNTY as early as possible prior to any anticipated snow event for which MUNICIPALITY anticipates the need for Salt from the Annex Shed.
- E. MUNICIPALITY shall be permitted to operate its vehicles on site of the Annex Shed for the purpose of obtaining salt therefrom.
- F. All performance by the County shall be limited by the County's appropriation for same, the County's budgetary restrictions, and the availability of personnel.
- G. The COUNTY shall not provide MUNICIPALITY Salt under this agreement if doing so will prejudice COUNTY operations.
- H. While COUNTY may if it so chooses, COUNTY shall have no obligation to hire or otherwise retain additional personnel to perform the services under this Agreement. COUNTY shall have no obligation to procure additional equipment to perform under this Agreement.
- I. COUNTY shall bill MUNICIPALITY monthly for all Salt loaded during the prior month. MUNICIPALITY shall tender payment to COUNTY within sixty (60) days of receipt of invoice.

IV. DISPUTE RESOLUTION.

- A. Mandatory Mediation. In the event of a dispute, whether technical or otherwise, the objecting Party must request Non-Binding Mediation and the non-objection party must participate in the mediation. The costs of the mediator shall be borne equally by the parties.
- B. Procedure. The Mediator shall be a retired Judge of the Superior Court of New Jersey or other professional mutually acceptable to the Parties and who has no current or on-going relationship to either Party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the Parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interests are not being served by the mediation.
- C. Non-Binding Effect. Mediation is intended to assist the Parties in resolving disputes over the correct interpretation of this Agreement. No Mediator shall be empowered to render a binding decision.
- D. Judicial Proceedings. Upon the conclusion of Mediation, either party may commence judicial legal proceedings in the appropriate division of the Superior Court of New Jersey venued in Bergen County.

- E. Temporary Injunctive Relief. Notwithstanding the foregoing, nothing herein shall prevent a party from seeking temporary injunctive relief to prevent irreparable harm in the appropriate division of the Superior Court of New Jersey venued in Bergen County.
- F. Payment Pending Dispute. In the event of any dispute as to the amount to be paid, the full amount shall be paid; but if through subsequent negotiation, arbitration or litigation the amount due shall be determined, agreed or adjudicated to be less than was actually so paid, then the COUNTY shall forthwith repay the excess.

V. DEFENSE, INDEMNIFICATION, AND SUBROGATION.

- A. Each party agrees to defend, indemnify and hold the other party harmless from any claims, losses, damages, or judgments arising out of the negligence, gross negligence, or willful act of the indemnifying party or any of its officers or employees.

VI. EMPLOYMENT RECONCILIATION.

- A. MUNICIPALITY has represented that it is not currently providing the services set forth in this Agreement using public employees, and no employees are intended to be terminated for reasons of efficiency or economy as a result of entry into this Agreement.
- B. No employees are intended to be transferred from MUNICIPALITY to COUNTY pursuant to this Agreement, and the COUNTY will not accept transfer of any employees from MUNICIPALITY to COUNTY by virtue of this Agreement. In the event a reconciliation plan is required by N.J.S.A. 40A:65-11, it shall be MUNICIPALITY's responsibility to prepare such plan, and, if required, to file same with the Civil Service Commission prior to commencement of services under this Agreement. In such case, COUNTY will cooperate with MUNICIPALITY in the preparation and filing of the plan.

VII. NOTICES.

All notices, demand, consents, approvals, 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

MUNICIPALITY: Robert Tovo
Township of Washington
350 Hudson Avenue
Township of Washington, NJ 07676

If to

COUNTY: Director, Division of Operations
Bergen County Department of Public Works
220 East Ridgewood Avenue
Paramus, NJ 07652

With a copy to:

Bergen County Counsel
County of Bergen
One Bergen County Plaza – Room 580
Hackensack, NJ 07601

VIII. TERMINATION.

- A. Notwithstanding any other term in this Agreement, COUNTY and MUNICIPALITY retain the right, in their sole discretion, to terminate this agreement at any time on thirty days' notice, without further liability to the other, except as set forth herein.
- B. If this Agreement is terminated, MUNICIPALITY shall be responsible for payment for any Salt provided to MUNICIPALITY prior to termination. MUNICIPALITY shall also be responsible for payment for any Salt ordered by the COUNTY based on the estimate of need provided to the COUNTY by MUNICIPALITY prior to termination, and which the COUNTY is unable to use in the winter season for which the MUNICIPALITY provided the estimate.

IX. MISCELLANEOUS.

- A. Authorization. All Parties hereto have the requisite power and authority to enter into this Agreement and it is the intention of the Parties to be bound by the terms hereof. The execution and delivery of this Agreement is valid and binding upon the Parties hereto and the genuineness of any and all resolutions executed may be assumed to be genuine by the Parties in receipt thereof.
- B. Assignment. No Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Party and any such attempted assignment shall be void.
- C. Cooperation of the Parties. In performing any services pursuant to this Agreement, the performing Parties will act in a reasonably prudent manner to accommodate the common goals of the Parties toward implementation and effectuation of the stated purposes of this Agreement. No Party hereto shall be liable for failure to advise another Party of any adverse impact from action taken hereunder, unless such failure to advise shall be the result of bad faith or willful concealment of an impact actually known to the Party taking the action or omitting to take such action to be substantially adverse to the other Parties. The fact that any act or omission should subsequently be determined

to have an adverse impact shall not in itself be evidence of bad faith or willful concealment and the Party bringing an action shall be required to affirmatively establish, by independent sufficient evidence, that such Party acted in bad faith or willfully concealed an adverse impact of which it had actual knowledge.

- D. Benefit/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.
- E. Complete Agreement. This Agreement sets forth the entire understanding of the Parties, and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the Parties relating to the subject matter hereof. The Parties acknowledge and agree that they have not made any representations, including the execution and delivery hereof, except such representations as are specifically set forth herein.
- F. 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.
- G. Modification. This agreement may not be modified except in a writing executed by all Parties.
- H. Governing Law/Venue/Construction. This Agreement and all amendments hereof shall be governed by and construed in accordance with the laws of the State of New Jersey applicable to contracts made and to be performed therein. The venue shall be the County of Bergen. The Parties acknowledge that they have been represented by counsel with respect to the negotiation and preparation of this Agreement and that, accordingly, this Agreement shall be construed in accordance with its terms and without regard to or aid of canons requiring construction against the drafting party.
- I. 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.
- J. 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.

K. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction; such holding shall not invalidate or render unenforceable any other provision hereof.

L. 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.

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

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed and attested to by their proper corporate officers, and their respective seals to be affixed the day and year first written above.

ATTEST:

COUNTY OF BERGEN

By:

James J. Tedesco, III, County Executive, or
Julien X. Neals, Esq., Acting County Administrator

ATTEST:

TOWNSHIP OF WASHINGTON

By:

Printed:

Title:
