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SHARED SERVICES AGREEMENT

by and among

TOWNSHIP OF FRANKLIN, HOST MUNICIPALITY

GLOUCESTER COUNTY IMPROVEMENT AUTHORITY,

COUNTY OF GLOUCESTER, NEW JERSEY,

FOR THE OPERATION, MAINTENANCE AND USE OF A DEICER STORAGE FACILITY AND DEICER MATERIAL

Dated: December 1, 2017

Prepared by: Thomas G. Campo,
County Counsel

TABLE OF CONTENTS

	Recitals	3
Paragraph A.	Description of the Project	4
Paragraph B.	Description of Services	4
Paragraph C.	Project Costs	5
Paragraph D.	Duration of Agreement	5
Paragraph E.	Limitation of Delegation	6
Paragraph F.	Indemnification	6
Paragraph G.	Compliance with Laws and Regulations	7
Paragraph H.	Insurance	7
Paragraph I.	Events of Default	7
Paragraph J.	Remedies	7
Paragraph K.	No Remedy Exclusive	8
Paragraph L.	No Additional Waiver Implied by One Waiver	8
Paragraph M.	No Personal Liability	8
Paragraph N.	Miscellanous	8
Section 1.	Amendment	8
Section 2.	Successors and Assigns	8
Section 3.	Severability	8
Section 4.	Counterparts	8
Section 5.	Entire Agreement	9
Section 6.	Further Assurances and Corrective Instruments	9
Section 7.	Headings	9
Section 8.	Non-Waiver	9
Section 9.	Governing Law	9
Paragraph O.	Effective Date	9

SHARED SERVICES AGREEMENT

THIS SHARED SERVICES AGREEMENT, ("Shared Services Agreement"), dated this 1st day of December, 2017, is made by and among the Township of Franklin (Host Municipality), Gloucester County Improvement Authority, and County of Gloucester.

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; and

2. The Gloucester County Improvement Authority ("Authority") is a body politic and corporate of the State of New Jersey with main offices located at 109 Budd Boulevard, Woodbury, New Jersey 08096; and

3. The Township of Franklin ("Host Municipality") is a municipal corporation of the State of New Jersey with offices located at 1571 Delsea Drive, Franklinville, NJ 08322; and

4. The New Jersey Department of Environmental Protection ("NJDEP") has adopted regulations that, among other things, require local governmental units, including Gloucester County ("County") and all municipalities located within the County, to adopt and implement stormwater management programs and to effect the implementation of said programs by the construction of various improvements and the undertaking of other initiatives ("NJDEP Program Requirements"); and

5. In the spirit of intergovernmental cooperation and in continuation of the County's demonstrated commitment to providing innovative regional government, the County has agreed to partner with the municipalities located within the County to implement certain of the NJDEP Program Requirements; and

6. The County has undertaken a capital improvement program in order to construct a number of the infrastructure elements of the County Storm Water Management Program, including, but not limited to, deicing material storage facilities; and

7. The parties now wish to enter into a Shared Services Agreement providing for the operation, maintenance and use of the deicing storage facility and the deicing materials to be stored there; and

8. The Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1 et seq., specifically authorizes governmental entities to enter into Shared Services Agreements.

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

AGREEMENT

A. DESCRIPTION OF THE PROJECT.

The Project, for purposes of this Agreement, shall be considered the operation, maintenance and use of the deicing storage facility and the deicing materials to be stored there, which facility was previously constructed by the Authority. The facility is located on property owned by Host Municipality and located at 234 Broad Street, Newfield, NJ 08344.

B. DESCRIPTION OF SERVICES.

1. Representations by Host Municipality:

    a. Manage, operate, and staff the deicer facility, Machinery &Equipment (M&E), and loader;

    b. Maintain accurate records of deicer material distributed to all Users, and all labor costs incurred by the Host Municipality in the staffing of the facility during a storm event;

    c. Communicate inventory status and readiness of facility and equipment to County;

    d. Unload deicer deliveries; load User trucks and equipment during storm events;

    e. Maintain adequate risk and GL insurance on facility, equipment and loader.

    f. Advise the County in a timely manner regarding the need for major repairs to loader, brine-making equipment, and the deicer storage facility.

2. Representations by the Authority:

    a. The Authority constructed, owns structure, brine mixers, M&E and loader;

3. Representations by the County:

    a. The County will order deicer, pay deicer vendors and maintain inventory control;

    b. Exercise oversight over Host Municipalities operation and maintenance of deicer storage facilities, M&E and loaders;

    c. If necessitated due to the failure of Host Municipality to perform, supply

manpower necessary to operate facility and/or loader, and back charge Host Municipality to fully recover labor cost.

d. The County is responsible for major loader repairs and/or replacement of a loader, should the County at its' sole discretion determine that the repair or replacement is necessary. The County will annually apportion the costs, on a prorated basis, among all Host and User entities per this shared services agreement.

e. The County is responsible for major repairs of the deicer storage building not covered by insurance, as well as the repair and/or replacement of brine-making machinery and equipment associated with the deicer storage building. The County will annually apportion the costs, on a prorated basis, among all user entities per the controlling shared service agreement.

C. PROJECT COSTS.

1. The cost of the Project shall be equal to the value of the individual services provided by each of the servicing entities. The monetary value cannot be determined at this time because of the uncertain nature of the level of services which may be needed, given the requirements related to weather events.

2. Reimbursement of County and Host Municipalities:

   a. The County will annually collect all documented Host Municipality labor expenses eligible for reimbursement. The County will add the eligible Host Municipal labor costs reimbursement to the Deicer Commodity, Loader and Facility Maintenance costs reimbursement pool, and the total pool shall annually be apportioned to all Users, Hosts, and the County on a prorated basis as determined by the quantity of deicer material received by each participating entity.

   b. Utilizing the proration methodology set forth in paragraph "a" of this section, the County will invoice all Users, Hosts and the County on May 1st of each year. Payment is due by the end of May.

   c. Late payments will be subject to a 6% interest penalty. All amounts delinquent more than 60 days will be subject to an 18% interest penalty.

D. DURATION OF AGREEMENT.

This Agreement shall become effective immediately upon authorization, execution and delivery by all parties.

This Agreement shall be effective for the period commencing upon the effective date of this Agreement and continuing for a period of 10 years.

Either party may terminate this Agreement for any reason between the dates of May 1 and September 1 of each calendar year by providing 30 days' written notice to the other party as follows: As to Gloucester County: Office of County Counsel, 2 South Broad Street, Woodbury, NJ 08096. As to a municipality: Municipal Clerk of said municipality. Neither party shall have the right to terminate this contract between the dates of September 1 and May 1 of any year of this Agreement.

E. LIMITATION OF DELEGATION.

To the extent that this Agreement constitutes a delegation of authority by any one entity to another, this Agreement shall not be construed to delegate any authority other than the authority necessary to perform the services described in this Shared Services Agreement.

None of the parties 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 performing the obligations of the County pursuant to the Agreement.

F. INDEMNIFICATION.

(a) During the Term of this Shared Services Agreement, each entity shall indemnify and shall hold each other entity, the members of its governing body and its officers, agents and employees harmless against, and each indemnifying entity 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 indemnified entity, 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 performed, work performed, obligation undertaken or not performed in connection with the Project.

(b) The indemnifying entity at its own cost and expense, shall defend any and all such claims, suits and actions which may be brought or asserted against any indemnified entity, the members of its governing body or its officers, agents or employees; provided, however, that this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance of its obligation to defend any insured party which may be named in such policy or insurance in connection with any claims, suits or actions which are covered by the terms of such policy.

(c) Each entity agrees as follows:

(i) Each entity shall give each other entity prompt written notice of the filing of each such claim and the institution of each such suit or action;

(ii) No entity shall, without the prior written consent of each other entity, adjust, settle or compromise any such claim, suit or action with respect to the

Project.

G. COMPLIANCE WITH LAWS AND REGULATIONS.

Each entity agrees that it will at its 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.

H. INSURANCE.

At all times during the term of this Shared Services Agreement, each entity 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 shall be determine to be reasonably required. Each entity shall be obligated to pay for the cost of all such insurance, except that Host Municipality shall be reimbursed for certain costs of insurance as described above in this Agreement.

I. EVENTS OF DEFAULT.

Any one of the following shall constitute an event of default by any defaulting entity:

1. continued breach by any such entity of any representation, warranty or covenant contained in this Shared Services Agreement within thirty (30) days after written notice of such breach has been sent by any other entity to the defaulting entity or, if such breach is of a type that cannot be cured within thirty (30) days, the failure of the defaulting entity within such thirty (30) day period to commence and diligently pursue such performance to completion;

2. failure by any defaulting entity to perform any other term or condition of this Shared Services Agreement within thirty (30) days after written notice of such failure has been sent by any other entity or, if such failure is of a type that cannot be cured within thirty (30) days, the failure of the defaulting entity within such thirty (30) day period to commence and diligently pursue such performance to completion; or

3. the filing of a petition by the defaulting entity in bankruptcy or the filing of a petition in bankruptcy against defaulting entity which is not dismissed within sixty (60) days after such filing, or if defaulting entity is adjudged to be bankrupt or determined to be insolvent or if defaulting entity seeks reorganization or liquidation under any federal or State bankruptcy law, or if defaulting entity makes an assignment for the benefit of its creditors.

J. REMEDIES.

Whenever any Event of Default as described in paragraph I., above hereof shall have occurred and shall be continuing, and provided that prior written notice of the Default has

been given to the Defaulting Party by the Non-Defaulting Party and the Default has not been cured, the Non-Defaulting Party may take whatever action may appear necessary or desirable to enforce the performance and observance of any obligation, agreement or covenant of the Defaulting Party under the terms of this Shared Services Agreement.

K. NO REMEDY EXCLUSIVE.

No remedy which is conferred upon or which is reserved to the parties herein is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy which is provided under the terms of this Shared Services Agreement or which is now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

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 of the Borough or County, in his or her individual capacity, and neither the officers, agents or employees of the Borough 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 each other entity 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.** All entities 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 applicable to agreements made and to be performed entirely within such State, including all matters of enforcement, validity and performance.

O. **EFFECTIVE DATE.** This Agreement shall be effective as of 1st day of December, 2017, which date shall be considered the commencement date of this Agreement.

ATTEST:

Laurie J Burns

LAURIE J. BURNS, CLERK

COUNTY OF GLOUCESTER

ROBERT M. DAMMINGER, DIRECTOR

ATTEST:

Paulw Lenkowski

PAUL W. LENKOWSKI, SECRETARY/ TREASURER

GLOUCESTER COUNTY IMPROVEMENT AUTHORITY

CHARLES FENTRESS, CHAIRMAN

ATTEST:

Barbara Freijomil

BARBARA FREIJOMIL, RMC, CLERK

TOWNSHIP OF FRANKLIN

Leah Vassallo

Leah Vassallo Acting **MAYOR**