

# **SHARED SERVICES AGREEMENT**

**BETWEEN**

**COUNTY OF BERGEN**

**AND**

**BOARD OF EDUCATION,  
CITY OF HACKENSACK**

**TO:**

**PERMIT THE BOARD OF EDUCATION, CITY OF  
HACKENSACK TO PURCHASE FUEL FOR THE  
BOARD’S VEHICLES AT THE COUNTY’S FUEL PUMPS**

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

Approved by Bergen County Resolution No. \_\_\_\_\_  
Approved by Board of Education, City of Hackensack  
Resolution referred to as “D6 Shared Services Agreement-Fuel”

**DATE: \_\_\_\_\_**

PREPARED BY:

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

## **SHARED SERVICES AGREEMENT – FUEL**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_ **2019**, 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

**BOARD OF EDUCATION, CITY OF HACKENSACK** a body politic and corporate of the State of New Jersey, with administrative offices located at 191 Second Street, Hackensack, NJ 07601 hereinafter referred to as “BOARD.”

### **WITNESSETH:**

**WHEREAS**, BOARD purchases gasoline and diesel fuel (collectively “Fuel”) for its vehicles in bulk; and

**WHEREAS**, COUNTY operates fuel pumps for fueling of COUNTY vehicles; and

**WHEREAS**, COUNTY fuel pumps are operated using hardware and software permitting the tracking and billing of multiple users; and

**WHEREAS**, BOARD wishes to enter into an agreement with COUNTY whereby COUNTY would permit BOARD to purchase Fuel for its vehicles from the COUNTY fuel pumps; 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 BOARD have both adopted resolutions authorizing entry into this Agreement, copies of which is annexed hereto;

**NOW, THEREFORE, BE IT RESOLVED**, in consideration of the promises and of the covenants, terms, and conditions hereinafter set forth, COUNTY and BOARD 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 BOARD 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 BOARD 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 (1) year, unless terminated sooner as provided in this agreement.
- B. This Agreement shall renew annually for successive one (1) year terms, unless terminated sooner as provided in this agreement.

## **III. SERVICES AND COMPENSATION.**

- A. The COUNTY, through its Division of Mechanical Services, shall permit BOARD to purchase fuel for BOARD’s vehicles and fill said vehicles directly from the COUNTY fuel pumps, in accordance with the terms of this Agreement.
- B. The COUNTY shall provide BOARD with one fob per BOARD vehicle, and one personal identification number for each of BOARD employees who will be using the COUNTY’s fuel pumps. BOARD shall pay for all fuel dispensed using BOARD’s fobs. The BOARD shall promptly return any inoperable fobs to the COUNTY. If a fob is lost, BOARD shall notify COUNTY immediately to permit the fob to be deactivated. The BOARD shall pay for all fuel dispensed using the BOARD’s fob prior to such deactivation.
- C. The BOARD will be charged for fuel at the County’s cost, plus an administrative fee of fifteen percent (15%).
- D. The COUNTY shall bill BOARD monthly for all fuel dispensed. BOARD shall tender payment to COUNTY within sixty (60) days of receipt of invoice.

- E. 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 and equipment.
- F. The COUNTY shall not provide BOARD fuel under this agreement if doing so will prejudice COUNTY operations. The COUNTY shall retain the unilateral right to terminate the within Agreement in the event the COUNTY alone determines that the terms of this Agreement render the COUNTY incapable of meeting its own fuel needs.
- G. 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. The COUNTY shall have no obligation to procure additional equipment to perform under this Agreement.

#### **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.**

The BOARD agrees to defend, indemnify and hold the COUNTY 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.**

No employees are intended to be transferred from BOARD to COUNTY, or from COUNTY to BOARD, pursuant to this Agreement, and the COUNTY will not accept transfer of any employees from BOARD to COUNTY by virtue of this Agreement. If a reconciliation plan is required by N.J.S.A. 40A:65-11, it shall be BOARD'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 BOARD 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

BOARD:

Dennis R. Frohnafel, Ed.D.,  
Interim Board Secretary  
Board of Education, City of Hackensack  
191 Second Street  
City of Hackensack, NJ 07601

If to

COUNTY:

Director, Division of Mechanical Services  
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 BOARD 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. BOARD shall be responsible for payment for any fuel dispensed prior to termination.

## **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 cannons 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.

**[Signature Page(s) to Follow]**



**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:

**BOARD OF EDUCATION  
CITY OF HACKENSACK**

\_\_\_\_\_

By:

\_\_\_\_\_

Printed:

\_\_\_\_\_

Title:

\_\_\_\_\_