
SHARED SERVICES AGREEMENT

by and between the

LSA SEWERAGE AUTHORITY

AND

CITY OF VINELAND

Dated: _____, 2014

Prepared by: **Keith A. Davis, Esq.**

NEHMAD PERILLO & DAVIS, P.C.

Special Counsel for the
Landis Sewerage Authority

SHARED SERVICES AGREEMENT

This Shared Services Agreement (“Agreement”), dated this ____ day of _____, 2014, by and between the Landis Sewerage Authority, a Sewerage Authority under and subject to Sewerage Authorities Law, N.J.S.A. 40:14A-1 et. seq. with offices at 1776 S. Mill Road, Vineland, New Jersey 08360 (“LSA”), and the City of Vineland, a municipal corporation of the State of New Jersey with offices at 640 Wood Street, Vineland, New Jersey 08360 (“City”).

RECITALS

- A. The City and LSA agree that the residents can be better served with a reduced expenditure of tax dollars and rate dollars, while providing a greater level of governmental services through a shared services agreement;
- B. The City and LSA have recognized their value to each other to help fund needed municipal projects by transferring surplus LSA funds consistent with N.J.S.A. 40A:5A-12.1. In 2013, LSA provided approximately \$434,000 in LSA funds for such purposes. In the future, the City Council shall determine what funds are needed on an annual basis for municipal projects which may be up to less than the five percent (5%) statutory cap. ~~or no funding at all.~~
- C. The City and LSA further recognize the value of interlocal cooperation as a way of reducing duplication and overlap of services;
- D. In enacting the “Uniform Shared Services and Consolidation Act”, N.J.S.A. 40A:65-1 et seq. (the “Act”), the New Jersey Legislature has encouraged any local unit of the State to enter into an agreement with any other local unit or units for the joint provision within their several jurisdictions of any service which any party to the agreement is empowered to render within its own jurisdiction as a means to reduce local expenses funded by property taxpayers;
- E. The City and LSA as “local units” defined by the Act are empowered to enter into shared services agreements;
- F. The City and LSA have previously acted pursuant to the Act by entering into shared services agreements with each other whereby the City agreed to provide the LSA with the services of the City’s Tax Collector’s Office, including the placement of sewer liens, tax searches, and other clerical work, for the periods January 1, 2012 through December 31, 2012 and January 1, 2013 through December 31, 2013, and January 1, 2014 through December 31, 2014 as contained in the City of Vineland Resolution No. 2013-492;
- G. The City and LSA wish to assist each other to the extent possible and alleviate their mutual needs in areas including maintenance, repair and services that they are each fully able to perform independently but find that it would more cost effective to share;

Comment [GG1]:

Should be rewritten to ensure that the CITY retains all rights accorded by NJ State Statute to demand the maximum payment in lieu of taxes from LSA on an annual basis. There should be no restriction on the use of said funds. (...first \$50k per year shall be dedicated by the City to fund...). These use of these funds shall be determined by the annual City Budget as approved on an annual basis.

[Comment by Electric Utility](#)

H. ~~The City and LSA mutually agree to share management expertise and insights for better strategic decision-making; also wish to have the LSA's Executive Director serve in an advisory capacity to the City's Water Utility by providing recommendations which are within the expertise of the Executive Director;~~

Comment [GG2]:
Revise "H" to read as follows:
The City and LSA mutually agree to share management expertise and insights for better strategic decision making.
[Comment by Municipal Utilities](#)

I. Through this Agreement, it is the intention of the parties to cooperate and collaborate with one another in order to share certain services and resources set forth herein to operate in a more cost effective manner thereby providing more expeditious and efficient services to their respective taxpayers and rate payers;

J. Acting pursuant to the Act, the City and LSA desire to enter into this Shared Services Agreement (the "Agreement") through which the City and LSA shall hereinafter share certain services and resources in order to decrease costs ~~for~~ by both the City and LSA;

K. Any purchases for goods or services made by either the City or LSA to carry out the terms, conditions or intent of this Agreement shall be considered Cooperative Purchasing pursuant to N.J.A.C. 5:34-7.1 et seq. A separate Cooperative Purchasing Agreement shall be adopted by the parties in the same manner of that this Agreement is adopted.

L. The City and LSA shall consider the adoption of a Resolution authorizing the execution of this Agreement; and

M. This Agreement shall take effect upon the adoption of said resolutions and the execution of this Agreement by all parties.

NOW, THEREFORE, in consideration of the mutual promises, agreements and other considerations made by and between the parties, and pursuant to all applicable federal, state, and local laws, statutes, codes or ordinances, the City and LSA do hereby agree as follows:

1. Basic Terms of Agreement

1.1 Pursuant to the ~~RECITALS Background~~ above, which ~~are~~ is hereby expressly incorporated into this Agreement by reference, the City and LSA agree to share certain services and resources set forth in below in order to operate in a more cost effective manner thereby providing more expeditious and efficient services to their respective taxpayers and ratepayers.

Comment [GG3]:
Some of the "City and LSA agree to share certain services and resources set below". Most of the items below are not shared services. They would be considered more a Cooperative Purchasing / Commodity Resale System and not shared services. The state has specific guidelines to follow in determining shared services agreements and how other agreements should be handled. It should be determined who will be responsible for setting up the deals properly. Is that all going to fall on the City?
[Comment by Finance](#)

1.2 ~~The City and LSA agree that of any requested funds, to be reviewed on an annual basis, transferred under the authority of N.J.S.A. 40A:5A-12.1 as shown available and up to the amount on the LSA budget form SS9, the first \$50,000 per year shall be dedicated by the City to a fund for capital infrastructure including, but not limited to sidewalks, traffic signal, traffic safety projects and measures and administrative costs associated with grants for capital infrastructure. Said fund shall be for construction purposes only and no administrative fees or charges shall be applied to this fund, with the exception of qualifying for grants.~~

Comment [GG4]:
While the budget is at the discretion of the Mayor and Council, the City's budget has had no designation of funds for capital or infrastructure other than contribution to the capital improvement fund. While it would be prudent to have done so, there was no discretionary money for such. The City has been trying to manage the impacts of a reduction in State Aid, Grants and down turn in the economy for at least the last 6 years. And currently it is dealing with the effects of tax appeals. They were the reason's the contribution was required from the LSA in the first place. Infrastructure and capital projects have been funded through grants and improvement authorizations. The goals and needs of the City should be determined by the Mayor and Council at a much broader and more important level. Carving out these small pieces presents more record keeping and burden and in the long run would not be really feasible. There is no designation for any other contributions made by other utilities.
[Comment by Finance](#)

1.3 LSA primarily provides service to those portions of the City of Vineland in its sewer service area. However, there are some areas outside of the City of Vineland which also receive sewer services from LSA. Going forward, LSA shall not provide new sewer service to any area outside the City of Vineland, absent a court mandate or governmental directive to do so nor shall they take any action which will effectively promote the construction of new sewer service or capacity to any area outside the City.

2. Scope of Services

2.1 The City and LSA agree to share the following services:

2.1.1 Management expertise and insights for better strategic decision-making. ~~The LSA's Executive Director, Dennis W. Palmer, will act in an advisory role and provide his expertise to the City's Water Utility regarding its managerial, support staff operations and asset management (e.g. providing expertise on issues involving the Department of Environmental Protection, capital and infrastructure planning) at no cost to the City;~~

2.1.2 Sanitary Sewer Planning and Installation. ~~The City and LSA shall work together to devise funding strategies, including but not limited to funds that may be available through the U.S. Economic Development Administration, Vineland/Millville Urban Enterprise Zone, or any other bonding or assessment programs. In addition, the parties will jointly plan the extension of LSA facilities that will further economic development goals within the City. On all projects initiated by the City, the City and LSA shall join in installing sanitary sewer with funding by the Vineland Millville Urban Enterprise Zone (UEZ), New Jersey Economic Development Authority (EDA), bonding or assessment programs. Under the assessment program, LSA will provide engineering and design services, permit applications and fees as well as inspection services at no cost, with UEZ and EDA assuming all costs of construction.~~

2.1.3 Joint Contracting – Laboratory Services. ~~Either party City may request to be joined into the other party's LSA's bidding efforts for any environmental laboratory services that are required with each party responsible for its own share of the bid in order to maximize their joint buying power. This shall be done in accordance with the Cooperative Purchasing Agreement between the parties.~~

2.1.4 Natural Gas and Chemicals Purchasing. ~~Either party may request to be joined into the other party's purchasing efforts for the supply of all natural gas and all chemicals required in their operations with each party responsible for their own consumption based upon their independent meters or chemical purchase. Administrative costs of such efforts shall be shared equally between the parties. All such purchasing shall be done in accordance with the Cooperative Purchasing Agreement between the parties.~~

Comment [GG5]:

All of the services outlined in this section and any other section, that relate to purchasing efforts for goods, services, construction, maintenance, etc., are not classified as "shared services".

These services cannot be acted upon by simply adopting a "Shared Services Agreement". These services are considered "Cooperative Purchasing", which is an inclusive term used to describe all purchasing systems where two or more local contracting units join together for the provision or performance of goods or services as provided for by the *Local Public Contracts Law* and the *Public School Contracts Law*.

I am attaching a Guide for Cooperative Purchasing that deals with types of Cooperative Purchasing and the guidelines/regulations that must be followed.

[Comment by Purchasing](#)

Comment [GG6]:

Why it is necessary to have the LSA's Executive Director serve in an advisory capacity to the City's Water Utility. While the agreement lists providing expertise on issues involving the DEP, there are several divisions of NJDEP that are specific to programs and not that interchangeable between wastewater and drinking water standards. In addition, there are different certifications required for drinking water, does the LSA Executive Director have those certifications? What expertise is needed?

[Comment by Engineering](#)

Comment [GG7]:

New Jersey Economic Development Authority is referenced as "EDA". The "EDA" in which we receive funding for sewer projects is the U.S. Economic Development Administration. New Jersey Economic Development Authority does not fund infrastructure projects.

The UEZ never funded sewer expansion previously even when there was a funding stream from the State. The utilization of Vineland Millville Urban Enterprise Zone (UEZ) funding for sewer has always been in the form of a loan to the property owner and it must be tied to job creation. UEZ funding cannot be used for residential purposes. Since there is no longer any UEZ funding derived from the State, its ability to continue funding economic development initiatives is based solely on the interest earned on its loan portfolio. In order to use UEZ funding, there would have to be a specific project that would create jobs and the UEZ Committee approves the use and structure of the funds. The language in the agreement simply states that the UEZ and EDA assume all construction costs, which is very broad.

[Comment by Economic Development](#)

Comment [GG8]:

Cooperative Purchasing Agreement.

[Comment by Finance](#)

Comment [GG9]:

Not sure about joint buying power in laboratory services. As laboratory services are driven by permit requirements, which dictate frequency and pollutant parameters, the only true potential savings in laboratory services could be in mobilization for sampling events. However, with multiple facilities and varying sampling frequencies, most likely there would be little coordination of sampling events.

[Comment by Engineering](#)

Comment [GG10]:

Natural Gas and chemical – Commodity resale or cooperative purchasing agreement.

[Comment by Finance](#)

2.1.5 Street Paving. The City and LSA shall jointly share in the paying of any City streets where the parties share administrative costs of such bidding, with the City being responsible for conducting all public bidding or use of its own forces and equipment for said street paving projects and implementing and overseeing their construction and LSA being responsible for reimbursing the City for its direct and overhead ~~actual and reasonable~~ costs of paving projects related to ~~actual~~ LSA work in the public right of way.

Comment [GG11]:

The City street paving is already backlogged, and any additional responsibilities relative to the LSA would create a further backlog. Settlement problems over LSA mains would present additional problems.

[Comment by Public Works](#)

Comment [GG12]:

Who governs and determines what is reasonable? Is this for all sewer mains, both gravity and force, as well as laterals? Is this for all the areas that have continual settlement problems and require frequent repair? If so, as these would require trench restoration, base repair, and surface paving would all of these items be deemed reasonable? Additionally, if this includes all the areas that have continual settlement problems, who determines what is reasonable as far as the limits of repair, both horizontally and vertically, as well as the extent of the repair?

As the Engineering office is currently short staffed, this unfairly and needlessly dumps additional workload onto the office if the projects are publicly bid, with no ascertainable benefit to the City. Was there an operational analysis of the Engineering Office to determine that the office could handle the additional workload?

[Comment by Engineering](#)

Comment [GG13]:

As this states, the City and LSA would maintain roughly equal number of facilities, and this would be accomplished by identifying all of the subject catch basins and storm sewers and locating them on a map. The engineering office has been endeavoring to update the storm sewer maps with GIS, as the maps we currently have are hand drawn maps, over the past few years. Based on current workloads and staffing levels, the map updating is not currently a high-level priority. Does this agreement provide funding or personnel to update the maps, or would this agreement require the engineering office to reprioritize improvement projects to finalize a map? What is the need for assistance in maintaining the storm sewer system? Who will modify the City's current Tier A Municipal Stormwater General NJPDES Permit (the assigning of any responsibility or requirement of the permit needs to be documented with NJDEP)? Does LSA have the appropriate equipment to maintain large diameter pipe networks (gravity sanitary sewer mains are smaller diameter than most of the storm sewer system)?

[Comment by Engineering](#)

Comment [GG14]:

The current maintenance facility is undersized and the current staffing level is too low for the existing City fleet. Was there an operational analysis of the City's Vehicle Maintenance facilities and staffing level to determine that both the facility and staff could handle the additional workload of performing maintenance on LSA fleet?

[Comment by Engineering](#)

Comment [GG15]:

This section refers to Fleet Maintenance and the use of CITY facilities and manpower for repair and maintenance of LSA equipment and vehicles. It is not clear as to which CITY facilities are being offered. Public Works and the Electric Department both maintain fleet maintenance facilities. I presume this joint service is being offered through the Public Works Garage since they have more manpower and resources at their disposal than the EL Department garage. Any major repair work should require LSA to provide its own PO for procurement of parts and/or vendor services. The bimonthly "true up" on expenses should be limited to minor parts, fluids, lubricants, expendable materials, environmental and disposal fees, labor costs and administrative fees as documented by the City via its normal accounting practices and procedures.

[Comment by Electric Utility](#)

2.1.6 Cleaning of Catch Basins and Storm Sewers. The City and LSA shall share in the maintenance and cleaning of catch basins and storm sewers throughout the City with the City and LSA agreeing in the future to designate a roughly equal number of such facilities in the City of Vineland to maintain between City and LSA. To the extent practical, based on staffing levels of either party and priorities of other projects, this will be accomplished by identifying all of the subject catch basins and storm sewers, locating them on a map, and designating which party shall be responsible for their maintenance and cleaning, on a roughly equal basis.

2.1.7 Vehicle Maintenance. To the extent practical and considering the need for public safety requirements foremost, the City and LSA shall share in the maintenance of vehicle fleets owned by the City and LSA with the LSA being permitted to utilize the City's repair facilities for maintenance of its vehicles and reimbursing the City for any direct and overhead ~~actual~~ costs incurred in connection with the maintenance of LSA vehicles such as for materials, parts, employee time and a prorated fee for normal upkeep of said vehicle maintenance facilities. In order to keep a record of the actual costs for eventual reimbursement, the parties shall maintain a shop schedule ~~manual~~ setting forth annual rates and issuance of work orders for work actually performed. The direct costs shall include the cost of maintaining a "shop schedule" and all supervision and overhead costs allocable to such activities. A "true up" of the direct ~~actual~~ costs of parts and labor, as well as overhead, shall occur on the 15th day of every two months from the date of this Agreement, at which time the LSA shall reimburse the City for said ~~actual~~ costs.

2.1.8 Maintenance of Easements. The City and LSA shall share in the maintenance of easements throughout the City with the City and LSA agreeing in the future to designate a roughly equal number of such easements in the City of Vineland to maintain between the City and LSA. This will be accomplished by identifying all of the subject easements, locating them on a map, and designating which party shall be responsible for their maintenance and cleaning, on a proportional ~~roughly equal~~ basis.

Comment [GG16]:

The allocation of easement maintenance, or the expenses incurred for same, should be based upon the ownership and/or usage of said easements. For example:

- a. The City is the sole user of a particular easement for the purpose of maintaining water or electric service, the City bears the expense.
- b. LSA is the sole user of a particular easement for the purpose of maintaining sewer service, the LSA bears the expense.
- c. The City and LSA share a common easement, both parties will reach a mutual agreement on the allocation of costs based upon the proportional usage thereof.

[Comment by Electric Utility](#)

2.1.9 Sharing and Joint Purchasing of Equipment and Vehicles.

Comment [GG17]:

As this states, the City and LSA would maintain roughly equal number of easements, and this would be accomplished by identifying all of the subject easements and locating them on a map. What easements are we talking about? LSA, drainage, Water Utility, Electric Utility? Are there more LSA easements than City? Would this be more or less workload for Public Works? If additional workload, was there an operational analysis of the City's Public Works staffing level to determine that staff could handle the additional workload?

[Comment by Engineering](#)

Comment [GG18]:

Again this would be a cooperative purchase. Strict guidelines need to be established and both entities would need to be on title for a joint purchase.

[Comment by Finance](#)

Comment [GG19]:

An occasional sharing of equipment is one thing but this section will require a great deal of oversight to make sure improper use/damage to equipment is immediately addressed. Specialized equipment, from both the Utility and LSA will require that the person operating it be adequately trained and experienced to avoid mishaps and equipment failures. There is already a State wide plan called NJWARN for utilities to share equipment when needed, but mostly for emergencies.

[Comment by Water Utility](#)

2.1.9.1 The City and LSA possess equipment and vehicles which shall be made available to either party upon reasonable notice for its own use. In no case shall a party's request to borrow specialized equipment or vehicles negatively impact the normal work schedule of the party possessing the equipment or vehicles. The party using the other party's equipment and vehicles shall be responsible for fueling when in use and to return the equipment or vehicle with a full fuel tank. A listing of the equipment available to either party is identified on the list annexed hereto as Exhibit A, which may be updated from time to time to reflect new purchases.

2.1.9.2 All equipment and vehicle purchases, including any accessory goods or services, shall not be authorized by this Agreement, but shall be made in accordance with a separate Cooperative Purchasing Agreement between the parties. If either party intends to acquire any equipment or vehicle, that party shall notify the other of its intention to determine if the other party is desirous of jointly purchasing it. Specialty vehicles, such as Electric Utility line trucks, shall be exempted.

2.1.9.3 If equipment or a vehicle is purchased jointly by both parties, the parties shall ~~separately~~ mutually agree in writing to terms and conditions concerning the amount each party shall contribute to the purchase and its ongoing maintenance, insurance and other related costs.

2.1.9.4 Each party will use equipment and vehicles described herein with due care and for the purpose for which it is intended. The party utilizing equipment and/or vehicle will maintain it in good repair, condition and working order and will furnish all parts and services required therefor, initially at its expense, and return equipment and vehicle in the same condition it was in when taken for its use by the other party, ordinary wear and tear excepted. Those expenses shall be incorporate into the "true up" described in the previous section and shall be paid for by the parties based upon actual use.

Comment [GG20]:

User of said equipment or vehicle shall return equipment or vehicle in good repair and full tank of fuel to respective party.

[Comment by Electric Utility](#)

2.1.9.5 Each party will provide the other party with reasonable notice when a certain equipment or vehicles are no longer suitable for public use and scheduled to be retired.

Comment [GG21]:
This section should also include notification of equipment that would be retired, not just notification on equipment intended to be purchased.
[Comment by Engineering](#)

2.1.9.6 Vehicle and equipment liability and physical damage insurance will at all times be the responsibility of the vehicle/property's owner regardless of whom is in possession of the vehicle/equipment at the time of loss.

Comment [GG22]:
Also state the following:
Vehicle and equipment liability and physical damage insurance will at all times be the responsibility of the vehicle/property's owner regardless of whom is in possession of the vehicle/equipment at the time of loss.
[Comment by TRICO JIF](#)

2.2 This Agreement does not address funding or the sharing of any other goods, services or other functions between the City and LSA. Funding will be the responsibility of each party for their own duties and obligations, and may be the subject of a future agreement(s) between the parties at a later date.

Comment [GG23]:
Should address financing, as the City can do it better with savings for its rate payers.
[Comment by Municipal Utilities](#)

2.3 Delinquent Sewer Accounts. Joint billing and customer service shall be instituted which will achieve the purpose of and be a true shared service. Administration of customer service, including any termination of service shall be in accordance with the City Municipal Utilities' policies, procedures and schedules. The LSA shall be allocated a share of all customer service, billing, cashiering, collections and overhead costs.

Comment [GG24]:
I would imagine that this is the most important part of the document, for LSA. Since they bill bi-annually, an outstanding \$1,000 payment would require ignoring the bill for around a year and a half. I would be curious to see if the owner/tenant has also reneged on paying water and electric. If for some reason the other utilities were being paid regularly, shutting off the service would result in lost income for us.
[Comment by Municipal Utilities](#)

As authorized by N.J.S.A. 40:14A-21(d) and 26(e), the City shall cause water supply to its Water ~~Utility Department~~ customers to be stopped or restricted in the event any customers fail to satisfy their outstanding financial obligations to the LSA (i.e. pay their sewer bill). Also in accordance with the statute, this action shall be the result of an agreement to be negotiated between the City Municipal Utilities and LSA. It will include a process consistent with the Municipal Utilities curtailment of service procedures, and all costs associated with curtailment of water service, including an allowance for loss of water revenue to be borne by the LSA.

Comment [GG25]:
Any termination of service must be in accord with VMU policies and schedule. Recognize that water service is turned off as the last option for customers taking both water and electric service and further that any unintended damage to shutoff valves shall be the cost responsibility of the agency requesting the shutoff. However coordinating such a service will only be practical if customer service and billing functions are combined. If customer service is combined, customer service representatives need proper training, compensation, software configuration and reporting structure within the organization from one director (not two directors). In addition, if VMU is to do cut offs, LSA must develop a plan to identify the correct water meter related to the LSA account as more than one meter can be active at a location. The coordination with sewer accounts (should customer service not be combined) is LSA's responsibility. LSA would be responsible to field customer inquiries regarding shut offs and reconnections.
[Comment by Municipal Utilities](#)

~~Termination of water service shall take place by the City at the direction of LSA if said customer has accrued more than \$1,000.00 in sewer charges (plus interest if any) and it has remained delinquent for a period of more than twenty (20) days beyond the date of a delinquency letter provided by LSA to its customer or twenty (20) days beyond the agreed upon payment date pursuant to a written payment agreement. Prior to water service termination, LSA will serve upon all residential (not commercial) customers a letter which advises that water service shall be terminated within 72 hours if payment is not promptly made. Notwithstanding anything herein, water service shall not be terminated if the temperature on that day is greater than 90 degrees Fahrenheit or less than 32 degrees Fahrenheit. Should City terminate water service as provided herein, LSA shall reimburse City for the normal cost of water service shutoff and collect that fee as an added expense from the customer. In discharging the responsibilities outlined herein, the parties shall fully comply with any applicable state, county or local health code requirements. The LSA shall hold the City harmless for any action brought in furtherance of this Article and shall indemnify and reimburse the City for any costs it may incur as a result of the City performing its obligation hereunder including reasonable attorney fees.~~

Comment [GG26]:
Customers should have more than 72 hours of notice. Shutoffs shall not overlap on the same days or weeks as the Water Utility shutoffs. More liability and costs need to be included and evaluated. This is a major problem for Billing and customer service to coordinate as LSA and the City are on different software systems.
[Comment by Water Utility](#)

2.4 Joint Marketing Opportunities. Local economic development initiatives can be significantly strengthened by taking advantage of synergies that exist between the City's Economic Development Office and the LSA. The parties shall look for opportunities to collaborate on economic development services including targeted advertising and public relations, research, new business recruitment, business retention and expansion, presentations and other such activities deemed necessary and appropriate.

2.5 This Agreement may be amended from time to time to incorporate additional shared functions in writing executed by both parties.

3. Notices

Whenever any party desires to share the services as identified above, the LSA Executive Director shall contact the City Department Director ~~head~~ having responsibility for the service to be shared, and vice versa. Whenever a service is to be shared, advance written emailed confirmation shall be provided identifying the service to be shared and the terms associated therewith, with copies provided to the City Business Administrator, ~~the~~ City Department Director and ~~the~~ Committee on Shared Services as defined herein.

4. Term

The term of this Agreement shall commence on February 1, 2014 and continue for a term of three (3) years until January 31, 2017, with the right for both parties to renew on three-year terms going forward.

5. Additional Terms

5.1 All "Taxpayer" requests, requirements and complaints shall be handled through the City.

5.2 All "LSA Ratepayer" requests, requirements and complaints shall be handled through the LSA.

5.3 The Committee on Shared Services ("Committee") is designated to coordinate, implement, monitor and communicate issues that arise out of the terms of this Agreement. All complaints and concerns from "Elected Officials", "Board Members" and/or "staff", in reference to the conduct of this Agreement shall be forwarded to the Committee as appropriate for resolution and/or action. Membership of the Committee shall include the LSA Executive Director, the City Director of Municipal Utilities, two members appointed by ~~of~~ the LSA Board of Directors, one member appointed by the Mayor of the City and one member appointed by the Council of the City ~~two members of Vineland City~~, for a total of six (6) ~~five (5)~~ members. However, nothing in this paragraph shall prevent either party, or any of its employees or unions, from seeking any remedy under law or under any existing labor agreement.

Comment [GG27]:

We have reviewed the proposed Shared Services Agreement by and between the Landis Sewerage Authority and the City of Vineland. While it is apparent that a considerable amount of time has been spent in crafting the agreement, we are not in a position to comment on the potential effect of implementation that may occur on individual city departments.

However, we do believe that from a policy standpoint all parties should continue to work together towards a sustainable resolution that benefits both taxpayers and ratepayers. Successful intra-jurisdictional cooperation will bring the city and the LSA greater efficiency and savings. It is important to stay focused on the long-term benefits that both entities can achieve by working together. With respect to the agreement, we do believe there is one additional item that deserves consideration for possible inclusion in the final draft. There are economic development synergies that exist between the LSA and the city's Department of Economic Development. We believe this presents opportunities for joint marketing efforts, and that this should be further explored.

[Comment by Public Relations](#)

Comment [GG28]:

Why would LSA have more power in a Shared Services Committee than the City?

[Comment by Engineering](#)

- 5.4 It is anticipated that additional cost-sharing ideas will be identified as the terms of this Agreement are implemented. Any additional agreements or modifications to this Agreement must be reduced to writing, executed by both parties and approved in accordance with the statutory requirements to become binding.
- 5.5 The Committee shall meet bi-annually to review the services shared under this Agreement and prepare a written report for the City and LSA setting forth the savings achieved as a result of each shared service and any proposals to increase the savings and scope of shared services on a going forward basis. In addition, the written recommendation will cover mutual problems and needs, objectives, methodology for all objectives and criteria to properly evaluate the accomplishments of the shared services.
- 5.6 Nothing herein shall be construed as amending any other contract either party is subject to, it being the intention of the parties to keep all other existing contracts in full force and effect.
- 5.7 Nothing herein shall be construed as amending any existing labor union contract of which either the City or LSA is a party and the parties agree to comply with any and all New Jersey Civil Service requirements to which it is otherwise legally required to follow.

6. Insurance

Notwithstanding the indemnification and defense obligations of each party to this agreement, LSA and the City of Vineland shall each purchase and maintain such insurance described in the attached schedule and as is appropriate for the work being performed and furnished and as will provide protection from any and all covered claims which may arise out of or caused or alleged to have been caused in any manner from each party's performance and furnishing of services and each party's other obligations under the Agreement, whether it is to be performed or furnished by the party, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the services, or by anyone for whose acts any of them may be liable. Each party shall be required to name the other as an "Additional Insured" on their policy of commercial general liability insurance, and simultaneously with the delivery of the executed Agreement, each party shall provide the other with a Certificate of Insurance indicating that the insurance coverage as described in the attached schedule, and as is appropriate for the work being performed and furnished, has been obtained and that each party has been designated as an "Additional Insured" where required. On or before the renewal date of said policy, each party shall be required to provide the other with a Certificate of Insurance indicating the continuation of insurance coverage and designating the other party as an "Additional Insured". The schedule of insurance and the limits of liability for the insurance shall provide coverage for not less than the following amounts or greater where required by law: Notwithstanding the indemnification and defense obligations of Contractor, the "Contractor" shall:

A. Workers' Compensation.

Statutory coverage and limits in compliance with the Workers' Compensation Law of the State of NJ.

Comment [GG29]:

I would suggest this language:
Notwithstanding the indemnification and defense obligations of each party to this agreement, LSA and the City of Vineland shall each purchase and maintain such insurance described in the attached schedule and as is appropriate for the work being performed and furnished and as will provide protection from any and all covered claims which may arise out of or caused or alleged to have been caused in any manner from each party's performance and furnishing of services and each party's other obligations under the Agreement, whether it is to be performed or furnished by the party, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the services, or by anyone for whose acts any of them may be liable. Each party shall be required to name the other as an "Additional Insured" on their policy of commercial general liability insurance, and simultaneously with the delivery of the executed Agreement, each party shall provide the other with a Certificate of Insurance indicating that the insurance coverage as described in the attached schedule, and as is appropriate for the work being performed and furnished, has been obtained and that each party has been designated as an "Additional Insured" where required. On or before the renewal date of said policy, each party shall be required to provide the other with a Certificate of Insurance indicating the continuation of insurance coverage and designating the other party as an "Additional Insured". The schedule of insurance and the limits of liability for the insurance shall provide coverage for not less than the following amounts or greater where required by law: Notwithstanding the indemnification and defense obligations of Contractor, the "Contractor" shall

*A. Workers' Compensation
Statutory coverage and limits in compliance with the Workers' Compensation Law of the State of NJ.*

B. General Liability Including Products & Completed Operations With a minimum combined single limit of liability per occurrence for bodily injury and property damage of one million (\$1,000,000) dollars with a minimum annual aggregate of two million (\$2,000,000) dollars. Other party shall be named as "Additional Insured".*

*C. Automobile Liability Insurance
With a minimum combined single limit of liability per accident of one million (\$1,000,000) dollars for bodily injury and property damage. This insurance must include coverage for owned, hired, and non-owned automobiles.*

*D. Errors and Omissions/Professional Liability
A minimum limit of liability of one million (\$1,000,000) dollars per incident and in the annual aggregate. Failure by the either party to supply such written evidence of required insurance and to maintain same for the duration of this Agreement shall result in default under this Agreement. The insurance companies for the above coverages must be acceptable to the parties. Each party shall take no action to cancel or materially change any of the insurance required under this Agreement without the other party's prior approval. The maintenance of insurance under this section shall not relieve either party of any liability greater than the limits or scope of the applicable insurance coverage.*

Comment by TRICO JIF

B. General Liability Including Products & Completed Operations With a minimum combined single limit of liability per occurrence for bodily injury and property damage of one million (\$1,000,000) dollars with a minimum annual aggregate of two million (\$2,000,000) dollars*. Other party shall be named as “Additional Insured”.

C. Automobile Liability Insurance. With a minimum combined single limit of liability per accident of one million (\$1,000,000) dollars for bodily injury and property damage. This insurance must include coverage for owned, hired, and non-owned automobiles.

D. Errors and Omissions/Professional Liability. A minimum limit of liability of one million (\$1,000,000) dollars per incident and in the annual aggregate. Failure by the either party to supply such written evidence of required insurance and to maintain same for the duration of this Agreement shall result in default under this Agreement. The insurance companies for the above coverages must be acceptable to the parties. Each party shall take no action to cancel or materially change any of the insurance required under this Agreement without the other party’s prior approval. The maintenance of insurance under this section shall not relieve either party of any liability greater than the limits or scope of the applicable insurance coverage.

~~The City and LSA shall each maintain adequate property liability, auto liability and workers’ compensation coverage related to its employees and their participation in this Agreement; and shall name the other party as an Additional Insured for all activities that occur and are directly related to the responsibilities under the terms of this Agreement. Each party shall maintain adequate property liability, auto liability and workers’ compensation coverage, related to its employee(s) and participation in this Agreement.~~

7. Indemnification

The City and LSA shall not be liable for any intentional acts or omissions related to an employee performing its duties in the discharge of this Agreement. Each party shall indemnify, defend and hold the other harmless from all losses, claims, liabilities, injuries or damage caused by an employee’s work performance for his or her employer when engaged in activities contemplated by this Agreement; including but not limited to any allegation by either party arising out of the aforementioned sharing of management expertise and insights for better strategic decision-making, ~~against the LSA arising out of the Executive Director performing advisory duties to the City’s Water Utility~~. Such indemnification shall include payment of reasonable attorneys’ fees and costs in defense of any claim. Each party, however, is not obligated to indemnify the other if the acts or omissions are exclusively within the purview of its responsibilities to its employer and are not covered by this Agreement. To the extent any damages are covered by applicable insurance, the City and LSA waive all rights against each other.

Comment [GG30]:

You may want to insert the following language:
LSA shall indemnify, save harmless and defend the City of Vineland, its elected and appointed officials, its employees, agents, volunteers and others working on behalf of the City of Vineland, from and against any and all claims, losses, costs, attorney’s fees, damages, or injury including death and/or property loss, expense claims or demands arising out of or caused or alleged to have been caused in any manner by a defect in any equipment or materials supplied under this agreement or by the performance of any work under this agreement, including all suits or actions of every kind or description brought against the City of Vineland, either individually or jointly with LSA for or on account of any damage or injury to any person or persons or property, caused or occasioned or alleged to have been caused by, or on account of, the performance of any work pursuant to or in connection with this agreement, or through any negligence or alleged negligence in safeguarding the work area, or through any act, omission or fault or alleged act, omission or fault of LSA, its employees, Subcontractors or agents or others under the control of LSA.

The City of Vineland shall indemnify, save harmless and defend LSA, its elected and appointed officials, its employees, agents, volunteers and others working on behalf of the LSA, from and against any and all claims, losses, costs, attorney’s fees, damages, or injury including death and/or property loss, expense claims or demands arising out of or caused or alleged to have been caused in any manner by a defect in any equipment or materials supplied under this agreement or by the performance of any work under this agreement, including all suits or actions of every kind or description brought against LSA, either individually or jointly with the City of Vineland for or on account of any damage or injury to any person or persons or property, caused or occasioned or alleged to have been caused by, or on account of, the performance of any work pursuant to or in connection with this agreement, or through any negligence or alleged negligence in safeguarding the work area, or through any act, omission or fault or alleged act, omission or fault of the City of Vineland, its employees, Subcontractors or agents or others under the control of the City of Vineland.

Comment by TRICO JIF

The LSA shall indemnify, save harmless and defend the City, its elected and appointed officials, its employees, agents, volunteers and others working on behalf of the City, from and against any and all claims, losses, costs, attorney's fees, damages, or injury including death and/or property loss, expense claims or demands arising out of or caused or alleged to have been caused in any manner by a defect in any equipment or materials supplied under this agreement or by the performance of any work under this agreement, including all suits or actions of every kind or description brought against the City, either individually or jointly with the LSA for or on account of any damage or injury to any person or persons or property, caused or occasioned or alleged to have been caused by, or on account of, the performance of any work pursuant to or in connection with this agreement, or through any negligence or alleged negligence in safeguarding the work area, or through any act, omission or fault or alleged act, omission or fault or alleged act, omission or fault of the LSA, its employees, Subcontractors or agents or others under the control of the LSA.

The City shall indemnify, save harmless and defend the LSA, its elected and appointed officials, its employees, agents, volunteers and others working on behalf of the LSA, from and against any and all claims, losses, costs, attorney's fees, damages, or injury including death and/or property loss, expense claims or demands arising out of or caused or alleged to have been caused in any manner by a defect in any equipment or materials supplied under this agreement or by the performance of any work under this agreement, including all suits or actions of every kind or description brought against the LSA, either individually or jointly with the City for or on account of any damage or injury to any person or persons or property, caused or occasioned or alleged to have been caused by, or on account of, the performance of any work pursuant to or in connection with this agreement, or through any negligence or alleged negligence in safeguarding the work area, or through any act, omission or fault or alleged act, omission or fault or alleged act, omission or fault of the City, its employees, Subcontractors or agents or others under the control of the City.

8. Dispute Resolution

In the event a dispute arises concerning the terms and conditions of this Agreement, the parties shall attempt to mutually agree upon a third party to arbitrate any such dispute which arises under this Agreement. Any decision by the third party arbitrator shall be binding on the parties. In the event the parties are unable to mutually agree on the selection of a single arbitrator, each party shall select one arbitrator certified by the American Arbitration Association (AAA), and a third arbitrator shall be selected randomly from a pool of qualified arbitrators of the AAA. The parties shall follow all AAA rules and regulations for such dispute resolution matters. ~~each party shall appoint an attorney licensed to practice in the State of New Jersey to serve as arbitrators. Such appointment shall be made within fifteen (15) days after written notice by any party of the election to proceed with arbitration by a panel of arbitrators. Any decision by a majority vote of the three attorneys shall be binding on the parties.~~ The costs and expenses of the arbitrator(s) and fees charged by such arbitrator(s) shall be shared equally by the parties; however, each party shall be solely responsible for their own attorney fees and expenses related to retention of their own experts and witnesses.

Comment [GG31]:

If each party were to appoint an attorney to serve as an arbiter, than what three attorneys are referred to with "Any decision by a majority vote of the three attorneys shall be binding on the parties"? Who is the third attorney?

[Comment by Engineering](#)

9. Choice of Law

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

10. Entire Agreement

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

11. Severability

If any part of this Agreement shall be held to be unenforceable, the remainder of this Agreement shall remain in full force and effect.

12. Termination

This Agreement may be terminated, upon ninety (90) days written notice to the other party or parties, as appropriate, as follows:

- a. If, through any cause, a party shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if a party shall violate any of the covenants, agreements, or stipulations of this Agreement, the aggrieved party shall thereupon have the right to terminate this Agreement upon giving written notice of such termination to the violating party.
- b. A party may terminate this Agreement for public convenience at any time by a notice in writing to the other party or parties, as appropriate.
- c. Termination shall not operate to affect the validity of the indemnification provisions of this Agreement, or to prevent either party from pursuing any other relief to which it may be entitled pursuant to the terms of this Agreement.

13. Limitation of Delegation

This Agreement shall not be construed as delegating any authority other than the authority to provide the services and resources described in this Agreement, consistent with the terms and provisions of this Agreement.

Neither the City nor LSA intend by this Agreement to create any agency relationship or merger, it being understood that both entities shall remain separate, independent local units.

14. Warranties and Representations

The City and LSA both warrant that its representatives who have signed this Agreement on behalf of the City and LSA are authorized to do so.

15. Compliance With Laws and Regulations

The City and LSA 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 its supplying of the resources and/or the performance of the services described in this Agreement.

16. No Additional Waiver Implied by One Waiver

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

In Witness Whereof, the parties hereto have executed this Agreement.

Attest:

Landis Sewerage Authority

G. Steven Errickson
Chairman

Attest:

City of Vineland

Ruben Bermudez
Mayor

Attest:

City of Vineland

Anthony Fanucci
President, City Council

July 15, 2014

Department of Administration Comments

1. Basic Terms of Agreement

1.1 Change the word “Background” to “Recitals”. [Back to Agreement](#)

3. Notices

- Change “Department head” to “Department Director”.
- After “City”, insert “Department”. [Back to Agreement](#)

5. Additional Terms

5.7 Official notice to unions prior to execution of this Agreement is a good idea to help avoid any potential grievances or right-to-unit-work concerns. [Back to Agreement](#)

7. Indemnification

This needs to be evaluated in conjunction with comments to “Recitals - H.” and “Scope of Services - 2.1.1”. [Back to Agreement](#)

July 15, 2014

Engineering Comments

As requested, the following are my comments referenced to sections of the proposed agreement:

Recital B

Unfortunately I am not following the logic with this section. As it states, funds would be transferred for municipal projects, but is this operating money that would be used for capital projects, or operating money that would be used for operating expenses? [Back to Agreement](#)

Recital H and Scope of Services 2.1.1

The agreement is unclear as to why it is necessary to have the LSA's Executive Director serve in an advisory capacity to the City's Water Utility. While the agreement lists providing expertise on issues involving the DEP, there are several divisions of NJDEP that are specific to programs and not that interchangeable between wastewater and drinking water standards. In addition, there are different certifications required for drinking water, does the LSA Executive Director have those certifications? What expertise is needed? [Back to Agreement](#)

Basic Terms of Agreement 1.2

There should be some additional explanation as to the LSA budget form SS9. Is this form the entire LSA budget? Why is money being earmarked for capital improvements, and why are some specifically listed? As it states that it is not limited to the types of projects listed, who governs or authorizes funds if other projects are proposed for funding? As administrative fees are exempted out of this, does that mean the intent is not to have any money go towards operating expenses? Also, with the first \$50,000 dedicated to capital funds, it would take several years of saving the money to reach a balance for a project, for instance a traffic signal would take about 5 years of saving to cover only the construction costs. [Back to Agreement](#)

Scope of Services 2.1.2 Sanitary Sewer Installation

As this states that on all projects initiated by the City, installation of sanitary sewer would be funded through UEZ. How can this agreement bind another agency to funding, it is a competitive process? Who governs or has the authority to plan sanitary sewer projects? Who governs or has the authority to determine which funding source to apply for determine if the project is bonding or assessment project? What about general assessment projects? [Back to Agreement](#)

Scope of Services 2.1.3 Joint Contracting – Laboratory Services

Not sure about joint buying power in laboratory services. As laboratory services are driven by permit requirements, which dictate frequency and pollutant parameters, the only true potential savings in laboratory services could be in mobilization for sampling events. However, with multiple facilities and varying sampling frequencies, most likely there would be little coordination of sampling events. [Back to Agreement](#)

Scope of Services 2.1.5 Street Paving

While it states that the City and LSA shall jointly share in the paving of any City street, it further states that the City would basically do everything and LSA would only reimburse for its actual and reasonable costs of paving projects related to actual LSA work in the public right of way. Who governs and determines what is reasonable? Is this for all sewer mains, both gravity and force, as well as laterals? Is this for all the areas that have continual settlement problems and require frequent repair? If so, as these would require trench restoration, base repair, and surface paving would all of these items be deemed reasonable? Additionally, if this includes all the areas that have continual settlement problems, who determines what is reasonable as far as the limits of repair, both horizontally and vertically, as well as the extent of the repair? [Back to Agreement](#)

As the Engineering office is currently short staffed, this unfairly and needlessly dumps additional workload onto the office if the projects are publicly bid, with no ascertainable benefit to the City. Was there an operational analysis of the Engineering Office to determine that the office could handle the additional workload? [Back to Agreement](#)

Scope of Services 2.1.6 Cleaning of Catch Basins and Storm Sewers

As this states, the City and LSA would maintain roughly equal number of facilities, and this would be accomplished by identifying all of the subject catch basins and storm sewers and locating them on a map. The engineering office has been endeavoring to update the storm sewer maps with GIS, as the maps we currently have are hand drawn maps, over the past few years. Based on current workloads and staffing levels, the map updating is not currently a high-level priority. Does this agreement provide funding or personnel to update the maps, or would this agreement require the engineering office to reprioritize improvement projects to finalize a map? What is the need for assistance in maintaining the storm sewer system? Who will modify the City's current Tier A Municipal Stormwater General NJPDES Permit (the assigning of any responsibility or requirement of the permit needs to be documented with NJDEP)? Does LSA have the appropriate equipment to maintain large diameter pipe networks (gravity sanitary sewer mains are smaller diameter than most of the storm sewer system)? [Back to Agreement](#)

Scope of Services 2.1.7 Vehicle Maintenance

The current maintenance facility is undersized and the current staffing level is too low for the existing City fleet. Was there an operational analysis of the City's Vehicle Maintenance facilities and staffing level to determine that both the facility and staff could handle the additional workload of performing maintenance on LSA fleet? [Back to Agreement](#)

Scope of Services 2.1.8 Maintenance of Easements

As this states, the City and LSA would maintain roughly equal number of easements, and this would be accomplished by identifying all of the subject easements and locating them on a map. What easements are we talking about? LSA, drainage, Water Utility, Electric Utility? Are there more LSA easements than City? Would this be more or less workload for Public Works? If additional workload, was there an operational analysis of the City's Public Works staffing level to determine that staff could handle the additional workload? [Back to Agreement](#)

Scope of Services 2.1.9 Sharing and Joint Purchasing of Equipment and Vehicles

This section should also include notification of equipment that would be retired, not just notification on equipment intended to be purchased. [Back to Agreement](#)

Go Back to Agenda

Additional Terms 5.3

Why would the City agree to have LSA to have more power in a Shared Services Committee than the City? [Back to Agreement](#)

8. Dispute Resolution

If each party were to appoint an attorney to serve as an arbiter, than what three attorneys are referred to with “Any decision by a majority vote of the three attorneys shall be binding on the parties”? Who is the third attorney? [Back to Agreement](#)

Thanks, Brian



Memo

To: Mayor Ruben Bermudez
From: Sandy Forosisky
Date: May 9, 2014
Re: Shared Service Agreement – LSA and COV

Per your email directive of May 8, 2014, I have reviewed the Shared Services Agreement for any impact on the Department of Economic Development.

My comments on the agreement concern paragraph 2.1.2 under the Scope of Services:

- New Jersey Economic Development Authority is referenced as “EDA”. The “EDA” in which we receive funding for sewer projects is the U.S. Economic Development Administration. New Jersey Economic Development Authority does not fund infrastructure projects.
- The UEZ never funded sewer expansion previously even when there was a funding stream from the State. The utilization of Vineland Millville Urban Enterprise Zone (UEZ) funding for sewer has always been in the form of a loan to the property owner and it must be tied to job creation. UEZ funding cannot be used for residential purposes. Since there is no longer any UEZ funding derived from the State, its ability to continue funding economic development initiatives is based solely on the interest earned on its loan portfolio. In order to use UEZ funding, there would have to be a specific project that would create jobs and the UEZ Committee approves the use and structure of the funds. The language in the agreement simply states that the UEZ and EDA assume all construction costs, which is very broad. [Back to Agreement](#)

July 15, 2014

Department of Finance Comments

LSA Shared Services Agreement

An Inter-Local Agreement normally provides benefits to all parties involved. While the intention of this agreement was just that, this agreement was drafted without the direct input from the appropriate operating department heads from the City. Review by such individuals is pertinent to make sure that the items in this agreement are realistic and benefit both sides.

RECITALS

H. Who has made the determination that the Water Utility lacks management and support review? Since the Water Utility was merged under the Utility umbrella I think that oversight and management has significantly improved and is headed in the right direction. [Back to Agreement](#)

Basic Terms of Agreement

It should be noted that in most areas of the City we continue to do more with less. We have not filled positions in many departments leaving vacancies and more work for the rest. All of the items deserve consideration to this fact and should not spread current resources even thinner. With that being said my comments are as follows:

1.1. Some of the “City and LSA agree to share certain services and resources set below”. Most of the items below are not shared services. They would be considered more a Cooperative Purchasing / Commodity Resale System and not shared services. The state has specific guidelines to follow in determining shared services agreements and how other agreements should be handled. It should be determined who will be responsible for setting up the deals properly. Is that all going to fall on the City? [Back to Agreement](#)

1.2. While the budget is at the discretion of the Mayor and Council, the City’s budget has had no designation of funds for capital or infrastructure other than contribution to the capital improvement fund. While it would be prudent to have done so, there was no discretionary money for such. The City has been trying to manage the impacts of a reduction in State Aid, Grants and downturn in the economy for at least the last 6 years. And currently it is dealing with the effects of tax appeals. They were the reason’s the contribution was required from the LSA in the first place.

Infrastructure and capital projects have been funded through grants and improvement authorizations. The goals and needs of the City should be determined by the Mayor and Council at a much broader and more important level. Carving out these small pieces presents more record keeping and burden and in the long run would not be really feasible. There is no designation for any other contributions made by other utilities. [Back to Agreement](#)

Scope of Services

2.1.1. Why does City Council feel that the Water Utility Management is inadequate? [Back to Agreement](#)

2.1.3. Cooperative Purchasing agreement. [Back to Agreement](#)

2.1.4. Natural Gas and chemical – Commodity resale or cooperative purchasing agreement.
[Back to Agreement](#)

2.1.5. Street Paving - Not a shared service. [Back to Agreement](#)

2.1.7. Maybe a shared services but what maintenance facility are we talking about? The City's vehicle maintenance does not have the man power nor does it have a facility. Will the City have to increase staffing requirements? Will LSA cover the cost? [Back to Agreement](#)

2.1.9. Again this would be a cooperative purchase. Strict guidelines need to be established and both entities would need to be on title for a joint purchase. [Back to Agreement](#)

2.3. This would have been one of the areas where a merger would have produced significant synergies. The sewer bill would have been combined with all utilities. One system, One bill, One mailing, one payment. Priority in payments to be applied needed to be established. But chances are steps would have been or could have been taken earlier because of the combination of all the utilities. Billing would have been on a monthly basis allowing for ability for customers to spread out the charge over a 12 month period. [Back to Agreement](#)

July 15, 2014

TRICO JIF Comments

We have reviewed the shared services agreement between LSA and Vineland only with respect to the language on page 6 paragraphs 6 and 7 (Insurance & Indemnification).

We find the language in the document to be very cumbersome but believe that the intent is for employees of Vineland to remain under the direction and control of Vineland while performing duties under the agreement whether for Vineland or for the LSA and for employees of the LSA to remain under the direction and control of the LSA while performing duties under the contract whether for the LSA or the City of Vineland. That being said, there should be language that clearly sets forth the responsibilities of each party for Workers Compensation, General Liability, Automobile Liability, and damage to owned property. The current language in paragraphs 6 and 7 as referenced above do not delineate these responsibilities.

I would suggest this language for paragraph 6:

Notwithstanding the indemnification and defense obligations of each party to this agreement, LSA and the City of Vineland shall each purchase and maintain such insurance described in the attached schedule and as is appropriate for the work being performed and furnished and as will provide protection from any and all covered claims which may arise out of or caused or alleged to have been caused in any manner from each party's performance and furnishing of services and each party's other obligations under the Agreement, whether it is to be performed or furnished by the party, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the services, or by anyone for whose acts any of them may be liable. [Back to Agreement](#)

Each party shall be required to name the other as an "Additional Insured" on their policy of commercial general liability insurance, and simultaneously with the delivery of the executed Agreement, each party shall provide the other with a Certificate of Insurance indicating that the insurance coverage as described in the attached schedule, and as is appropriate for the work being performed and furnished, has been obtained and that each party has been designated as an "Additional Insured" where required. On or before the renewal date of said policy, each party shall be required to provide the other with a Certificate of Insurance indicating the continuation of insurance coverage and designating the other party as an "Additional Insured".

The schedule of insurance and the limits of liability for the insurance shall provide coverage for not less than the following amounts or greater where required by law:

Notwithstanding the indemnification and defense obligations of the Contractor, the "Contractor" shall

A. Workers' Compensation

Statutory coverage and limits in compliance with the Workers' Compensation Law of the State of New Jersey.

B. General Liability Including Products & Completed Operations With a minimum combined single limit of liability per occurrence for bodily injury and property damage of one million (\$1,000,000) dollars with a minimum annual aggregate of two million (\$2,000,000) dollars.*

Other party shall be named as "Additional Insured".

C. Automobile Liability Insurance

With a minimum combined single limit of liability per accident of one million (\$1,000,000) dollars for bodily injury and property damage. This insurance must include coverage for owned, hired, and non-owned automobiles.

D. Errors and Omissions/Professional Liability

A minimum limit of liability of one million (\$1,000,000) dollars per incident and in the annual aggregate. Failure by the either party to supply such written evidence of required insurance and to maintain same for the duration of this Agreement shall result in default under this Agreement.

The insurance companies for the above coverages must be acceptable to the parties. Each party shall take no action to cancel or materially change any of the insurance required under this Agreement without the other party's prior approval. The maintenance of insurance under this section shall not relieve either party of any liability greater than the limits or scope of the applicable insurance coverage.

With respect to indemnification, you want the agreement to say that the LSA will be responsible for its actions and Vineland will be responsible for theirs. You may want to insert the following language in lieu of paragraph 7:

LSA shall indemnify, save harmless and defend the City of Vineland, its elected and appointed officials, its employees, agents, volunteers and others working on behalf of the City of Vineland, from and against any and all claims, losses, costs, attorney's fees, damages, or injury including death and/or property loss, expense claims or demands arising out of or caused or alleged to have been caused in any manner by a defect in any equipment or materials supplied under this agreement or by the performance of any work under this agreement, including all suits or actions of every kind or description brought against the City of Vineland, either individually or jointly with LSA for or on account of any damage or injury to any person or persons or property, caused or occasioned or alleged to have been caused by, or on account of, the performance of any work pursuant to or in connection with this agreement, or through any negligence or alleged negligence in safeguarding the work area, or through any act, omission or fault or alleged act, omission or fault or alleged act, omission or fault of LSA, its employees, Subcontractors or agents or others under the control of LSA.

The City of Vineland shall indemnify, save harmless and defend LSA, its elected and appointed officials, its employees, agents, volunteers and others working on behalf of the LSA, from and against any and all claims, losses, costs, attorney's fees, damages, or injury including death and/or property loss, expense claims or demands arising out of or caused or alleged to have been caused in any manner by a defect in any equipment or materials supplied under this agreement or by the performance of any work under this agreement, including all suits or actions of every kind or description brought against LSA, either individually or jointly with the City of Vineland for or on account of any damage or injury to any person or persons or property, caused or occasioned or alleged to have been caused by, or on account of, the performance of any work pursuant to or in connection with this agreement, or through any negligence or alleged negligence in safeguarding the work area, or through any act, omission or fault or alleged act, omission or fault or alleged act, omission or fault of the City of Vineland, its employees, Subcontractors or agents or others under the control of the City of Vineland. [Back to Agreement](#)

The above language makes it clear that each party to the agreement shall be responsible for their own actions. I would also state the following under paragraph 2.1.9:

Vehicle and equipment liability and physical damage insurance will at all times be the responsibility of the vehicle/property's owner regardless of whom is in possession of the vehicle/equipment at the time of loss. [Back to Agreement](#)

Go Back to Agenda

On a final note, the LSA Executive Director cannot be covered by Vineland's professional liability (POL) policy since he is providing a professional service to the City of Vineland in his capacity as the Executive Director for the LSA. You must iron this out in the agreement.

I would like to emphasize that the discussion set forth above is only an insurance/risk management perspective and is NOT legal advice. We do not provide legal advice as we are not qualified to do so. I highly recommend that you seek the advice of legal counsel in order to become fully apprised of the legal implications related to these issues.

Please read the contract carefully and make sure you are completely comfortable with all business provisions contained in it. If questions arise concerning any business issue, please contact your solicitor for further clarification or direction.

Thanks.

Paul A. Forlenza
Area Vice President
Public Entity Practice

Arthur J. Gallagher & Co.
P.O. Box 530 | 6000 Sagemore Drive, Suite 6203 | Marlton, NJ 08053
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July 15, 2014

Department of Public Works Comments

2.1.5..Street Paving.

The City street paving is already backlogged, and any additional responsibilities relative to the LSA would create a further backlog. Settlement problems over LSA mains would present additional problems.

[*Back to Agreement*](#)

2.1.7..Vehicle Maintenance.

The workload that the existing City fleet presents already exceeds the manpower to perform it.

[*Back to Agreement*](#)

July 15, 2014

Comments by Municipal Utilities

Recitals H:

Revise to read as follows:

The City and LSA mutually agree to share management expertise and insights for better strategic decision making. [Back to Agreement](#)

1.2:

Such City contributions cannot be earmarked for a specific purpose or come with strings attached. [Back to Agreement](#)

2.1.3:

When combined bidding occurs, the lead agency will properly allocate staff costs to the other agencies. [Back to Agreement](#)

2.1.4:

When combined bidding occurs, the lead agency will properly allocate staff costs to the other agencies. [Back to Agreement](#)

2.2:

Should address financing, as the City can do it better with savings for its rate payers. [Back to Agreement](#)

2.3:

I would imagine that this is the most important part of the document, for LSA. Since they bill bi-annually, an outstanding \$1,000 payment would require ignoring the bill for around a year and a half. I would be curious to see if the owner/tenant has also renegeed on paying water and electric. If for some reason the other utilities were being paid regularly, shutting off the service would result in lost income for us.

Any termination of service must be in accord with VMU policies and schedule. Recognize that water service is turned off as the last option for customers taking both water and electric service and further that any unintended damage to shutoff valves shall be the cost responsibility of the agency requesting the shutoff. However coordinating such a service will only be practical if customer service and billing functions are combined. If customer service is combined, customer service representatives need proper training, compensation, software configuration and reporting structure within the organization from one director (not two directors). In addition, if VMU is to do cut offs, LSA must develop a plan to identify the correct water meter related to the LSA account as more than one meter can be active at a location. The coordination with sewer accounts (should customer service not be combined) is LSA's responsibility. LSA would be responsible to field customer inquiries regarding shut offs and reconnections.

[Back to Agreement](#)

July 15, 2014

Comments by John Boyle of the Electric Utility

1. Recommend complete review by the City Solicitor to ensure that the City's rights are fully protected.
2. RECITAL B and BASIC TERMS 1.2 should be rewritten to ensure that the CITY retains all rights accorded by NJ State Statue to demand the maximum payment in lieu of taxes from LSA on an annual basis. There should be no restriction on the use of said funds. (...first \$50k per year shall be dedicated by the City to fund...). These use of these funds shall be determined by the annual City Budget as approved on an annual basis. [Back to Agreement](#)
3. SCOPE of SERVICES 2.1.7: This section refers to Fleet Maintenance and the use of CITY facilities and manpower for repair and maintenance of LSA equipment and vehicles. It is not clear as to which CITY facilities are being offered. Public Works and the Electric Department both maintain fleet maintenance facilities. I presume this joint service is being offered through the Public Works Garage since they have more manpower and resources at their disposal than the EL Department garage. Any major repair work should require LSA to provide its own PO for procurement of parts and/or vendor services. The bimonthly "true up" on expenses should be limited to minor parts, fluids, lubricants, expendable materials, environmental and disposal fees, labor costs and administrative fees as documented by the City via its normal accounting practices and procedures. [Back to Agreement](#)
4. SCOPE of SERVICES 2.1.8: The allocation of easement maintenance, or the expenses incurred for same, should be based upon the ownership and/or usage of said easements. For example:
 - a. The City is the sole user of a particular easement for the purpose of maintaining water or electric service, the City bears the expense.
 - b. LSA is the sole user of a particular easement for the purpose of maintaining sewer service, the City bears the expense.
 - c. The City and LSA share a common easement, both parties will reach a mutual agreement on the allocation of costs based upon the proportional usage thereof. [Back to Agreement](#)
5. SCOPE of SERVICES 2.1.9, Sharing of Equipment and Vehicles:
 - a. 2.1.9.1- User of said equipment or vehicle shall return equipment or vehicle in good repair and full tank of fuel to respective party.
 - b. 2.1.9.2- Joint Purchase of equipment or vehicle shall require mutual consent. [Back to Agreement](#)
6. SCOPE of SERVICES 2.3, Delinquent Sewer Accounts: This section should be reviewed by Health and L & I and should include language requiring notice of forced termination of water service to the proper department(s) or authority for the proper enforcement of Health Codes, Occupancy Codes or other City or State mandated codes. [Back to Agreement](#)
7. ADDITIONAL TERMS 5.2, change to All "**LSA RATEPAYER**" requests... [Back to Agreement](#)

July 15, 2014

Water Utility Comments

Recitals G:

How many pipe repairs does LSA actually perform in-house? My understanding is that most new installations are performed by Contractors and I would assume that the same is for repairs. Where our water mains have an average cover of 42", sanitary mains can exceed 20' feet in depth. Do they actually install service laterals or is this also done by a private contractor? Most laterals installations for commercial businesses I've seen have been performed by an outside entity. Having the Water Utility perform this work benefits LSA but further straps our capabilities to take care of our own infrastructure.

Equipment-Does LSA have backhoes and dump trucks of various sizes? If not, the added workload will require more frequent maintenance and repair.

Personnel for Repairs – How many workers does LSA actually have for this type of work. One crew, several crews?

Health Issues-Working around sanitary effluent would require all crew members to be vaccinated for hepatitis and receive booster shots. [Back to Agreement](#)

Recitals H:

Shared services indicates two separate entities working together and that is where my concerns lie. If you have a director of one entity reviewing the functions of another, what safeguards can be set in place to make sure that suggestions made do not ultimately benefit the former entity rather than the City. Mr. Palmer is very knowledgeable with sanitary sewer and is a good businessman but you have to keep in mind that he runs LSA and being impartial can be difficult. Would Dennis like to have someone serve in an advisory capacity for LSA? Again, I'm just wondering where this suggestion originated and how does that reflect upon our current operations.

I believe that the City already has the expertise in place to run all aspects of the water utility. That includes the current Director and all other Depts. that support VMWU. We also should not need a shared services agreement to get advice from Mr. Palmer. I can call 25 water utility Superintendents and or the DEP myself for advice on these things or anything. Sewer plants have different regulations than water utilities and therefore Mr. Palmer's area of expertise may not apply to VMWU. [Back to Agreement](#)

2.1.1:

How much weight will Mr. Palmer's advice and expertise have in actual decision making? Will his suggestions end up being directives that must be followed by the Utility? If the Utility has a Director, Superintendent and professional staff that already addresses managerial and support staff operations, why are Dennis's services required? Services are to be rendered at no cost to the City but what are the ramifications to the Utility? No one is expert in everything and I feel it is a great asset to discuss things with others, such as Dennis, that have knowledge and experience but will all final decisions still be rendered by the City Director of the Utilities? [Back to Agreement](#)

2.1.2:

The Water Utility should not be involved in sanitary sewer repairs. This could be more of a liability the City. All VMWU Civil Service workers job titles call for water repairs. They are not Water and Sewer repairers. Sewer repairs require Hepatitis immunizations which our employees don't or may not want to have. Also sewer repair work is more hazardous as it always tends to be a deep bury beyond 4 ft. VMWU employees may not want to be involved in this hazardous sewer repair work. [Back to Agreement](#)

2.1.9:

An occasional sharing of equipment is one thing but as indicated within this section will require a great deal of oversight to make sure improper use/damage to equipment is immediately addressed. Specialized equipment, from both the Utility and LSA will require that the person operating it be adequately trained and experienced to avoid mishaps and equipment failures. There is already a State wide plan for this it is called NJWARN and it is for utilities to share equipment when needed but mostly for emergencies. Here is the link: <http://www.njwarn.org/>. [Back to Agreement](#)

2.3:

I would imagine that this is the most important part of the document, for LSA. Since they bill bi-annually, an outstanding \$1,000 payment would require ignoring the bill for around a year and a half. I would be curious to see if the owner/tenant has also reneged on paying water and electric. If for some reason the other utilities were being paid regularly, shutting off the service would result in lost income for us. I believe customers should have more than 72 hours of notice. Shutoffs shall not overlap on the same days or weeks as the water utility shutoffs. More liability and costs need to be included and evaluated. This is a major problem for Billing and customer service to coordinate as LSA and the City are on different software systems. [Back to Agreement](#)

The one overriding thing that troubles me with this document is the fact that City Management and Professional Staff was not part of the effort thus it was not a combined effort between LSA and the City. Efficiency and fiscal responsibility are things we all strive for and I would feel a whole lot better about this proposed arrangement if it was something that was generated by a mutual desire between the parties rather than a response to disagreements or political controversy.

July 15, 2014

Public Relations Comments

Mayor, per your request:

We have reviewed the proposed Shared Services Agreement by and between the Landis Sewerage Authority and the City of Vineland. While it is apparent that a considerable amount of time has been spent in crafting the agreement, we are not in a position to comment on the potential effect of implementation that may occur on individual city departments.

However, we do believe that from a policy standpoint all parties should continue to work together towards a sustainable resolution that benefits both taxpayers and ratepayers. Successful intra-jurisdictional cooperation will bring the city and the LSA greater efficiency and savings. It is important to stay focused on the long-term benefits that both entities can achieve by working together.

With respect to the agreement, we do believe there is one additional item that deserves consideration for possible inclusion in the final draft. There are economic development synergies that exist between the LSA and the city's Department of Economic Development. We believe this presents opportunities for joint marketing efforts, and that this should be further explored. [Back to Agreement](#)

Michael Tofanelli



MEMORANDUM

TO: Ruben Bermudez, Mayor

FROM: Kathleen Hicks, Supervising Planner

TOPIC: Landis Sewerage Authority (LSA) Shared Services Agreement

DATE: May 20, 2014 [Back to Agreement](#)

I have worked for the City for over 26 years. During that time, the City and LSA have worked together cooperatively on issues of common interest. The LSA (along with the CVEU, Water Utility and Chamber of Commerce) contributed to the funding for the 1992 City Master Plan. The LSA undertook a number of studies of problem areas where the City had either secured federal EDA money for construction (e.g., Mill Road and S. Delsea Drive force mains) or intended to do an assessment project (e.g., SE Vineland and Jackson Drive projects). The City also worked with the LSA on the development of the Wastewater Management Plan, which was finally approved by DEP after 16 years of effort.

There have, however, been issues where the City and the LSA have not been in agreement. They are as follows:

1. Provision of service outside of the City
2. Responsibility for the collection system
3. Contribution to the City

I attribute the lack of agreement on these significant issues to the very nature of authorities. Once created, they become their own animal, separate and apart from the entity that created them. They view themselves as a business. The health of their business is frequently of a higher priority than serving the entity that created them. This problem is not unique to the LSA, but is rather typical of all authorities.

The first issue, the provision of service outside of the City, is often re-visited. From the LSA's perspective, extending service translates into revenue, or the health of their business. From the City's perspective, extending service translates into a loss of capacity for Vineland. Over the years, a number of adjoining municipalities have approached the LSA. Fortunately, the LSA has bowed to the City's position. There were two times, however, where mayors supported the provision of service outside of Vineland. One system was built to serve Sechler Foods in Franklin Township, which ties up a tremendous amount of capacity to this day (equivalent to about 1,000 homes). The other system wasn't built. The proposed agreement does address this issue in section 1.3.

The second issue, the responsibility for the collection system, is the one of greatest significance from a planning perspective. In my opinion, the Authority is a well-run utility, but for the collection system. They have been very progressive in the development of the Mill Road treatment facility. The collection system is another matter. The collection system is totally unplanned. Quite frankly, it is spaghetti! It is the position of the LSA that someone else has to build the collection system, which means a developer or the City. The City doesn't have the resources to extend sewer service. We have secured federal EDA money for a couple of projects, but it is a very competitive grant process. Industrial development also has to be at the end of the line. The funding isn't intended for residential or commercial areas. The City can also do assessment projects, but I think 50% +1 of the beneficiaries of a project have to be in agreement. The end result is that most sewer lines that have been built are done by developers. They build to serve their own projects. There is no plan of how the sewer service area, which is delineated in the Wastewater Management Plan, is to be sewered. What is being installed is a system of force mains, low pressure force mains and gravity lines that look like spaghetti.

How is Lilliston Ford served? They have to pump east to Sarah Place because there is no sewer in N. Delsea Drive. How is Marciano's Restaurant served? They have to pump east to Sarah Place because there is no sewer in N. Delsea Drive. How will the proposed Marcacci Meats at the northeast corner of Delsea and Oak to be served? They will have to pump east because there is no sewer in N. Delsea Drive. How will the proposed Dandelion Plaza on the northwest corner of Delsea and Wheat be served? They will have to pump to the east to West Avenue because there is no sewer in N. Delsea Drive. How will the proposed Horse Bridge Village on the northeast corner of Main and Wheat be served? They will have to pump to the west to Briar Glen. How is Wal-Mart served? They had to pump to the east to Delsea Drive because there is no sewer in Landis Avenue. How is the new Shop Rite served? They have to pump south to Woodlawn Street because there is no sewer in Landis Avenue.

The collection system needs to be planned, constructed and maintained by the LSA. I'm not suggesting that the City and developers not do their part, but ultimately they should be contributing to a bigger planned system. The LSA needs to develop a capital improvement program that deals with more than the Mill Road facility and the pump stations. It is recognized that this isn't an easy task because of Vineland's relatively flat terrain and because there is no predictability to when development will occur. But the problem with the collection system needs to be addressed. This problem isn't visible to elected officials and the public, but it exists. It greatly impacts upon the development of the City. The lack of infrastructure can be a deal breaker.

The last issue is the contribution to the City. I personally don't know the rationale behind the provision in State law that allows the City to request the funding. It is only a guess that it is some type of compensation for tax exempt property or the use of public right-of-way. The reality is, however, that the City needs funding for operating expenses. The LSA's assertion that they would have to raise taxes again to give the City money a second year isn't correct. If they raised rates last year to generate a certain dollar amount, the rates would generate the same dollar amount this year for the City. If there is a need to raise rates again, there must be a different reason.

In my opinion, in lieu of the City taking over the LSA, entering into a formal agreement is a good idea. But there needs to be more professional involvement in the development of the agreement. We don't understand each other's operations sufficiently to ascertain where shared services or cooperative purchasing makes sense. Also, any money coming to the city should not be ear-marked. The City should be given the flexibility to put the funds to the greatest need.

July 15, 2014

Purchasing Comments

I have reviewed, as requested, the LSA Shared Services Agreement.

I offer the following comments for Section 2 – Scope of Services –

All of the services outlined in this section and any other section, that relate to purchasing efforts for goods, services, construction, maintenance, etc., are not classified as “shared services”.

These services cannot be acted upon by simply adopting a “Shared Services Agreement”

These services are considered Cooperative Purchasing –

“Cooperative Purchasing” is an inclusive term used to describe all purchasing systems where two or more local contracting units join together for the provision or performance of goods or services as provided for by the *Local Public Contracts Law* and the *Public School Contracts Law*.

I am attaching a Guide for Cooperative Purchasing that deals with types of Cooperative Purchasing and the guidelines/regulations that must be followed. [Back to Agreement](#)

If you have any questions or need additional information, please let me know.

Thank You.

Yvonne Lewis, RPPO
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PO Box 1508
Vineland, NJ 08360
(856) 794-4000 Ext. 4045
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Email: ylewis@vinelandcity.org

COOPERATIVE PURCHASING: A GUIDE FOR LOCAL OFFICIALS

(FIFTH EDITION)



State of New Jersey
Jon S. Corzine, Governor

Department of Community Affairs
Susan Bass Levin, Commissioner

Division of Local Government Services
Susan Jacobucci, Director

February 2002
Reprinted, September, 2006

F O R E W O R D

To the

FIFTH EDITION

The initial Rules addressing Cooperative Purchasing were adopted in 1979. Now after twenty-two years, there are 110 Cooperative Purchasing Systems representing more than 2,600 local governments. With an ever-increasing interest in Cooperative Purchasing, the process for the establishment and registration of a Cooperative Purchasing System has been simplified and the types of programs expanded.

The Fifth Edition of the Guidelines has been updated to reflect the recent modifications to the *Cooperative Purchasing Rules* resulting from revisions to the *Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.)* and the *Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.)*. In addition, the *Electric Discount and Energy Competition Act (P.L.1999, c.23) (N.J.S.A. 48:3-49 et al.)* also resulted in modifications to the *Cooperative Purchasing Rules*.

COOPERATIVE PURCHASING GUIDELINES

I. INTRODUCTION

When local governments put aside provincial interests in exchange for the broader benefits to be achieved through Cooperative Purchasing, they can secure the provision and performance of goods and services at a lower cost. Cooperative Purchasing has demonstrated a strong ability to serve as an effective tool to assist local officials save taxpayer dollars. Cooperative Purchasing represents viable alternatives to the conventional “go-it-alone” bidding process.

The Cooperative Purchasing Systems registered with the Division of Local Government Services include among their membership counties, municipalities, boards of education, local authorities and other contracting units. Cooperative Purchasing provides local officials with a viable proven alternative purchasing protocol. References to the “Rules” means the *Cooperative Purchasing Rules (N.J.A.C. 5:34-7.1 et seq.)*

This publication describes the different types of Cooperative Purchasing Systems. It contains sample documents for the establishment and participation in a Cooperative Purchasing System. Sample resolutions and agreements are for guidance and should be used with the advice of counsel.

The Division of Local Government Services encourages you to consider the benefits of participating in a Cooperative Purchasing System.

Should you have any questions about Cooperative Purchasing, please contact the Division at:

Bureau of Local Management Services
Division of Local Government Services
Post Office Box 803
Trenton NJ 08625-0803

Phone: 609.292.7842

Web Site:

<http://www.nj.gov/dca/lgs/lpcl/index.shtml>

E-mail: lpcl@dca.state.nj.us

COOPERATIVE PURCHASING GUIDELINES

II. COOPERATIVE PURCHASING IS FOR YOU!

Cooperative Purchasing holds great appeal insofar as lower bids may be expected when higher quantities can be aggregated. When evaluating whether to participate in a Cooperative Purchasing System, consider the following as part of the decision-making process:

Participation in a Cooperative Purchasing System does not relieve a local government of its mandated legal responsibilities.

At a minimum, each participant is required to certify that it has received the goods or services as ordered as a basis for payment. The general obligations under the *Local Public Contracts Law* and the *Public School Contracts Law* with regard to advertising, the proper handling of bids and the method of awarding contracts are still applicable. Be certain that the Cooperative Purchasing Agreement clearly defines responsibility for these provisions.

Determine exactly what it is you want to buy.

It may seem easier to rely on specifications drafted by another local government. However, if the specifications do not reflect your own particular needs, you may encounter difficulties. Specification writing is something of a special art. There are many different characteristics that can be specified for most goods and services. Your own needs may not be well served by another's assumptions. Therefore, you may want to consider drafting your own specifications, and not participate in the System's request for bids for that particular good or service.

Items purchased through a Cooperative Purchasing System are not always cheaper than what you can purchase yourself.

Price differentials are dependent on numerous business considerations such as location, inventory levels, timing of delivery, etc. The quality or characteristics of the good or service may not necessarily be what you want either. This is yet another reason to retain your own staff capability to analyze each situation before you act.

Once a determination is made that a Cooperative Purchasing System is desirable, make sure you go about it properly.

The agreement to be drafted must not only meet the requirements of State law and regulations, but also clearly assign the responsibilities to the various participants. It is better to think about possible problems before they arise, rather than ending up in court!

Networking - A secondary benefit.

COOPERATIVE PURCHASING GUIDELINES

Periodic meetings of the members of the Cooperative Purchasing System can serve as a forum for the exchange of ideas beyond purchasing.

Beyond Cooperative Purchasing.

Several systems have implemented a cooperative auction for the disposal of surplus equipment. This has helped members dispose of everything from trucks to bicycles and fishing rods, not to mention a row boat with a hole in its hull.

III. TYPES OF COOPERATIVE PURCHASING

“Cooperative Purchasing” is an inclusive term used to describe all purchasing systems where two or more local contracting units join together for the provision or performance of goods or services as provided for by the *Local Public Contracts Law* and the *Public School Contracts Law*.

COOPERATIVE PRICING

“Cooperative Pricing” is a purchasing system in which a Lead Agency advertises for bids; awards a master contract to the vendor providing for its own needs and for the prices to be extended to registered members; and notifies the members of the contract awarded. The registered members then contract directly with the vendor for their own needs, subject to the specifications in the master contract.

Separate contracts or purchase orders are executed between each participating government agency and the successful vendor. The Lead Agency essentially is providing the members of the Cooperative Pricing System the availability of prices for specified items based upon its having carried out the advertising and bid procedures required by the *Local Public Contracts Law*.

The Lead Agency in a Cooperative Pricing System does not bear any contractual responsibility to the vendor, except with respect to those items, which it orders for its own needs. However, in case of disputes, it is conceivable that the Lead Agency might be drawn into litigation.

The bid document notifies potential bidders of the desire of the Lead Agency to make the resulting bid prices available to the participating members of the System. The vendor, in submitting its bid, stipulates whether the price bid will be available to the participating members of the System. The prices and the exact nature and quality of the goods and

COOPERATIVE PURCHASING GUIDELINES

services provided cannot deviate from what was described in the specifications and awarded in the contract. The overall contract award is controlling with respect to specifications and prices, even though quantities are contracted for by the other participants via their own contract or purchase order.

The State Cooperative Purchasing System managed by the Division of Purchase and Property in the Department of the Treasury is a large-scale version of a cooperative pricing system. Certain goods and services purchased under State contract may be purchased by local governments. Information is available from the Division of Purchase and Property by calling 609.984.7047 or at their web site, www.state.nj.us/treasury/purchase.

JOINT PURCHASING

In a Joint Purchasing System, two or more local contracting units agree that one of them will serve as the Lead Agency or “purchasing agent” for the system, at least with respect to certain specified categories of purchases. The Lead Agency, in its capacity as purchasing agent, does the purchasing for the members of the System. It prepares the formal bid specifications; advertises for and receives bids; and executes a contract with the lowest responsible bidder for the full amount of the commodities or services needed by all participants.

A significant difference between Joint Purchasing and Cooperative Pricing is that Joint Purchasing requires the participants to identify in advance the specific individual quantity for the particular good or service to be bid. In addition to its other responsibilities, the Lead Agency is responsible for certifying that funds are available not only for its own needs, but for the aggregate quantity from all of the other participants. The contractual relationship, which ensues, is between the vendor and the Lead Agency. Only the Lead Agency does the buying and deals with the vendor. Thus, after the receipt of bids and evaluation, but prior to the award of a contract, funds for the purchase of the goods or services are transferred from the members to the Lead Agency. The lead agency then adjusts its budget accordingly. Details for these actions are arranged by the respective local unit financial officer.

COMMODITY RESALE

With the implementation of stricter environmental standards for underground gasoline storage tanks, many local governments removed their tanks and closed their gas dispensing facilities. As an alternative, they entered into contractual relationships with neighboring governments for the purchase of gasoline and diesel fuel.

Similarly, many local contracting units purchase snow removal chemicals from neighboring local governments. In most instances this results in cost savings since there is no need to construct and maintain a separate salt silo. The "resale" of commodities has also

COOPERATIVE PURCHASING GUIDELINES

been found to exist, albeit to a lesser extent, in the area of public works materials, such as road and roadway construction materials.

The commodities available for “resale” are limited by the *Rules* to gasoline, diesel fuel, snow removal chemicals and public works materials.

Only by establishing a Commodity Resale System may the seller, the System’s Lead Agency, through a Dedication by Rider, deposit the funds received from the sale of gasoline into the “fuel” account, for example, rather than returning the funds to surplus.

COUNTY COOPERATIVE CONTRACT PURCHASING

County Cooperative Contract Purchasing is a Cooperative Purchasing System that may be created only by a county government. The county advertises for bids and awards a contract to the successful bidder. With the approval of both the county and the successful vendor, local contracting units located within the geographic boundary of the county may purchase under the contract subject to its specifications, terms and conditions. It is similar in concept to the State Cooperative Purchasing System.

This form of Cooperative Purchasing should not be used as a substitute for Cooperative Pricing. County Cooperative Contract Purchasing should be limited to those situations where exact quantities are not known and the commodity to be purchased is unique. Remember, the primary beneficiary is the vendor. The price reduction achieved through the purchase of mass quantities as in Cooperative Pricing or Joint Purchasing is not to be found in County Cooperative Contract Purchasing.

REGIONAL COOPERATIVE PRICING SYSTEM

Regional Cooperative Pricing is a Cooperative Pricing System composed of two or more registered Cooperative Pricing Systems and their participating contracting units that have agreed to join together for the provision and performance of goods and services, including the purchase of energy.

Regional Cooperative Pricing is an outgrowth of the deregulation of energy and the need for an uncomplicated and efficient method for existing registered Cooperative Pricing Systems to join together to aggregate their energy needs. A process was developed that would not require the Lead Agency of each participating system to secure new participatory resolutions and cooperative purchasing agreements from the individual members of each system. By virtue of membership in one of the systems forming the Regional Cooperative Pricing System, the participating local governments are members of the Regional Cooperative Pricing System.

COOPERATIVE PURCHASING GUIDELINES

IV. LEGAL BASIS FOR COOPERATIVE PURCHASING

The basis for Cooperative Purchasing is to be found in the *Local Public Contracts Law* (N.J.S.A. 40A:11-11) and the *Public School Contracts Law* (N.J.S.A. 18A:18A-11).

LOCAL PUBLIC CONTRACTS LAW

State Cooperative Purchasing Program

N.J.S.A. 40A:11-12 provides for the participation of local governments in the Cooperative Purchasing Program administered by the Division of Purchase and Property in the Department of the Treasury. This is essentially a Cooperative Pricing Service, through which certain commodities purchased under State contract may also be purchased by local governments. Not all commodities purchased by the State may be purchased by local governments.

The State can provide lists of available State contract commodities. Local governments may then contact the vendor directly. Purchases made under State contract cannot differ as to specification, quality or price from that contained in the State contract. However, in some cases a higher price may be charged to local governments if specified in the State contract.

In dealing with State contracts, local governments should take into account the following issues:

- Avoid the temptation to purchase goods and services from a vendor that is not on the State contract.
- Always verify that the specific goods and services were awarded to the successful vendor or otherwise covered under the contract.
- That the prices being charged are consistent with the contract award.

Whenever making such a purchase, the vendor's State Contract number should be verified with the Division of Purchase and Property that may be contacted at 609.984.7047 or www.state.nj.us/treasury/purchase.

While the State regulations do not require formal action by local governing bodies to participate, the local governments themselves are required to observe the basic requirements of the *Local Public Contracts Law* or the *Public School Contracts Law*. This means that the governing body must award contracts over the current bid threshold amount (N.J.A.C. 5:34-7.29(c)). The purchasing agent may be authorized by resolution to make purchases below the bid threshold amount. Information on the amount of the current bid threshold may be obtained by contacting the Division of Local Government Services at 609.292.7842.

COOPERATIVE PURCHASING GUIDELINES

Local Systems

N.J.S.A. 40A:11-10 and *11* and *N.J.S.A. 18A:18A-11* permit counties, municipalities, school districts and authorities to provide for the provision and performance of goods and services by joining together for the creation of purchasing systems. *N.J.S.A. 40A:11-10* provides for joint purchasing systems while *N.J.S.A. 40A:11-11* furnishes the statutory authorization for cooperative pricing. County Cooperative Contract Purchasing is specifically provided for in *N.J.S.A. 40A:11-11(6)*.

N.J.S.A. 40A:11-11 requires approval of all cooperative purchasing systems by the Director of the Division of Local Government Services before they can operate. The statute also details the general obligations of local governments and vendors with an eye toward preventing abuses.

The status of boards of education with respect to Cooperative Purchasing is somewhat unique. The *New Jersey Administrative Code* for the Department of Education at *6A:23-7.4* states:

A district board of education or charter school board of trustees may by resolution establish a joint purchasing system pursuant to *N.J.S.A. 40A:11-11*. Such joint purchasing system shall become effective only upon approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

Therefore, before a board of education may implement a cooperative purchasing system, compliance with the *Cooperative Purchasing Rules* and approval of the proposed system by the Director of the Division of Local Government Services is required.

Dispute Resolution — Boards of Education Only

In a purchasing system composed solely of boards of education, if a controversy or dispute arises among the parties with regard to a contract, the matter is referred to the county superintendent of the county in which the districts are located for resolution pursuant to *N.J.S.A. 18A:18A-14*. If the districts are in different counties, the dispute is referred to the superintendents of the respective counties. Failure of the superintendents to achieve resolution within 30 days, requires the matter be referred to the Commissioner of the Department of Education for determination.

COOPERATIVE PURCHASING GUIDELINES

V. OBTAINING STATE APPROVAL

HOW TO REQUEST APPROVAL

The process for the registration of a Cooperative Purchasing System is straightforward. The Lead Agency submits an application to the Division for review and approval. The application includes: (1) authorizing resolutions from the Lead Agency and system member(s); (2) a copy of the Cooperative Purchasing Agreement between the Lead Agency and each member(s) of the system; and (3) the appropriate Cooperative Purchasing Form (See Table below).

COOPERATIVE PURCHASING FORMS

TYPE OF PURCHASING SYSTEM	FORM
Cooperative Pricing	CP-2001
Joint Purchasing	
Regional Cooperative Pricing	
Commodity Resale	CP-2060
County Cooperative Contract Purchasing	CP-1917

The Division will act upon a request for registration within 45 days of receipt, unless additional information is required.

Approval is valid for a period of up to five years, and is only applicable with respect to the system as described in the application. If additional participants join, terms of the relationship are changed, or the scope of the items to be purchased is expanded, an additional application must be filed.

CRITERIA FOR APPROVAL

The basic criteria for approval are set forth in *N.J.S.A. 40A:11-11(a)-(d)* and are applicable to local government and boards of education. The Division will make sure that the provisions of law are complied with. The Division will be especially interested in having a clear understanding of the roles of the respective participants. It is of even greater importance to the participants themselves that their respective rights, responsibilities and duties be mutually understood at the outset.

COOPERATIVE PURCHASING GUIDELINES

IDENTIFICATION CODE

Upon approval of a new purchasing system, the Division will assign it a unique alphanumeric identifier. All documentation utilized in connection with activities of the Cooperative Purchasing System must display the System's identifier. Its use will assist in identifying how the competitive bid price was established, and will facilitate the audit process.

Purchases made through a Cooperative Purchasing System do not have to be reported to the Division.

Just remember — the principles of the *Local Public Contracts Law* and the *Public School Contracts Law*, as well as sound financial management, which apply to independent purchasing by a governmental unit, also apply to purchasing made through a Cooperative Purchasing System.

VI. USE OF PRE-EXISTING CONTRACTS

The Cooperative *Purchasing Rules* at *N.J.A.C. 5:34-7.12*, permit a new or existing member of a Cooperative Purchasing System to purchase under the terms and conditions of a contract previously awarded by the Lead Agency on behalf of itself and the members of the system, in two unique situations:

- A registered member of a Cooperative Pricing System who has not submitted an estimate for the good or service being bid.
- A contracting unit, which becomes a registered member of the Cooperative Pricing System subsequent to the award of a contract.

Written approval of both the Lead Agency and the contractor is required before the registered member may avail itself of the already awarded contract.

The Lead Agency should monitor the use of pre-existing contracts, especially if it appears that the same registered member fails to submit estimates, but then seeks approval to use the awarded contract. While the "non-estimate submitting" member will benefit from a lower price, all of the members who initially submitted estimates might have realized additional cost savings had this member submitted its estimate on time.

The use of pre-existing contracts should be the exception, not the rule.

COOPERATIVE PURCHASING GUIDELINES

VII. COOPERATIVE PRICING SAMPLE DOCUMENTS

The following pages contain a series of sample documents for the establishment and participation in a Cooperative Pricing System.

The appropriate documents should be tailored to meet the specific needs of your situation. Any resolution or agreement should be reviewed by counsel prior to adoption.

Be sure that the document clearly details the responsibilities of the parties and sets forth the procedures to be followed.

SAMPLE FORM	PAGE
Lead Agency Resolution for the Establishment of a Cooperative Pricing System	13
Resolution for Member Participation in a Cooperative Pricing System	15
Cooperative Pricing System Agreement	17

COOPERATIVE PURCHASING GUIDELINES

LEAD AGENCY RESOLUTION
FOR THE ESTABLISHMENT OF
A COOPERATIVE PRICING SYSTEM

A RESOLUTION AUTHORIZING THE (CONTRACTING UNIT)
TO ESTABLISH A COOPERATIVE PRICING SYSTEM AND TO ENTER INTO
COOPERATIVE PRICING AGREEMENTS WITH OTHER CONTRACTING UNITS

RESOLUTION NUMBER _____

WHEREAS, *N.J.S.A. 40A:11-11(5)* authorizes two or more contracting units to establish a Cooperative Pricing System and to enter into a Cooperative Pricing Agreement for its administration; and

WHEREAS, the (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey is desirous of establishing a Cooperative Pricing System and entering into a Cooperative Pricing Agreement with other contracting units;

WHEREAS, the (CONTRACTING UNIT) has agreed to serve as the Lead Agency for a Cooperative Pricing System; and

WHEREAS, on (DATE OF ACTION) the governing body of the (CONTRACTING UNIT), County of (COUNTY NAME), State of New Jersey duly considered the establishment of a Cooperative Pricing System for the provision and performance of goods and services,

NOW, THEREFORE BE IT RESOLVED as follows:

COOPERATIVE PRICING SYSTEM ESTABLISHED

The (GOVERNING BODY) hereby authorizes the creation of a Cooperative Pricing System to be known as (NAME OF COOPERATIVE PRICING SYSTEM) with the (CONTRACTING UNIT) serving as the Lead Agency.

COOPERATIVE PRICING AGREEMENT

The (CHIEF EXECUTIVE OFFICER) is hereby authorized to enter into separate Cooperative Pricing Agreements with the participating contracting units and said Agreement shall be deemed a single Agreement.

COOPERATIVE PURCHASING GUIDELINES

COPY OF RESOLUTION TO DIVISION OF LOCAL GOVERNMENT SERVICES

A single certified copy of this resolution shall be forwarded to the Division of Local Government Services as part of the application for the registration of this Cooperative Pricing System.

EFFECTIVE DATE

This resolution shall take effect immediately upon passage.

BY: _____
(NAME AND TITLE)

ATTEST BY: _____
(NAME AND TITLE)

COOPERATIVE PURCHASING GUIDELINES

RESOLUTION FOR MEMBER PARTICIPATION
IN A COOPERATIVE PRICING SYSTEM

A RESOLUTION AUTHORIZING THE (CONTRACTING UNIT)
TO ENTER INTO A COOPERATIVE PRICING AGREEMENT

RESOLUTION NUMBER _____

WHEREAS, N.J.S.A. 40A:11-11(5) authorizes contracting units to establish a Cooperative Pricing System and to enter into Cooperative Pricing Agreements for its administration; and

WHEREAS, the (NAME OF LEAD AGENCY), hereinafter referred to as the "Lead Agency" has offered voluntary participation in a Cooperative Pricing System for the purchase of goods and services;

WHEREAS, on (DATE OF ACTION) the governing body of the (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey duly considered participation in a Cooperative Pricing System for the provision and performance of goods and services;

NOW, THEREFORE BE IT RESOLVED as follows:

TITLE

This RESOLUTION shall be known and may be cited as the Cooperative Pricing Resolution of the (CONTRACTING UNIT)

AUTHORITY

Pursuant to the provisions of *N.J.S.A. 40A:11-11(5)*, the (CHIEF EXECUTIVE OFFICER) is hereby authorized to enter into a Cooperative Pricing Agreement with the Lead Agency.

CONTRACTING UNIT

The Lead Agency shall be responsible for complying with the provisions of the *Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.)* and all other provisions of the revised statutes of the State of New Jersey.

EFFECTIVE DATE

This resolution shall take effect immediately upon passage.

COOPERATIVE PURCHASING GUIDELINES

CERTIFICATION

BY:

(NAME AND TITLE)

ATTEST BY:

(NAME AND TITLE)

COOPERATIVE PURCHASING GUIDELINES

COOPERATIVE PRICING SYSTEM AGREEMENT

(NAME OF COOPERATIVE PRICING SYSTEM)

AGREEMENT FOR A COOPERATIVE PRICING SYSTEM

This Agreement made and entered into this __day of ____, 20____, by and between the, (NAME OF LEAD AGENCY) and (LIST FULL NAME OF PARTICIPANTS), who desire to participate in the (NAME OF THE COOPERATIVE PRICING SYSTEM).

WITNESSETH

WHEREAS, *N.J.S.A. 40A:11-11(5)*, specifically authorizes two or more contracting units to establish a Cooperative Pricing System for the provision and performance of goods and services and enter into a Cooperative Pricing Agreement for its administration; and

WHEREAS, the (NAME OF LEAD AGENCY) is conducting a voluntary Cooperative Pricing System with other contracting units; and

WHEREAS, this Cooperative Pricing System is to effect substantial economies in the provision and performance of goods and services; and

WHEREAS, all parties hereto have approved the within Agreement by Resolution¹ in accordance with the aforesaid statute; and

WHEREAS, it is the desire of all parties to enter into such Agreement for said purposes;

NOW, THEREFORE, in consideration of the promises and of the covenants, terms and conditions hereinafter set forth, it is mutually agreed as follows:

1. The goods or services to be priced cooperatively may include (LIST GOODS and/OR SERVICES TO BE PRICED COOPERATIVELY) and such other items as two or more participating contracting units in the system agree can be purchased on a cooperative basis.

<p>1. For boards of education only: A motion made and carried, and recorded in the written minutes of a business meeting of a board of education shall be considered to be the same as a resolution.</p>

2. The items and classes of items which may be designated by the participating contracting units hereto may be purchased cooperatively for the period commencing with the execution of this Agreement and continuing until terminated as hereinafter provided.
-

COOPERATIVE PURCHASING GUIDELINES

3. The Lead Agency, on behalf of all participating contracting units, shall upon approval of the registration of the System and annually thereafter [CHOOSE ONE: (1) EITHER ON THE ANNIVERSARY OF THE REGISTRATION OF THE SYSTEM OR (2) IN JANUARY OF EACH SUCCEEDING YEAR] publish a legal ad in such format as required by *N.J.A.C. 5:34-7.9(a)* in its official newspaper normally used for such purposes by it to include such information as:
 - A. The name of Lead Agency soliciting competitive bids or informal quotations.
 - B. The address and telephone number of Lead Agency.
 - C. The names of the participating contracting units.
 - D. The State Identification Code assigned to the Cooperative Pricing System.
 - E. The expiration date of the Cooperative Pricing System.
 4. Each of the participating contracting units shall designate, in writing, to the Lead Agency, the items to be purchased and indicate therein the approximate quantities desired [IF NOT AN OPEN ENDED CONTRACT], the location for delivery and other requirements, to permit the preparation of specifications as provided by law.
 5. The specifications shall be prepared and approved by the Lead Agency and no changes shall be made thereafter except as permitted by law. Nothing herein shall be deemed to prevent changes in specifications for subsequent purchases.
 6. A single advertisement for bids or the solicitation of informal quotations for the goods or services to be purchased shall be prepared by the Lead Agency on behalf of all of the participating contracting units desiring to purchase any item.
 7. The Lead Agency when advertising for bids or soliciting informal quotations shall receive bids or quotations on behalf of all participating contracting units. Following the receipt of bids, the Lead Agency shall review said bids and on behalf of all participating contracting units, either reject all or certain of the bids or make one award to the lowest responsible bidder or bidders for each separate item. This award shall result in the Lead Agency entering into a Master Contract with the successful bidder(s) providing for two categories of purchases:
 - A. The quantities ordered for the Lead Agency's own needs, and
 - B. The estimated aggregate quantities to be ordered by other participating contracting units by separate contracts, subject to the specifications and prices set forth in the Lead Agency's Master Contract.
-

COOPERATIVE PURCHASING GUIDELINES

8. The Lead Agency shall enter into a formal written contract(s) directly with the successful bidder(s) only after it has certified the funds available for its own needs.
 9. Each participating contracting unit shall also certify the funds available only for its own needs ordered; enter into a formal written contract, when required by law, directly with the successful bidder(s); issue purchase orders in its own name directly to successful vendor(s) against said contract; accept its own deliveries; be invoiced by and receive statements from the successful vendor(s); make payment directly to the successful vendor(s) and be responsible for any tax liability.
 10. No participating contracting unit in the Cooperative Pricing System shall be responsible for payment for any items ordered or for performance generally, by any other participating contracting unit. Each participating contracting unit shall accordingly be liable only for its own performance and for items ordered and received by it and none assumes any additional responsibility or liability.
 11. The provisions of Paragraphs 7, 8, 9 and 10 above shall be quoted or referred to and sufficiently described in all specifications so that each bidder shall be on notice as to the respective responsibilities and liabilities of the participating contracting units.
 12. No participating contracting unit in the Cooperative Pricing System shall issue a purchase order or contract for a price which exceeds any other price available to it from any other such system in which it is authorized to participate or from bids or quotations which it has itself received.
 13. The Lead Agency reserves the right to exclude from consideration any good or service if, in its opinion, the pooling of purchasing requirements or needs of the participating contracting units is either not beneficial or not workable.
 14. The Lead Agency shall appropriate sufficient funds to enable it to perform the administrative responsibilities assumed pursuant to this Agreement.
 15. *It is agreed that each participating contracting unit shall pay the Lead Agency an annual fee of (AMOUNT OF FEE) as its estimated prorated share of the administrative costs incurred by the Lead Agency. This amount shall be paid (NUMBER OF DAYS) days from the receipt of billing from the Lead Agency. In the event this estimated prorated share should prove insufficient, each party agrees to pay an additional prorated sum to be determined by all of the participating contracting units.²*
 16. *For the first year of the term of this Agreement, the (NAME OF LEAD AGENCY) shall serve as the Lead Agency, and thereafter, for each succeeding year, the Lead Agency designation shall be rotated among the System members in the following order: (LIST MEMBERS TO SERVE AS LEAD AGENCY). The Director of the Division of Local*
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COOPERATIVE PURCHASING GUIDELINES

*Government Services within the State Department of Community Affairs shall be notified within thirty (30) days of any change in the designated Lead Agency.*³

17. This Agreement shall become effective on (INSERT DATE) subject to the review and approval of the Director of the Division of Local Government Services and shall continue in effect for a period not to exceed five (5) years from said date unless any party to this Agreement shall give written notice of its intention to terminate its participation.⁴
18. *Additional local contracting units may from time to time, execute this Agreement by means of a Rider annexed hereto, which addition shall not invalidate this Agreement with respect to other signatories. The Lead Agency is authorized to execute the Rider on behalf of the members of the System.*⁵
19. All records and documents maintained or utilized pursuant to terms of this Agreement shall be identified by the System Identifier assigned by the Director, Division of Local Government Services, and such other numbers as are assigned by the Lead Agency for purposes of identifying each contract and item awarded.

2. Clause 15 relating to the payment of an Administrative Fee is optional. If a Fee is charged, language defining how the Fee is established should be included. The participating contracting units may help underwrite the administrative costs incurred by the Lead Agency in fulfilling its role as "purchasing agent" for the System through the payment of an Administrative Fee. While the Fee is optional, the question of whether to impose a Fee should be resolved and agreed to by the participating members at the time the System is established.

3. Clause 16 relating to the rotation of Lead Agency responsibility is optional.

4. Approval may be for less than five (5) years at the discretion of the Lead Agency.

5. To facilitate signing, appropriate language permitting counterpart copies to be signed by the Lead Agency and individual participants may be included. See sample "Paragraph 18 Rider" on Page 22

20. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their authorized corporate officers and their respective seals to be hereto affixed the day and year above written.

FOR THE LEAD AGENCY

COOPERATIVE PURCHASING GUIDELINES

BY:

(NAME AND TITLE))

FOR THE PARTICIPATING UNIT

BY:

(NAME AND TITLE)

“PARAGRAPH 18 RIDER”

The sample Cooperative Pricing Agreement in Paragraph 18 provides for the execution of the Agreement by means of a Rider. This use of the Rider can expedite the process for the execution of the Agreement by a number of potential members to a Cooperative Pricing System.

COOPERATIVE PRICING AGREEMENT RIDER

Pursuant to Paragraph 18 of the Cooperative Pricing Agreement, the (INSERT NAME OF MEMBER) hereby requests that it be allowed to participate in the cooperative arrangement described in the above-mentioned Agreement.

The (INSERT NAME OF MEMBER) acknowledges that it has received and reviewed the Agreement in its entirety, and agrees to be bound by its promises, covenants, terms and conditions, as well as by any rules and regulations duly promulgated by the Lead Agency and the members of the Cooperative Pricing System.

COOPERATIVE PURCHASING GUIDELINES

The (INSERT NAME OF MEMBER) shall likewise be entitled to all the rights and benefits of a member of the Cooperative Pricing System.

IN WITNESS WHEREOF, the parties hereto have caused this Rider to be executed by their authorized officers on the _____st day of _____, 20_____.

ATTEST: (MEMBER)

CLERK

AUTHORIZED SIGNATORY

Pursuant to Paragraph 18 of the Cooperative Pricing Agreement, the [LEAD AGENCY] does hereby accept [Insert Name of Member] as a member of the Cooperative Pricing System in consideration for the execution of the foregoing Rider and the promises, covenants, terms and conditions, as well as by any rules and regulations, referred to therein.

ATTEST: (LEAD AGENCY)

CLERK

AUTHORIZED SIGNATORY

VIII. JOINT PURCHASING SAMPLE DOCUMENTS

The following pages contain a series of sample documents for the establishment and participation in a Joint Purchasing System.

The appropriate documents should be tailored to meet your specific needs. Any resolution or agreement should be reviewed by counsel prior to adoption.

Be sure that the document clearly details the responsibilities of the parties and clearly sets forth procedures to be followed.

SAMPLE FORM	PAGE
Lead Agency Resolution for the Establishment	

COOPERATIVE PURCHASING GUIDELINES

of a Joint Purchasing System	24
Resolution for Member Participation in a Joint Purchasing System	26
Joint Purchasing System Agreement	28

LEAD AGENCY RESOLUTION
FOR THE ESTABLISHMENT OF
A JOINT PURCHASING SYSTEM

A RESOLUTION AUTHORIZING THE (CONTRACTING UNIT)
TO ESTABLISH A JOINT PURCHASING SYSTEM
AND TO ENTER INTO JOINT PURCHASING AGREEMENTS
WITH OTHER CONTRACTING UNITS

RESOLUTION NUMBER _____

WHEREAS, *N.J.S.A. 40A:11-10* authorizes two or more contracting units to establish a Joint Purchasing System and enter into a Joint Purchasing Agreement for its administration; and

WHEREAS, the (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey is desirous of establishing a Joint Purchasing System and entering into said Joint Purchasing Agreement with other contracting units; and

WHEREAS, the (CONTRACTING UNIT) has agreed to serve as the Lead Agency for a Joint Purchasing System with other contracting units; and

WHEREAS, on (DATE OF ACTION) the governing body of the (CONTRACTING UNIT), County of (COUNTY NAME), State of New Jersey duly considered the establishment of a Joint Purchasing System for the provision and performance of goods and services,

NOW, THEREFORE BE IT RESOLVED as follows:

JOINT PURCHASING SYSTEM ESTABLISHED

COOPERATIVE PURCHASING GUIDELINES

The (GOVERNING BODY) hereby authorizes the creation of a Joint Purchasing System to be known as the (NAME OF JOINT PURCHASING SYSTEM) with the (CONTRACTING UNIT) serving as the Lead Agency.

JOINT PURCHASING AGREEMENT

The (CHIEF EXECUTIVE OFFICER) is hereby authorized to enter into separate Joint Purchasing Agreements with the participating contracting units and said Agreement shall be deemed a single Agreement.

**COPY OF RESOLUTION TO
THE DIVISION OF LOCAL GOVERNMENT SERVICES**

A single certified copy of this resolution shall be forwarded to the Division of Local Government Services as part of the application package for the registration of this Joint Purchasing System.

EFFECTIVE DATE

This resolution shall take effect immediately upon passage.

BY:

(NAME AND TITLE)

ATTEST BY:

(NAME AND TITLE)

**RESOLUTION FOR MEMBER PARTICIPATION
IN A JOINT PURCHASING SYSTEM**

A RESOLUTION AUTHORIZING THE (CONTRACTING UNIT)

COOPERATIVE PURCHASING GUIDELINES

TO ENTER INTO A JOINT PURCHASING AGREEMENT

RESOLUTION NUMBER _____

WHEREAS *N.J.S.A. 40A:11-11(10)* authorizes contracting units to establish a Joint Purchasing System and to enter into a Joint Purchasing Agreement for its administration; and

WHEREAS the (NAME OF LEAD AGENCY), hereinafter referred to as the “Lead Agency” has offered voluntary participation in a Joint Purchasing System for the provision and performance of goods and services; and

WHEREAS, on (DATE OF ACTION) the governing body of the (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey duly considered participation in a Joint Purchasing System for the provision and performance of goods and services,

NOW, THEREFORE BE IT RESOLVED as follows:

TITLE

This Resolution shall be known and may be cited as the Joint Purchasing Resolution of the (CONTRACTING UNIT)

AUTHORITY

Pursuant to the provisions of *N.J.S.A. 40A:11-10* the (CHIEF EXECUTIVE OFFICER OF THE CONTRACTING UNIT) is hereby authorized to enter into a Joint Purchasing Agreement with the Lead Agency.

CONTRACTING UNIT

The Lead Agency shall be responsible for complying with the provisions of the Local Public Contracts Law (*N.J.S.A. 40A:11-1 et seq.*) and all other provisions of the revised statutes of the State of New Jersey.

EFFECTIVE DATE

This resolution shall take effect immediately upon passage.

CERTIFICATION

COOPERATIVE PURCHASING GUIDELINES

BY: _____
(NAME AND TITLE)

BY: _____
(NAME AND TITLE)

COOPERATIVE PURCHASING GUIDELINES

JOINT PURCHASING SYSTEM AGREEMENT

(NAME OF JOINT PURCHASING SYSTEM)

AGREEMENT FOR A JOINT PURCHASING SYSTEM

This Agreement made and entered into this ____ day of ____, 20____, by and between the, (NAME OF LEAD AGENCY) and (LIST FULL NAME OF PARTICIPANTS), to participate in a Joint Purchasing System.

WITNESSETH

WHEREAS, *N.J.S.A. 40A:11-10*, specifically authorize two or more contracting units to enter into a Joint Purchasing Agreement for the provision and performance of goods and services; and

WHEREAS, the (NAME OF LEAD AGENCY) is conducting a voluntary Joint Purchasing System with other authorized contracting units utilizing the administrative purchasing services and facilities of the (NAME OF LEAD AGENCY); and

WHEREAS, this Joint Purchasing Agreement is to effect substantial economies in the provision and performance of goods and services; and

WHEREAS, all parties hereto have approved the within Agreement by Resolution;¹ and in accordance with the aforesaid statute; and

WHEREAS, it is the desire of all parties to enter into such Agreement for said purposes;

NOW, THEREFORE, IN CONSIDERATION OF the promises and of the covenants, terms and conditions hereinafter set forth, it is mutually agreed as follows:

1. The goods or services to be priced jointly may include (LIST THE GOODS AND SERVICES TO BE PURCHASED JOINTLY) and such other items as two or more participating contracting units in the system agree can be purchased on a joint basis.

<p>1. For boards of education only: A motion made and carried, and recorded in the written minutes of a business meeting of a board of education shall be considered the same as a resolution.</p>

2. The items and classes of items which may be designated by the participating contracting units hereto shall be purchased jointly for the period commencing with
-

COOPERATIVE PURCHASING GUIDELINES

the execution of this Agreement and continuing until terminated as hereinafter provided.

3. The Lead Agency, on behalf of all participating contracting units, shall upon approval of the System's registration and annually thereafter [CHOOSE ONE: (1) EITHER ON THE ANNIVERSARY OF THE SYSTEM'S REGISTRATION or (2) IN JANUARY OF EACH SUCCEEDING YEAR] publish a legal ad in such format as required by *N.J.A.C. 5:34-7. 9 (a)* in its official newspaper normally used for such purposes by it to include such information as:
 - A. The name of Lead Agency soliciting competitive bids or informal quotations.
 - B. The address and telephone number of Lead Agency.
 - C. The names of the participating contracting units.
 - D. The State Identification Code assigned the Joint Purchasing System.
 - E. The expiration date of the Joint Purchasing Agreement.
 4. Each of the participating contracting units shall designate, in writing, to the Lead Agency, the items to be purchased and indicate therein the quantities desired [IF NOT AN OPEN ENDED CONTRACT], the location for delivery and any other requirements, to permit the preparation and filing of specifications as provided by law.
 5. The specifications shall be prepared and approved by the Lead Agency, and no changes shall thereafter be made. Nothing herein shall be deemed to prevent changes in specifications for subsequent purchases.
 6. A single advertisement for bids or the solicitation of informal quotations for the goods or services to be purchased shall be prepared by the Lead Agency on behalf of all of the participating contracting units desiring to purchase any item.
 7. The Lead Agency when advertising for bids or soliciting informal quotations shall receive bids or quotations on behalf of all participating contracting units.
 8. Following the receipt of bids, the Lead Agency shall review said bids and on behalf of all participating contracting units, either reject all or certain of the bids or make one award to the lowest responsible bidder or bidders for each separate item.
 9. The award shall result in only the Lead Agency entering into a formal written contract(s) directly with the successful bidder(s).
-

COOPERATIVE PURCHASING GUIDELINES

10. The Lead Agency on behalf of each participating contracting unit shall certify the funds available for all the needs ordered under a particular contract(s); issue all purchase orders in its own name directly to the successful vendor(s) against said contract; and be invoiced by and receive statements from the successful vendor(s).
11. The Lead Agency shall be responsible for payment for any items ordered, or for performance generally, by any other participating contracting unit. Each participating contracting unit, however, shall be required to accept its own deliveries.
12. The provisions of Paragraphs 7, 8, 9, 10 and 11 above shall be quoted or referred to and sufficiently described in the specifications so that each bidder shall be on notice as to the respective responsibilities and liabilities of the participating contracting unit.
13. No participating contracting unit in the Joint Purchasing System shall issue a purchase order or contract for a price which exceeds any other price available to it from any other such system in which it is authorized to participate or from bids or quotations which it has itself received.
14. The Lead Agency reserves the right to exclude from consideration any good or service if, in its opinion, the pooling of purchasing requirements or needs of the participating contracting units is either not beneficial or not workable.
15. The Lead Agency shall appropriate sufficient funds to enable it to perform the administrative responsibilities assumed pursuant to this Agreement.
16. *It is agreed that each participating contracting unit shall pay the Lead Agency an annual fee of (AMOUNT OF FEE) as its estimated prorated share of the administrative costs incurred by the Lead Agency. This amount shall be paid (NUMBER OF DAYS) days from the receipt of billing from the Lead Agency. In the event this estimated prorated share should prove insufficient, each party agrees to pay an additional prorated sum to be determined by all of the participating units.²*

<p>2. Clause 16 relating to the payment of an Administrative Fee is optional. If a Fee is charged, language defining how the Fee is established should be included. The participating contracting units may help underwrite the administrative costs incurred by the Lead Agency in fulfilling its role as "purchasing agent" for the System through the payment of an Administrative Fee. While the Fee is optional, the question of whether or not to impose a Fee should be resolved and agreed to by the participating members at the time the System is established.</p>
--

17. It is further agreed that upon notification by the Lead Agency that it is about to award a contract to a vendor on behalf of itself and participating agencies, each participating agency shall issue a purchase order and make payment in advance to the Lead Agency for its respective portion of the pending contract. The Lead Agency shall hold such advance payment in trust for the purpose for which it was made in
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COOPERATIVE PURCHASING GUIDELINES

accordance with *N.J.A.C. 5:34-7.14(d)6iii* and shall promptly return any unneeded portion.

18. This Agreement shall become effective on (INSERT DATE) subject to the review and approval of the Director of the Division of Local Government Services and shall continue in effect for a period not to exceed five (5) years from said date unless any party to this Agreement shall give written notice of its intention to terminate its participation.³
19. All records and documents maintained or utilized pursuant to terms of this Agreement shall be identified by the System Identifier assigned by the Director, Division of Local Government Services, and such other numbers as are assigned by the Lead Agency for purposes of identifying each contract and item awarded.
20. This Agreement shall be binding upon and enure to the benefit of the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their authorized corporate officers and their respective seals to be hereto affixed the day and year above written.

FOR THE LEAD AGENCY:

BY: _____

(NAME AND TITLE)

FOR THE PARTICIPATING UNIT:

BY: _____

(NAME AND TITLE)

3 Approval may be for less than five (5) years at the discretion of the Lead Agency

IX. COMMODITY RESALE SAMPLE DOCUMENTS

The following pages contain a series of sample documents for the establishment and participation in a Commodity Resale System. The Sample Agreement is for the sale of gasoline and diesel fuel.

COOPERATIVE PURCHASING GUIDELINES

The appropriate documents should be tailored to meet your specific needs. Any resolution or agreement be reviewed by counsel prior to adoption.

Be sure that the document clearly details the responsibilities of the parties and sets forth the procedures to be followed:

SAMPLE FORM	PAGE
Lead Agency Resolution for the Establishment of a Commodity Resale System	33
Basis for an Agreement for the Resale of Gasoline and Diesel Fuel as part of a Commodity Resale System	34

**LEAD AGENCY RESOLUTION
FOR THE ESTABLISHMENT OF A COMMODITY RESALE SYSTEM
FOR THE RESALE OF GASOLINE AND DIESEL FUEL**

A RESOLUTION AUTHORIZING THE (CONTRACTING UNIT)
TO ESTABLISH A COMMODITY RESALE SYSTEM AND TO ENTER INTO
COMMODITY RESALE AGREEMENTS WITH OTHER CONTRACTING UNITS

RESOLUTION NUMBER _____

WHEREAS, *N.J.A.C. 5:34-7.15* authorizes contracting units to establish a Commodity Resale System; and

WHEREAS, the (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey is desirous of establishing a Commodity Resale System for the resale of (IDENTIFY COMMODITY (S)); and

WHEREAS, the (CONTRACTING UNIT) has agreed to serve as the Lead Agency for a Commodity Resale System with (LIST PARTICIPANTS)

COOPERATIVE PURCHASING GUIDELINES

NOW, THEREFORE BE IT RESOLVED on the (DATE OF ACTION) by the (GOVERNING BODY) of (CONTRACTING UNIT), County of (COUNTY OF LOCATION), State of New Jersey, as follows:

The (GOVERNING BODY) hereby authorizes the creation of a Commodity Resale System to be known as the (NAME OF COMMODITY RESALE SYSTEM) with the (CONTRACTING UNIT) serving as the Lead Agency.

The (CHIEF EXECUTIVE OFFICER) is hereby authorized to enter into a contract with (CONTRACTING UNIT) for the sale of (NAME OF COMMODITY(S) TO BE SOLD).

A single certified copy of this Resolution along with (1) a copy of the (PURCHASE AGREEMENT) and (2) a copy of the Request for Registration or Modification of a Commodity Resale System Form (Cooperative Purchasing Form CP-2060) shall be forwarded to the Director of the Division of Local Government Services within the State Department of Community Affairs.

This resolution shall take effect immediately upon passage.

BY: _____
(NAME AND TITLE)

ATTEST BY: _____
(NAME AND TITLE)

BASIS FOR AN AGREEMENT
FOR THE RESALE OF GASOLINE AND DIESEL FUEL
AS PART OF A COMMODITY RESALE SYSTEM

AN AGREEMENT for the resale of [GASOLINE] [DIESEL FUEL] made on this _____th day of _____, 20____ by and between the [MEMBER] and the [LEAD AGENCY] entered into pursuant to the Commodity Resale Provisions of the Cooperative Purchasing Rules (N.J.A.C. 5:34-7.1 et seq.).

WHEREAS, [LEAD AGENCY] owns and operates a fuel storage and dispensing facility for its own needs; and

WHEREAS, [MEMBER] is desirous of making use of the motor fuel system owned by [LEAD AGENCY] located at [LOCATION OF FUEL FACILITY].

NOW THEREFORE, in consideration for the promises and of the mutual covenants herein contained, the parties hereto agree as follows:

1. SUPPLY OF MOTOR FUEL

COOPERATIVE PURCHASING GUIDELINES

[LEAD AGENCY] will provide an estimated [NUMBER OF GALLONS] gallons of [TYPE OF FUEL/OCTANE] gasoline and [NUMBER OF GALLONS] gallons of [Number 2 DIESEL FUEL] per month for use by the [MEMBER]. In the event that [MEMBER] fuel consumption increases over the above stated gallons, the [LEAD AGENCY] shall bill for the actual amount of fuel consumed by [MEMBER].

2. BASE MOTOR FUEL RATE AND TIME OF PAYMENT

The rate that [MEMBER] shall pay for the motor fuel supply pursuant to the Agreement shall be the base motor fuel rate. It shall be computed as follows:

The [MEMBER] motor fuel rate shall be a combination of:

- (a) The contract cost which [LEAD AGENCY] pays for motor fuel; and
- (b) An administrative service charge of [INSERT PERCENT] percent on the amount of motor fuel actually supplied for the month.

3. PAYMENT OBLIGATION

A monthly invoice for the previous month's usage shall be forwarded to the [LEAD AGENCY] to [MEMBER] on or before the [DATE] of each month. Payment shall be made as required under Section 2 of this Agreement. Monies received from [MEMBER] shall be placed in the [ACCOUNT NAME]. If [MEMBER] has a negative cash balance for [NUMBER] consecutive billing periods, that shall constitute cause for termination of the Agreement. Prior to any termination, [MEMBER] shall receive a [INSERT NUMBER OF DAYS] advance notice regarding its negative cash balance.

4. FUEL DISPENSING

All motor fuels to be supplied by [LEAD AGENCY] to [MEMBER] shall be dispensed by metering pumps at the [NAME OF SITE] located at [ADDRESS OF SITE].

5. MOTOR FUEL DISPENSING SYSTEM

[LEAD AGENCY] will maintain at its own cost the motor fuel dispensing system. [MEMBER] shall have the right to verify the accuracy of the dispensing system at its expense. [MEMBER] shall give the [LEAD AGENCY] [NUMBER OF DAYS] days notice prior to conducting any test. [MEMBER] shall be assigned entrance keys to the motor fuel dispensing system. The keys shall remain the property of the [LEAD AGENCY].

6. HOURS OF SERVICE

COOPERATIVE PURCHASING GUIDELINES

Unless notified in writing, the supply of motor fuel(s) is available [INSERT NUMBER OF HOURS] per day or [BETWEEN THE HOURS OF] , [NUMBER OF DAYS] per week.

7. EMERGENCIES

In the event of an emergency, [LEAD AGENCY] will use its best efforts to provide all motor fuel(s) that [MEMBER] requires.

8. MOTOR FUEL RATE CHANGES

Parties to this Agreement acknowledge and understand that the contract cost in Paragraph 2 fluctuates based upon the contract rate [LEAD AGENCY] must pay for the delivery of motor fuel to its dispensing facility. [LEAD AGENCY] shall notify [MEMBER] of any changes in the method of contract cost calculation [INSERT NUMBER OF DAYS] days before imposing any such rate change(s).

9. EXCUSED PERFORMANCE

[LEAD AGENCY] agrees to use its best efforts to provide a continuous and regular and uninterrupted supply of motor fuel, subject to the terms of this Agreement.

10. INDEMNIFICATION

[MEMBER] shall completely indemnify, protect and hold harmless [LEAD AGENCY] from any and all costs, expenses, liability, losses, claims, suits and proceeding of any nature whatsoever brought against the [LEAD AGENCY] as an additional insured on its liability policy with a minimum of [INSERT AMOUNT]. [MEMBER] shall provide evidence of same by providing [LEAD AGENCY] with a Certificate of Insurance within [NUMBER OF DAYS] after this Agreement goes into effect. Failure of [MEMBER] to provide such a Certificate of Insurance shall be cause for termination of this Agreement.

11. TERMINATION

This Agreement shall be in effect to a period of [INSERT NUMBER OF YEARS] upon approval by the governing bodies of [LEAD AGENCY] and [MEMBER].

Either party may terminate this Agreement with [INSERT NUMBER OF DAYS] advance notice by certified mail, to the official address of the other party.

12. GOVERNING LAW

COOPERATIVE PURCHASING GUIDELINES

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written.

FOR THE LEAD AGENCY:

BY: _____
(NAME AND TITLE)

FOR THE PARTICIPATING UNIT:

BY: _____
(NAME AND TITLE)

FR 05.11.01