

AGREEMENT FOR FIRE PROTECTION AND SERVICES

This AGREEMENT, made on this 13 day of December, 2016, between the HOPEWELL TOWNSHIP, FIRE DISTRICT NO.1, BOARD OF FIRE COMMISSIONERS, a body politic duly existing under the laws of the State of New and having its offices located at 201 Washington Crossing-Pennington Road, Hopewell Township, New Jersey, 08560, ("Township Board"), and THE BOARD OF FIRE COMMISSIONERS OF FIRE DISTRICT NO.1 OF PENNINGTON BOROUGH, a body politic existing under the laws of the State of New Jersey with the offices located at 120 Broemel Place, PO Box 387, Pennington, New Jersey 08534, ("Pennington Board").

RECITALS:

WHEREAS, the Township Board pursuant to N.J.S.A. 40-A: 14-81 et seq. is responsible for regulating all aspects of fire prevention, extinguishment of fires, regulation of fire hazards within Hopewell Township, Mercer County, State of New Jersey; and

WHEREAS, the Pennington Board through the Pennington Fire Company, Station # 51, agrees to provide primary fire protection services to that portion of Hopewell Township on an attached map made a part hereof as Exhibit 'A' ("Area of Primary Responsibility"), and further agrees to respond to other areas of Hopewell Township on a mutual aid basis as is determined by the respective Board of Fire Commissioners.

WHEREAS, pursuant to the Uniform Shared Services and Consolidation Act (N.J.S.A. 40A:65-1 et seq.) and N.J.S.A. 26:2K-61, the Pennington Board desires to contract with the

Township Board for its provision of Primary Fire Protection services for the Area of Primary Responsibility; and

WHEREAS, the Township Board and the Pennington Board are both “local units” and Primary Fire Protection are “shared devices” within the meaning of N.J.S.A. 40A:65-3;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, covenant and agree for themselves, their successors and assigns as follows:

1: Scope of Services

The Pennington Board agrees to provide emergency fire protection services within the Area of Primary Responsibility and to provide manpower and equipment, to include Apparatus, for such services as needed, and will employ standard practices when providing said services. In the event the Pennington Board is unable to respond to a fire call, the Pennington Board shall use its best efforts to provide for a standby Fire Company. The Pennington Board also agrees to enlist the aid and further advance the services of adjacent Fire Companies to assure the fullest protection within their area of primary responsibility.

2: Compensation

The Township agrees to pay an annual fee that shall represent a portion of the annually presented fire district budget of the Pennington Board. Unless specifically agreed, the Township Board shall not be held responsible for the purchase or maintenance of equipment and facilities or any employee or employee related expenses of the Pennington Board, unless specifically

agreed. Said Annual Fee shall be 76% of the total fire district budget of the Borough Board as approved by the voters or governing body for the calendar year commencing January 1, 2016.

3: Responsibilities of Parties

The Township Board and Pennington Board both agree to indemnify and hold each other harmless from any demands, claims, suits, causes of action or demands, including attorneys' fees and costs and expenses of suit, which may arise as a result of the negligence of the Pennington Board's operations pursuant to this Agreement.

This clause shall not preclude either Board from enforcing any rights or covenants as set forth in this Agreement.

The Township Board and Pennington Board agree to each maintain LIABILITY coverage in a minimum amount of One Million Dollars (\$1,000,000.00) with each being named as an additional insured on the other's liability policy.

4: Representation and Reports

The Pennington Board agrees to use its best efforts to provide in-person representation at least one of the Township Board's bi-monthly business meetings by a representative or agent of the Pennington Board capable of responding to Township Board questions and/or taking requests by the Township Board back to the Pennington Board for follow-up or action if required. The Pennington Board agrees to provide the Township Board each month with a report of the number and types of calls to which the Pennington Board's fire company responded during the month, and with a year-end annual report setting forth the nature and total number of all calls responded to by the Pennington Board within the area of primary responsibility. The Township Board may

request additional information in terms of reporting to which the Pennington Board will respond if such information is reasonably attainable.

5: Effect of Agreement

The parties hereunto agree to bind themselves only to the terms of this Agreement. No legal liability of any kind is imposed on either party unless specifically set forth in this Agreement.

6: Purchase of Apparatus

During the term of any lease purchase, loan, or other type of financing utilized for the acquisition of any Apparatus used for fire response calls, the respective interests of each party shall be the actual amount of all monies paid by each for the acquisition of the subject Apparatus.

By way of example, if a truck is purchased for a price of \$100,000, and Township Board paid \$76, 000 (76%) and Pennington Board has paid \$24,000 (24%), pursuant to the terms of this Agreement, Hopewell may purchase Pennington's interest for \$24,000 and conversely Pennington may purchase Hopewell's interest for \$76,000.

Following the end of any lease purchase, lease, loan, or other instrument used for the acquisition of the Apparatus, the value of the apparatus shall be determined by the independent appraisal, performed by an independent appraiser who shall be selected by mutual agreement of the parties, or by other valuation mechanism acceptable to the parties. Upon a value being determined by the independent appraiser or other mechanism, the purchase price shall be determined by calculating the percentage of the purchase price paid by each party for the subject vehicle.

7: Apparatus

Should this agreement be terminated for any reason, or should the Pennington Board no longer provide primary fire protection to that portion of Hopewell Township identified as Exhibit 'A', and other areas of Hopewell Township on a mutual aid basis, then with respect to all Apparatus purchased pursuant to this Agreement and all predecessor Agreements between the parties, either Board may notify the other of an intention to acquire the other Board's interest with the consent of the other Board.

8: Debt Service

The Township Board, in accordance with N.J.S.A. 40A 4-45 through 45.47, may separate the debt service incurred for the purchase of capital equipment (apparatus) referenced in paragraphs 6 and 7 above, including any increases or decreases in such debt service, from those amounts raised by taxation to fund its annual fire district budget by disclosure of such debt service amounts on the New Jersey Department of Community Affairs, Local Government Services unit, annual fire district budget worksheet. The amount disclosed shall be the Township Board's portion of the debt service for Capital Appropriations for Fire Apparatus as set forth in paragraphs 6 and 7 above, which shall be payable to the Pennington Board as part of the Annual Fee arrangement set forth in paragraph 2 above.

9: LOSAP

The Township Board, in accordance with N.J.S.A. 40A: 4-45 through 45.47, may separate all monies raised for the Length of Service Award Program ("LOSAP") from those amounts raised by taxation to fund its annual fire district budget, by disclosure of such amounts raised for LOSAP on the New Jersey Department of Community Affairs, Local Government

Services Unit, annual fire district budget worksheet. The amount disclosed shall be the Township Board's portion of the LOSAP payments made on behalf of the volunteer firefighters serving Hopewell Township pursuant to this Agreement. The Township Board's portion of the LOSAP payments contemplated in this paragraph shall be paid annually by the Township Board to the LOSAP provider designated by the Pennington Board in accordance with the percentage as stated in Paragraph 2 above.

10: Term of Agreement

This Agreement shall be effective, retroactive to January 1, 2016, upon approval by the Township Board and the Pennington Board and shall continue in full force and effect for five (5) years or until earlier terminated by either party. This Agreement may be terminated, effective on any anniversary date hereof, upon at least one (1) year's prior written notice of termination by either party.

11: Standards of Performance

In January of each year of this Agreement the respective Boards shall meet, negotiate and ultimately establish mutually agreed upon levels of service to be met by the Pennington Board for Fire and Emergency Calls. If at this annual meeting it is determined that the Pennington Board is unable to provide the previously agreed upon levels of service, on a repetitive basis and to such degree that the purposes of this Agreement are detrimentally affected, or it is determined that the levels of service provided by the Pennington Board have appreciably increased from those previously agreed upon, financial payments to the Pennington Board provided for herein may be renegotiated to reflect the level of service actually provided. Any financial adjustment will not become effective until at least the next calendar year's fire district budget and will have

no effect on the previously determined percentage of the acquisition costs to be paid by each party for apparatus and capital equipment already under contract or previously approved by the voters of Hopewell Township and Pennington Borough.

12: Approval

The Annual Fee due under this Agreement shall be contingent upon the approval of the Township Board's and Pennington Board's respective Annual Fire District Budgets at their elections pursuant to N.J.S.A. 40A:14-72 et seq. In the event that either or both budgets are defeated at the respective annual election, if necessary the parties shall negotiate the Annual Fee under this Agreement for the calendar year covered by the election.

13: Payments

Sums due and owing pursuant to this Agreement shall be paid in payments which will coincide with payments received by the Township Board from the Township Tax Collector pursuant to N.J.S.A. 40A: 14-79 et seq. Said payments shall be in the same percentage as the fees received by the Township Board from Tax Collector.

14: Apparatus

When the purchase of Fire Apparatus is deemed necessary by the Pennington Board in order to provide the emergency fire protection to the Township Board as described in the Scope of Services in this Agreement, the respective Boards agree as follows:

The Pennington Board has primary responsibility to provide a rolling ten-year Fire Apparatus Replacement Schedule listing the existing and any proposed additional Apparatus. The specifications for any new apparatus will be shared with the Township Board for their

review and comment. The Pennington Board will consider comments prior to initiating approval through Pennington Borough municipal referendum and before soliciting public bids for the provision of the apparatus.

The Township Board will likewise initiate and obtain the approval of the eligible voters of Hopewell Township pursuant to the provisions of N.J.S.A. 40A:14-1 *et seq.*

The two Boards shall agree on the percentage of the cost to be contributed by each Board which shall in no event be higher than that of the annual compensation set forth in Paragraph 2.

15: Sale of Fire Apparatus

In the event that the Pennington Board desires to sell any Apparatus acquired with funds received from the Township Board, the Pennington Board shall first notify the Township Board of such intent by certified mail. Upon receipt of notification, the Township Board shall have the option to elect to purchase said vehicle at the lowest of the following prices:

(a) The amount paid by Pennington for the purchase of the subject vehicle. See example set forth in a paragraph 6 of this Agreement.

(b) Any other amount agreed upon by the two Boards.

Should the Township Board intend to exercise its option to purchase the apparatus, within thirty days of its receipt of the Pennington Board's notice the Township Board shall provide written notification to the Pennington Board that the Township Board intends to purchase the apparatus.

Should the Township Board not exercise its rights to acquire said apparatus it shall be the responsibility of the Pennington Board to dispose of the said apparatus. If the apparatus is sold, the proceeds will be applied to the fire district budget for the future purchase of new or replacement Apparatus or to fund the operating expenses of the Pennington Board, thereby reducing the Annual Fire District Budget which is presented to the Township Board, and ultimately to the voters of Hopewell Township and Pennington Borough at their annual elections pursuant to N.J.S.A. 40A:14-72 et seq.

16: Complete Agreement

This Agreement sets forth the entire understanding of the parties as to the subject matter therein and may not be modified except in a writing executed by both parties.

17: Notices

Unless otherwise stated herein, any notices or communications under this Agreement shall be in writing and shall be hand-delivered, mailed or e-mailed to the party receiving such communication at the address specified above or such other address as either party may in future specify to the other party.

18: Governing Law

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

19: Dispute Resolution

In the event of any dispute under this Agreement and by mutual agreement between the parties, such disputes shall be settled by arbitration in accordance with the rules of the American

Arbitration Association, and judgment upon the award may be entered in any Court having jurisdiction thereof. The arbitration shall be supervised by an independent mediator to be selected by the parties.

20: Waiver

Failure on any party to exercise any right provided for herein shall not be deemed to be a waiver of any right hereunder.

21: Successors

This Agreement shall be binding upon the parties' respective successors and permitted assigns.

22: Severability

In the event anyone or more of the provisions of this Agreement or any Schedule is invalid or otherwise unenforceable, the enforceability of remaining provisions shall be unimpaired.

ADDENDUM

The Pennington Board will endeavor to develop policies and procedures geared to lowering the ISO rating of the Borough and the regional districts.

SIGNATURE PAGE FOLLOWS:

IN WITNESS WHEREOF, the parties hereunto set their signatures and seals to the foregoing 10
page AGREEMENT FOR FIRE PROTECTION SERVICES this _____ day of

_____, 2016 .

Attest:

HOPEWELL TOWNSHIP, FIRE DISTRICT NO. 1,

Board of Fire Commissioners

By:



Michael Chipowsky, Chairman

PENNINGTON BOROUGH, FIRE DISTRICT NO. 1,

Board of Fire Commissioners

By:



Mark E. Blackwell, Chairman