12/19/18

**SHARED SERVICES AGREEMENT**

**by and between the**

**COUNTY OF GLOUCESTER, NEW JERSEY**

**and**

**BOROUGH OF WESTVILLE**

**FOR THE PROVISION OF BASIC LIFE SUPPORT EMERGENCY MEDICAL SERVICES**

**Dated: November 20, 2018**

Prepared by: Eric M. Campo,
Assistant County Counsel

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## SHARED SERVICES AGREEMENT

**THIS SHARED SERVICES AGREEMENT** ("Shared Services Agreement"), dated this 19 day of December 2018, by and between the Borough of Westville, a municipal corporation of the State of New Jersey ("Municipality"), and the County of Gloucester, a body politic and corporate of the State of New Jersey ("County").

## RECITALS

1. The County of Gloucester ("County") is a body politic and corporate of the State of New Jersey with main offices located at Two S. Broad Street, Woodbury, NJ 08096;

2. The Borough of Westville ("Municipality") is a municipal corporation of the State of New Jersey with offices located at 165 Broadway, Westville, New Jersey 08093;

3. Municipality currently provides emergency medical services consisting of Basic Life Support (BLS) services and provides medical transport services in its municipality;

4. The County wishes to assist the Municipality in dealing with the very significant obligations related to the provision of such services and the significant costs incurred in providing such services;

5. Accordingly, the County has pursued a plan for the regionalization of the provision of such services in areas including the Municipality;

6. Municipality wishes to designate County as the provider of BLS emergency medical services within the Municipality;

7. N.J.S.A. 40A:65-1 et seq. specifically authorizes local government units, including counties and municipalities, to enter into shared services agreements.

**NOW, THEREFORE,** in consideration of the mutual promises, agreements and other considerations made by and between the parties, County and Municipality do hereby agree as follows:

## AGREEMENT

### A. DESCRIPTION OF THE PROJECT.

The project shall consist of the provision by the County of BLS emergency medical services within the Municipality.

## B. DESCRIPTION OF SERVICES.

The County's services will therefore include, but not necessarily be limited to, the following:

1. Provision, on a 24 hour, 7 days a week basis, of BLS emergency medical services.

2. The BLS emergency medical services to be provided shall be as defined in N.J.A.C. 8:40-1.1 et seq.

3. For purposes of this Agreement, "BLS" shall include both responding to calls for emergency medical assistance and providing medical transportation services, as well as assistance with rescue services for automobile accidents. The amount and type of equipment and number of personnel actually furnished in response to any emergency call shall be determined solely by County and its duly appointed agents, officers, directors, employees or subcontractors, consistent with the applicable provisions of N.J.A.C. 8:40-1.1 et seq.

4. It is expressly understood that in the performance of the obligations undertaken pursuant to this Agreement, County is an independent contractor with the sole right to supervise, manage, control and direct the provision of BLS. Further, Municipality shall look to the County for performance only and shall have no right at any time to direct or supervise the County, its agents, officers, directors, employees or subcontractors. Nothing in this Agreement shall constitute or be construed to create a partnership or a joint venture by and among the parties.

5. County shall make reasonable efforts to maintain reasonable emergency response times for the Service Area on a 24 hour, 7 day a week basis.

6. If personnel and equipment are available, County shall provide standby emergency medical services at community events and activities within the Municipality upon fourteen (14) days written notice of such request to County by Municipality at no additional cost. For purpose of this paragraph only, notice shall be provided to the Chief of Gloucester County Emergency Medical Services (GCEMS).

7. It is the intention of the parties that County shall be responsible for providing BLS emergency medical services as defined in N.J.A.C. 8:40-1.1 et seq.; the Municipality shall not be responsible for providing such BLS emergency medical services. The parties acknowledge that County does not, by this Shared Services Agreement, assume any responsibility to provide any other services, such as police or fire or the like.

## C. ESTIMATED COST; NO PAYMENT BY MUNICIPALITY.

The cost of the Project shall be, as far as may be determined at this time, approximately $8,688,000.00 for the provision of all of County's BLS emergency medical services to all

participant municipalities involved in the regionalization of emergency medical services within the County. The cost of the project for ensuing years is anticipated to be equal to or greater than the cost for the initial year of the project. This estimate is recited as required by the Shared Services Agreement. The parties agree that County shall not be entitled to any payment by Municipality for the provision of these services.

## D. PARTICIPATION AND COOPERATION BY MUNICIPALITY.

1. Pursuant to separate Lease Agreements entered into by and between County and Municipality, Municipality will lease to County for the sum of $1.00 per year all ambulance vehicles and other equipment which it currently owns or will, if acceptable to County, sub-lease to County any such vehicles or equipment which Municipality owns. Maintenance of, insuring of and all other aspects of the operation of the equipment shall be as described in the Lease Agreements.

2. Municipality shall lease to County for $1.00 per year any ambulance station and/or bays and offices/crew day rooms which it currently owns. Maintenance of, insuring of, and the like will be as described in the building leases made by and between the County and the Municipality. Municipality will make its best effort to encourage any municipal fire district, ambulance squad or other entity, which owns or controls such facilities to lease such facilities to the County on the same terms and provisions.

3. Municipality shall in all regards cooperate with County to any extent necessary to enable the County to submit and process grant applications for funding for the provision of emergency services. In the event that it is necessary, given the requirements of the particular grant program, for the application to be submitted by the Municipality, Municipality agrees that it will take all necessary steps to do so. In the event that such funding is available to the municipality, but not otherwise directly available to the County, then Municipality will take all steps necessary to apply for and where possible obtain such funding and after receipt of such funding and consistent with any applicable law, rule or regulation, pay the proceeds of such funding to the County.

## E. THIRD PARTY BILLING.

The parties recognize that County shall be solely entitled to any revenue generated by third party billing, which billing shall be done by County or County's agent. No part of the revenue from such billing shall be paid to Municipality.

## F. DURATION OF AGREEMENT.

This Agreement shall be for a period of ten years, commencing January 1, 2019 to December 31, 2028.

Either party may, for cause, terminate this Agreement by notice to the other party. Such notice shall be provided at least 18 months prior to the designated termination date.

## G. LIMITATION OF DELEGATION.

To the extent that this Agreement constitutes a delegation of authority by the County, this Agreement shall not be construed to delegate any authority other than the authority to provide the services described in this Agreement, consistent with the terms and provisions of this Shared Services Agreement.

Neither County nor Municipality intends by this Agreement to create any agency relationship other than that which may be specifically required by the Shared Services Agreement Act for the limited purpose of the provision of service by the County pursuant to this Agreement.

## H. INDEMNIFICATION.

(1) The County shall indemnify and shall hold the Municipality, the members of its governing body and its officers, agents and employees harmless against, and County shall pay any and all, liability, loss, cost, damage, claims, judgment or expense, of any and all kinds or nature, which shall be imposed by law, which the Municipality, the members of its governing body or its, officers, agents and employees may sustain or may be subject to or may be caused to incur by reason of any claim, suit or action which is based upon personal injury, death, or damage to property, whether real, personal or both, or upon or arising out of any services described in this Shared Services Agreement.

(2) During the term of this Shared Services Agreement, Municipality shall indemnify and shall hold the County, the members of the Board and its officers, agents and employees harmless against, and Municipality shall pay any and all, liability, loss, cost, damage, claims, judgment or expense, of any and all kinds or nature, which shall be imposed by law, which the County, the members of the Board or its, officers, agents and employees may sustain or may be subject to or may be caused to incur by reason of any claim, suit or action which is based upon personal injury, death, or damage to property, whether real, personal or both, or upon or arising out of any services retained by the Municipality and performed by its law enforcement, fire and/or public works personnel or the like in the course of providing necessary support to emergency medical services described in this agreement.

(3) The County and Municipality agree that the County shall give an authorized Municipality representative prompt written notice of the filing of each such claim and the institution of each such suit or action, and the Municipality shall give an authorized County representative prompt written notice of the filing of each such claim and the institution of each such suit or action.

## I. COMPLIANCE WITH LAWS AND REGULATIONS.

County and Municipality agree that they will at their own cost and expense promptly

comply with, or cause to be complied with, all laws, rules, regulations and other governmental requirements which may be applicable to the performance of the services described in this Agreement.

**J. INSURANCE.**

At all times during the term of this Shared Services Agreement, the County shall maintain or cause to be maintained with responsible insurers who are authorized to do business in the State of New Jersey, or in such other manner as may be required or permitted by law, casualty, all-risk and comprehensive general liability insurance with respect to the Project as the County shall determine to be reasonably required. The County shall be obligated to pay for the cost of all such insurance. All such insurance policies shall name the County as the named insured and the Municipality as an additional insured.

Municipality shall maintain liability insurance, which will be considered secondary insurance, which will include general liability insurance, casualty, all-risk insurance.

**K. REMEDIES.**

1. **Controversies and Claims Subject to Mediation.** Any controversy or claim arising out of or related to the contract, or the breach thereof, shall be settled by mediation.

   If a dispute between County and Municipality arises during the course of the contract, the parties will make a good faith effort to resolve the dispute through non-binding mediation.

2. **Contract Performance Pending Mediation.** During mediation proceedings, County shall continue to perform the services described in this Agreement.

3. **When Mediation May be Demanded.** Prior to either party demanding mediation, the aggrieved party shall attempt to resolve the problem directly with the other party. The aggrieved party shall submit a written notice of dispute to the other party. The other party shall respond in writing.
   Demand for mediation of any claim shall not be made until the earlier of the following:

   (a) five (5) business days after the other party has provided its written response to the aggrieved party's notice of dispute;

   (b) 30 days have passed after submission of the original, written claim by the aggrieved party and the other party has not responded.

   If the written response from the other party does not resolve the dispute, the aggrieved party shall have 30 days from the delivery of the other party's response to file a demand for mediation. If the aggrieved party fails to do so, it shall be deemed to have waived its right pursuant to this contract to demand Alternative Dispute Resolution.

A party who files a "Notice of Demand for Mediation" must assert in the demand all claims then known to that party for which mediation may be demanded. If a party fails to include a claim because of excusable neglect, or when a claim has matured or been acquired subsequently, the mediator or mediators may permit amendments.

4. **Procedure to Request Mediation.** Either party may demand mediation by written notice to the other party. The written notice shall contain at minimum (1) a brief statement of the nature of the dispute, and (b) the name, address and the phone number of that party's designated representative for purposes of mediation.

   The other party shall designate its representative for mediation in writing no later than five (5) business days after receipt of the demand for mediation.

   The respective designees shall thereupon promptly, and with due regard for the need for timely action, choose a mediator. If the parties cannot agree on a mediator, they shall choose a reputable mediation firm.

   Any mediation firm so chosen shall present a list of at least five (5) proposed mediators to the parties and shall provide the parties with a summary of each person's qualifications to serve as mediator. Each party shall rank the proposed mediators in order of preference.

   The fifth and any lower ranked persons on each list will be excluded from further consideration.

   The chosen mediator shall be the remaining person who is the combined highest ranking mediator on both preference lists, after deleting all excluded persons.

   In the event of a tie, the mediator shall be chosen by lot.

5. **Procedures at Mediation.** The mediation shall be conducted in such reasonable and efficient manner as may be agreed between the parties and the mediator or, if the parties cannot agree, as may be determined by the mediator.

   The parties will not be bound by the Rules of Evidence in presenting their positions before the mediator.

6. **Cost of Mediation.** Each party will bear its own cost of participation in the mediation. The mediator's fee will be divided equally between the parties.

7. **Failure of Mediation.** If a good faith effort to resolve the dispute through mediation is unsuccessful, either party may terminate the mediation by written notice to the mediator and to the other party. Thereafter, either party may submit the dispute to the Superior Court of New Jersey, Gloucester County, for adjudication, which court shall have exclusive original jurisdiction over the dispute.

## L. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.

In the event that any agreement which is contained in this Shared Services Agreement should be breached by either party and thereafter such breach shall be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be a waiver of any other breach hereunder.

## M. NO PERSONAL LIABILITY.

No covenant, condition or agreement contained in this Shared Services Agreement shall be deemed to be the covenant, condition or agreement of any past, present or future officer, agent or employee, Freeholder, Municipal Council Person, Officer, and/or Agent of the Municipality or County, in his or her individual capacity, and neither the officers, agents or employees of the Municipality or County nor any official executing this Shared Services Agreement shall be liable personally on this Shared Services Agreement by reason of the execution hereof by such person or arising out of any transaction or activity relating to this Shared Services Agreement.

## N. MISCELLANEOUS.

1. **Amendment.** This Shared Services Agreement may not be amended or modified for any reason without the express prior written consent of the parties hereto.

2. **Successors and Assigns.** This Shared Services Agreement shall inure to the benefit of and shall be binding upon the County, the Municipality and their respective successors and assigns.

3. **Severability.** In the event that any provision of this Shared Services Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

4. **Counterparts.** This Shared Services Agreement may be simultaneously executed in several counterparts, each of which shall constitute an original document and all of which shall constitute but one and the same instrument.

5. **Entire Agreement.** This Shared Services Agreement sets forth all the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and undertakings, inducements, or conditions, express or implied, oral or written between the parties hereto.

6. **Further Assurances and Corrective Instruments.** The Municipality and the County shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or to correct any inconsistent or ambiguous term hereof.

7. **Headings.** The Article and Section headings in this Shared Services Agreement are included herein for convenience of reference only and are not intended to define or limit the scope of any provision of this Shared Services Agreement.

8. **Non-Waiver.** It is understood and agreed that nothing which is contained in this Shared Services Agreement shall be construed as a waiver on the part of the parties, or any of them, of any right which is not explicitly waived in this Shared Services Agreement.

9. **Governing Law.** The terms of this Shared Services Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of New Jersey.

**O.** **EFFECTIVE DATE.** This Agreement shall be effective as of this 1 day of January, 2018, which date shall be considered the commencement date of this Agreement, and which effective date shall be so designated in authorizing resolutions to be adopted by the parties to this Shared Services Agreement.

**P.** **CONFIRMING STATEMENT.** This Agreement replaces and supersedes all previous agreements between Gloucester County and the municipality for the Provision of Basic Life Support and Emergency Medical Services.

**ATTEST:**

Laurie Burns

**LAURIE J. BURNS, CLERK OF THE BOARD**

**COUNTY OF GLOUCESTER**

**ROBERT M. DAMMINGER, DIRECTOR**

**ATTEST:**

**RYAN J. GILES, BOROUGH CLERK**

**BOROUGH OF WESTVILLE**

**RUSSELL W. WELSH, JR., MAYOR**