

DIVISION OF LOCAL GOVERNMENT SERVICES
SHARED SERVICES AGREEMENT
COVER SHEET

PROVIDER: Cape May County COUNTY: Cape May

RECIPIENT: Township of Upper COUNTY: Cape May

BRIEF DESCRIPTION OF SERVICE:

CMC Open Space Grant funding for project known as "Improvements to Amanda's Field".

EFFECTIVE DATE: April 1, 2014

EXPIRATION DATE: March 31, 2015

Please submit this cover sheet with shared service agreement either via email to EGG@dca.state.nj.us or hard copies may be mailed to the Division of Local Government Services at PO Box 803, Trenton, NJ 08625-0803. Mailed correspondence should be sent to the attention of Shared Services.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY**

R E S O L U T I O N

RESOLUTION NO. 93 -2014

**RE: AUTHORIZING A SHARED SERVICES AGREEMENT WITH THE
COUNTY OF CAPE MAY FOR FUNDING OF THE PROJECT KNOWN AS
“IMPROVEMENTS TO AMANDA’S FIELD”**

WHEREAS, the Township of Upper submitted an application for the 2013 Open Space Program Park and Recreation Development grant funding for the project known as “Improvements to Amanda’s Field”; and

WHEREAS, on February 11, 2014 the Board of Chosen Freeholders, based on the recommendation of the Open Space Review Board, voted to provide funding in an amount not to exceed \$220,000.00 to support the implementation of the aforementioned project; and

WHEREAS, the Township of Upper has determined that it is in the best interest of the Township to enter into a Shared Services Agreement with the County of Cape May; and

NOW, THEREFORE, BE IT RESOLVED by the Township Committee, the governing body of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. **SHARED SERVICES AGREEMENT.** Pursuant to the provisions of the Uniform Shared Services Act, (N.J.S.A. 40A:65-1, et seq., the Township of Upper is hereby authorized and empowered to enter into a Shared Services Agreement with the County of Cape May for the funding of the project known as “ Improvements to Amanda’s Field”.

2. **SERVICES TO BE PROVIDED; CONTRACT.** The Shared Services Agreement authorized in paragraph 1 hereof shall cover those services, which shall be enumerated in said Agreement.

3. **AUTHORIZATION TO MUNICIPAL OFFICIALS.** The appropriate Township officers and officials are hereby authorized to take any action necessary or advisable to carry out the intent and purpose of this Resolution. Specifically, the Mayor and Township Clerk are hereby authorized and directed to execute such Shared Services Agreement on behalf of the Township of Upper pursuant to the authority conferred by this Resolution. The Township Clerk is further authorized and directed to seal said Agreement with the official seal of the Township of Upper.

4. COMPLIANCE WITH STATUTORY REQUIREMENTS. The Shared Services Agreement between the County of Cape May and the Township of Upper shall meet and satisfy the requirements of N.J.S.A. 40A:65-1, et seq., as same may be amended and supplemented.

5. CONTRACT TERM. The term of this Agreement is for the period as stipulated in the Shared Service Agreement from the date of full execution of the Shared Services Agreement.

6. SEVERABILITY. If any section, subsection, paragraph, sentence or other part of this Resolution is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Resolution, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this Resolution directly involved in the controversy in which said judgment shall have been rendered and all other provisions of this Resolution shall remain in full force and effect.

7. REPEALER. All Resolutions or parts of Resolutions inconsistent herewith are hereby repealed to the extent of such inconsistency only.


RICHARD PALOMBO, Mayor


Barbara L. Young, Municipal Clerk

Resolution No. 93 -2014
Offered by: Young
Adopted: April 28, 2014

Seconded by: Barr

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Barr	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Coggins	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Inserra	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Young	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Palombo	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

**BOARD OF CHOSEN FREEHOLDERS
CAPE MAY COUNTY, NEW JERSEY
RESOLUTION**

No. 283-14

**RESOLUTION AUTHORIZING THE EXECUTION OF A SHARED SERVICES
AGREEMENT WITH THE TOWNSHIP OF UPPER
FOR THE PROJECT KNOWN AS "IMPROVEMENTS TO AMANDA'S FIELD",
PROVIDING FOR THE FUNDING OF A PORTION OF THIS PROJECT, IN A TOTAL
AMOUNT NOT TO EXCEED \$220,000.00, WITH ADOPTION OF ALL OTHER
TERMS AND CONDITIONS OF THE ANNEXED SCHEDULES**

WHEREAS, the County of Cape May (hereinafter "County") has determined that it is in the best interest of the County and residents therein, as well as the municipalities and residents of the individual municipalities located within the County, for the County to provide funds to such municipalities for the acquisition of lands for open space and the development of public park and recreation facilities or improvements, and historic preservation; and

WHEREAS, the County desires, pursuant to the provisions of N.J.S.A. 40:12-16 et seq., N.J.S.A. 40:12-9 and N.J.S.A. 40A:65-1, et seq. and other related statutes providing for joint action with regard to capital projects and improvements which are deemed to benefit the County and the municipalities and their residents, to provide funding for such projects and improvements; and

WHEREAS, in 1989, pursuant to P.L. 1989, Chapter 30, the County of Cape May Board of Chosen Freeholders established an Open Space and Farmland Preservation Trust Fund; and

WHEREAS, on December 27, 2012, in accordance with N.J.S.A. 40:12-15.3, the Board of Chosen Freeholders adopted new 2013 Program Guidelines for the Open Space Program that incorporated the two additional eligible categories of park and recreation development as well as historic preservation projects; and

WHEREAS, the Township of Upper has submitted an application under the 2013 Program for Improvements to Amanda's Field with the initial amount of the request of \$585,000.00 (hereinafter "Submitted Proposal"); and

WHEREAS, on July 23, 2013, the Open Space Review Board thoroughly reviewed, deliberated and voted to make a recommendation to the Board of Chosen Freeholders to fund the project, in an amount not to exceed \$220,000.00, pursuant to the attached Schedule "A". This will hereinafter be referred to as the "Defined Project"; and

**BOARD OF CHOSEN FREEHOLDERS
CAPE MAY COUNTY, NEW JERSEY
RESOLUTION**

No. 283-14

WHEREAS, a public hearing on this project was held on February 11, 2014 at the Cape May County Administration Building, 4 Moore Road, Cape May Court House, New Jersey 08210; and

WHEREAS, on the basis of the information provided by the applicant, the recommendation of the Open Space Review Board, and input gathered from the public hearing, the Board of Chosen Freeholders desires to enter into this Shared Services Agreement, attached hereto as Schedule "B", with the Municipality to support the implementation of the Defined Project; and

WHEREAS, the County and the Municipality desire to enter into this Agreement in order for the County to provide funding to the Municipality for the aforementioned Defined Project; and

WHEREAS the municipality will have sole responsibility over the development and implementation of the Defined Project, including the permitting, construction, operating, and long-term maintenance of the Defined Project in accordance with all applicable laws and regulations; and

WHEREAS, the existing Leasing and Management Agreement between the County and the Township of Upper, authorized by Resolution No. 346-03 dated April 22, 2003, will be modified to incorporate the additional elements to be developed under this Defined Project, in a form to be prepared and approved by County Counsel.

NOW, THEREFORE, in consideration of the promises, agreements and covenants hereinafter set forth and mutually agreed to, the County and the Municipality, each for itself, its successors and assigns, do mutually covenant, promise and agree as follows:

1. All of the above recitals are incorporated herein by reference as if repeated at length.
2. The appropriate officers of the Board, to wit, the Freeholder Director and the Clerk, are hereby authorized and directed to execute the attached Shared Services Agreement, effective April 1, 2014 through March 31, 2015, a copy of which is attached hereto as Schedule "B".
3. Encumbrance of funds under the Open Space Program to be released pursuant to the terms and conditions of the attached Shared Services Agreement.

**BOARD OF CHOSEN FREEHOLDERS
CAPE MAY COUNTY, NEW JERSEY
RESOLUTION**

No. 283-14

STATEMENT

This Resolution authorizes a Shared Services Agreement with the Township of Upper for funding for the above-referenced Park and Recreation Project under the Open Space Program, pursuant to N.J.S.A. 40:12-16, et. seq.

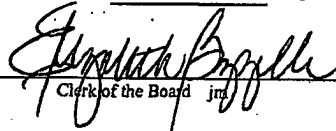
cc: Township of Upper
Director/Planning Department
Division Director/Open Space & Farmland Preservation
County Treasurer
File:

STATE OF NEW JERSEY } ss.:
COUNTY OF CAPE MAY }

I, Elizabeth Bozzelli, Clerk of the Board of Chosen Freeholders of the County of Cape May, State of New Jersey, do hereby certify that the foregoing is a correct and true copy of a resolution adopted by the Board at a meeting duly held on the 8th day of

April, 20 14.

Signed,


Clerk of the Board

Freeholders	RECORD OF VOTE					
	Ayes	Nays	Abstain	Absent	Moved	Second
Mr. Desiderio	✓					
Ms. Gabor	✓					✓
Ms. Hayes	✓					
Mr. Morey	✓				✓	
Mr. Thornton				✓		

V - Indicates Vote Moved-Resolution Offered Second-Resolution Seconded

SCHEDULE "A"

**CAPE MAY COUNTY
PLANNING DEPARTMENT**

4 Moore Road

Cape May Court House, N.J. 08210-1601

(609) 465-1080 □ Fax: 465-1418

planningbd@co.cape-may.nj.us



Established 1953

Will Morey
Freeholder

Leslie L. Gimeno, PP, AICP
Planning Director

Mayor Richard Palombo
Township of Upper
P.O. Box 205
Tuckahoe, New Jersey 08250-0205

August 14, 2013

Re: Application to Open Space Program for Amanda's Field

Dear Mayor Palombo,

The Open Space Board is in receipt of the Township's application to the Cape May County Open Space Program for improvements to Amanda's Field.

Upon submission, each application is reviewed by the Board for consistency with the goals and objectives of the Program, as described in the Program Guide. In order to maximize the benefit of the use of limited funds, the Open Space Board makes positive recommendations to the Board of Chosen Freeholders for those projects that have a regional appeal, and that would contribute to the diversity of our County's open space and recreation resources.

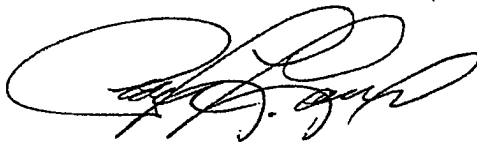
After careful consideration, the Cape May County Open Space Review Board has decided to recommend the Township's Park/Recreation Development project to the Board of Chosen Freeholders for partial funding in the amount not to exceed \$220,000. The Township's application provided a budget page, dated March 9, 2013, detailing the amount of the request, \$585,000. The Open Space Board is declining to recommend the funding of three of the items listed: Concession Stand (\$20k), Sports Lighting – Baseball Fields (\$250k), and Sports Lighting – Soccer (\$95k). The elimination of these items brings the recommended budget to \$220,000.

The Concession Stand was removed from consideration, as the Board feels that such structures are inconsistent operationally with the intent of the Open Space Program and its mission to fund public endeavors. The lighting projects, as presented in the application, simply were too large of a component of the project compared to the perceived enhanced recreational benefit.

It is anticipated that the existing leasing and management agreement can be modified to include the expanded funding and improvements. As such, County Counsel will be developing a draft of the modified agreement and will provide it to the Township. Once both the Township and the County agree to the form and content of the document, a public hearing will be held by the Board of Chosen Freeholders in order to meet the requirements of N.J.S.A. 40:12-15.2 et seq. If no modifications to the project and/or documents are necessitated by the public hearing, the Freeholder Board can move to adopt a resolution and execute the necessary documents as soon as 45 days after the public hearing.

Thank you in advance for your cooperation as we move through the necessary steps to bring the project into fruition. I look forward to working with you over the next several months, and to enjoying the wonderful recreation opportunities that the Township's project will bring to our area residents and visitors for many years to come. If you have any questions or concerns throughout the process, please feel free to contact Leslie Gimeno, County Planning Director, at (609) 465-6875.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Lomax", written in a cursive style.

Peter Lomax, Chairperson
Open Space Review Board

Cc: Paul Dietrich, Township Engineer
County Counsel

SCHEDULE "B"

SHARED SERVICES AGREEMENT

**BY AND BETWEEN THE
COUNTY OF CAPE MAY
AND
TOWNSHIP OF UPPER**

APRIL 1, 2014 - MARCH 31, 2015

CAPE MAY COUNTY OPEN SPACE AND FARMLAND PRESERVATION PROGRAM

PREAMBLE

THIS SHARED SERVICES AGREEMENT made and dated as of the 28 day of April, 2014, constitutes an agreement between the County of Cape May (hereinafter "County") and Township of Upper (hereinafter "Municipality"), both constituting public bodies corporate and politic of the State of New Jersey.

WITNESSETH

WHEREAS, the County has determined that it is in the best interests of the County and residents therein, as well as the municipalities and residents of the individual municipalities located within the County, for the County to provide funds to such municipalities for the acquisition of lands for open space and the development of public park and recreation facilities or improvements; and

WHEREAS, the County desires, pursuant to the provisions of N.J.S.A. 40:12-16, et seq., N.J.S.A. 40:12-9 and N.J.S.A. 40A:65-1, et seq., and other related statutes providing for joint action with regard to capital projects and improvements which are deemed to benefit the County and the municipalities and their residents, to provide funding for such projects and improvements, and

WHEREAS, in 1989, pursuant to P.L. 1989, Chapter 30, the County of Cape May Board of Chosen Freeholders established an Open Space and Farmland Preservation Trust Fund; and

WHEREAS, on December 27, 2012, in accordance with N.J.S.A. 40:12-15.3, the Board of Chosen Freeholders adopted new 2013 Program Guidelines for the Open Space Program that incorporated the two additional eligible categories of park and recreation development as well as historic preservation projects; and

WHEREAS, Municipality has submitted an application under the 2013 Program for the completion of recreational facilities at Amanda's Field located at 10 Sunset Drive, Upper Township, New Jersey, with the initial amount of the request of \$585,000.00 (hereinafter "Submitted Proposal"); and

WHEREAS, July 23, 2013, the Open Space Review Board has thoroughly reviewed, deliberated and voted to make a recommendation to the Board of Chosen Freeholders to fund a portion of this project, in an amount not to exceed \$220,000.00, with the additional condition that the lighting of the fields and concession stands will not be constructed as requested in the Submitted Proposal, which altered proposal will hereinafter be referred to as the "Defined Project".

WHEREAS, a public hearing on this project was held on February 11, 2014 at the Cape May County Administration Building, 4 Moore Road, Cape May Court House, New Jersey 08210; and

WHEREAS, on the basis of the information provided by the applicant, the recommendation of the Open Space Review Board, and input gathered from the public hearing,

the Board of Chosen Freeholders desires to enter into this Shared Services Agreement with the Municipality to support the implementation of the defined project; and

WHEREAS, the County and the Municipality desire to enter into this Agreement in order for the County to provide funding to the Municipality for the aforementioned Defined Project;

NOW, THEREFORE, in consideration of the promises, agreements and covenants hereinafter set forth and mutually agreed to, the County and the Municipality, each for itself, its successors and assigns, do mutually covenant, promise and agree as follows:

**ARTICLE I
PROVISION OF SERVICES**

SECTION 101. County Funding. The County agrees to provide reimbursement funds to the Municipality to undertake the Defined Project. Such funds shall be provided by the County to the Municipality with no repayment requested if the Municipality completes the Defined Project within the time frame outlined in Section 102 (the "Initial Term").

SECTION 102. Agreement Term; Terms and Conditions. The term of the Agreement shall commence on April 1, 2014 and shall terminate on March 31, 2015, which shall be the date when the Defined Project must be completed as referred to in Section 101. If the Municipality requests an extension of the Initial Term from the date referred to in Section 101, it shall make such request in writing at least 60 days prior to such date to the Clerk of the Board of Chosen Freeholders. The County shall notify, in writing, the Municipality of the County's agreement to extend the completion of the defined project no later than 30 calendar days prior to the expiration date of the Initial Term.

SECTION 103. Municipal Obligation. In consideration for the County providing the funding to reimburse the Municipality, the Municipality agrees to pay to undertake the Defined Project and to complete it by the end of the term of this Agreement as described in Section 101.

SECTION 104. Conditions Precedent. The following items shall be conditions precedent to the performance by the County and the Municipality of the respective obligations under this Agreement:

(a) The Approving Capital or Bond Ordinance or other budget provisions setting forth the authorization to proceed with the Defined Project of the Municipality shall have been adopted and shall be in full force and effect. A fully executed copy must be provided to the County within 30 days of passage.

(b) Application and receipt of any necessary permits from any and all agencies.

(c) The Approving Capital or Bond Ordinance or budget appropriations of the County shall have been adopted and shall be in full force and effect.

(d) Delivery of opinions of counsel to the County and the Municipality that this Agreement has been duly authorized and executed, and upon due execution by the other party will be a valid, binding and enforceable obligation of the County or the Municipality, as the case may be, except as the enforceability thereof may be subject to general principles of equity and laws affecting the enforcement of creditor's rights generally.

SECTION 105. Authorized County and Municipal Representatives. a) The authorized County Representatives for all purposes of the Agreement shall be the Freeholder Director or such other representative who shall, from time to time, be designated by the Freeholder Director.

(b) The authorized Municipal Representative for all purposes of the Agreement shall be the Mayor or such other representative who shall, from time to time, be designated by the Mayor.

(End of Article 1)

ARTICLE II
REPRESENTATIONS AND WARRANTIES

SECTION 201. Representations and Warranties of the County. The County represents and warrants to the Municipality as follows:

(a) General. The County is a public body corporate and politic of the State of New Jersey and has the power and authority to provide the Services to the Municipality and to execute and deliver this Agreement and all documents necessary to give effect to this Agreement and to perform its obligations hereunder.

(b) No Conflict. The execution, delivery and performance of this Agreement (i) has been duly authorized by all requisite action of the County, (ii) to the best knowledge of an Authorized County Representative, following diligent inquiry, will not violate or conflict with any provision of law, rule or regulation, any order of any court or other agency of government and (iii) to the best knowledge of an Authorized County Representative, will not violate or result in a default under any provision of any indenture, agreement or other instrument.

(c) Litigation. Except as otherwise disclosed to the Municipality, to the best knowledge of an Authorized County Representative, there is no action, suit or proceeding at law or in equity or by or before any Governmental Authority or other agency now pending or, threatened against or affecting the ability of the County to enter into this Agreement.

(d) Obligations of the County. When executed and delivered by the County, this Agreement will be a legal, valid and binding obligation of the County enforceable against it in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, moratorium or similar laws affecting creditors' rights generally.

SECTION 202. Representations and Warranties by the Municipality. The Municipality makes the following representations and warranties to the County:

(a) General. The Municipality (i) is a public body corporate and politic of the State of New Jersey, (ii) has full corporate power and authority to execute and deliver this Agreement and all documents necessary to give effect to this Agreement and to perform its obligations hereunder, and (iii) by proper Municipal action has duly authorized the execution and delivery of this Agreement.

(b) No Conflict. The execution, delivery and performance of this Agreement (i) has been duly authorized by all requisite action of the Municipality, (ii) to the best knowledge of an Authorized Municipal Representative, following diligent inquiry, will not violate or conflict with any provision of law, rule or regulation, any order of any court or other agency of government and (iii) to the best knowledge of an Authorized Municipal Representative, will not violate or result in a default under any provision of any indenture, agreement or other instrument.

(c) Litigation. Except as otherwise disclosed to the Municipality, to the best knowledge of an Authorized Municipal Representative, there is no action, suit or proceeding at law or in equity or by or before any Governmental Authority or other agency now pending or,

threatened against or affecting the ability of the Municipality to enter into this Agreement or perform the services hereunder.

(d) Obligations of the Agency. When executed and delivered by the Municipality, this Agreement will be a legal, valid and binding obligation of the Municipality, enforceable against it in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, moratorium or similar laws affecting creditors' rights generally.

(End of Article II)

ARTICLE III
OPEN SPACE AND FARMLAND PRESERVATION PROGRAM REQUIREMENTS

SECTION 301. The County will reimburse the Municipality in an amount not to exceed \$220,000.00.00 to support the Defined Project identified in Section 302. This amount is the maximum total amount of funding by the County to the Municipality.

SECTION 302. Municipality will utilize funding from the County in the amount of \$220,000.00 to support the Defined Project. The Defined Project is specifically identified and described in the Municipality's application, presentation and recommendation by the County Open Space Review Board and is made a part of and incorporated with this Agreement as if set forth at length herein. The County's funding shall not be utilized for any other purpose. In the event said funding is not utilized for the Defined Project, the County shall declare Municipality in default of this Agreement and require the immediate repayment of \$220,000.00 to the County as described in Section 308 herein.

SECTION 303. The Municipality is responsible for the design, preparation, permitting, construction and completion of the Defined Project. The Municipality will prepare detailed site plans, with engineer's estimates, for approval by the Open Space Review Board and/or the Board of Chosen Freeholders prior to the commencement of the project, and will be wholly responsible for the implementation of the project in accordance with the same. Said Project is or shall be accessible to all individuals as required by the Americans with Disabilities and Amendments Act. Municipality further agrees to assume or continue the obligations and prerogatives which otherwise apply to it as the lessee of the property and of the Defined Project such as the long-term care, maintenance and operation of the Defined Project which shall include all applicable insurance thereon. In addition, the Municipality agrees to execute a revised Leasing and Management Agreement with the County to include references to this Shared Services Agreement.

SECTION 304. The County will reimburse the Municipality the actual amount of expenditures made by the Municipality for implementation of the Defined Project in an amount described in Section 301 above. Upon completion of the Defined Project, the County will schedule a formal inspection of the Defined Project, and will review the Defined Project for consistency with the site plan and engineer's estimates referenced in Section 303 above. Municipality will provide a certification to the total expenditures and provide proof of all expenditures for the Defined Project to the Chief Financial Officer of the County of Cape May within thirty (30) days of final completion of the Defined Project. Proof of all expenditures shall be in the form of vouchers or purchase orders, vendor invoices, and copies of cancelled checks (both sides). The failure to provide said documentation will result in a default of this agreement, and will result in non-payment by the County.

SECTION 305. The Municipality agrees to indemnify the County and to hold it harmless from and against any and all damages, claims, losses and liabilities of any sort (including reasonable attorney's fees) that the County may incur as a result of or arising out of the design, preparation, construction and use of the Defined Project. In addition, Municipality agrees to have the County named annually as a primary additional insured on a general liability insurance policy with coverage at least equal to three million dollars (\$3,000,000.00) per bodily

injury or property damage occurrence until completion of the project. A certificate of insurance evidencing said coverage and the additional insured designation shall be provided to the County on an annual basis.

(a) Municipality assumes the risk of all damage, loss, cost and expense arising out of or relating to the Defined Project.

(b) It is the intention that the scope of this provision for indemnification is the widest and most comprehensive allowable by law and the Municipality will be responsible for any and all liabilities, occurrences, damages or costs which may occur.

(c) The Municipality and the County agree that this Agreement shall be construed to the fullest extent possible by law to impose upon the Municipality the fullest duties of indemnity which shall include the obligation by the Municipality to:

(1) Inspect the condition of the Defined Project, and repair as necessary;

(2) Defend the County in any claim, lawsuit, arbitration or claim of any sort completely through total and final resolution of the matter including appeals. In the event the Municipality does not timely provide a defense and indemnity that causes the County to incur costs including attorney's fees to enforce any rights pursuant to this Agreement, then, Municipality shall also be responsible for said costs and fees as incurred by County;

(3) Defend and indemnify the County for any claims for reimbursement and subrogation by any and all medical providers, medical insurers or worker's compensation carriers or any other individual or entity.

SECTION 306. Municipality waives all rights to make a claim (or crossclaim) or file a suit against County for, and relieves County from all liability or responsibility of any kind arising from such damages, loss, cost or expense arising out of or related to the Defined Project.

SECTION 307. Default. Failure on the part of Municipality to comply with either the implementation of the Defined Project, in any aspect, as described in its application or any provision of this Agreement, or the satisfactory maintenance of the improvements, as required herein constitutes "default". Upon "default", as determined solely by the County, the County may, at its option, either:

(a) Declare this Agreement to be terminated, and require Municipality to repay the funds identified herein to the County within ten (10) days; or

(b) Permit Municipality to "cure" any default within thirty (30) days. Thereafter, County may, at its option, grant any other additional time needed to cure any default as necessary. If said default continues longer than any time frame agreed upon by County, Municipality shall repay the funds identified herein to the County with ten (10) days.

SECTION 308. County Indemnification. The County agrees to indemnify the municipality and hold it harmless from and against any claims, damages, losses or liabilities that the municipality may incur as a result or arising out of the gross negligence on the part of the County. The County does not waive any applicable N.J.S.A. 59-1, et seq. immunities.

(End of Article III)

**ARTICLE IV
MISCELLANEOUS**

SECTION 401. **Governing Law.** This Agreement shall be deemed to be a contract under the laws of the State of New Jersey and for all purposes, including interpretation hereof and performance hereunder, shall be governed in accordance with the laws of the State of New Jersey. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement may bring the legal action or proceeding in the Superior Court of New Jersey sitting in Cape May Court House, New Jersey.

SECTION 402. **Consents.** Any consents required by the County or Municipality under this Agreement (other than those delegated to the applicable Authorized County Representative or Authorized Municipal Representative) shall be adopted by a resolution of the respective governing bodies.

SECTION 403. **Amendments.** Any amendment or modification of this Agreement will only be effective upon the execution of a written instrument authorized by the members of the Municipality in the case of the Municipality and the Freeholder Director and the Board of Chosen Freeholders in the case of the County.

SECTION 404. **Assignment.** No party may assign or attempt to assign its respective obligations under this Agreement. Any purported assignment of rights in violation of this provision is void. In addition to voiding the purported assignment, the County shall declare the assignor in default of this Agreement and require the re-payment of all project funds within seven (7) days.

SECTION 405. **Severability.** If one or more of the provisions of this Agreement are determined to be contrary to law, then such provision or provisions shall be deemed severable from the remaining provisions and shall not affect the validity of the other provisions of this Agreement.

SECTION 406. **Term.** The duties and obligations under Sections 306 and 307 shall remain in effect for as long as the applicable statute of limitations remain in effect and the duty to defend shall extend beyond the statute of limitations to the extent any claim is made against the County at any time in the future as it relates to the Defined Project.

SECTION 407. **Notices.** All notices required under the terms of this Agreement shall be given by hand delivering such notices or by mailing such notices by certified or registered mail, return receipt requested, to the address of the parties. Notices to the County shall be sent to the Clerk, Board of Chosen Freeholders and County Treasurer. Notices to the Municipality shall be sent to the Mayor and Clerk of the Municipality.

SECTION 408. **Entire Agreement.** This Agreement constitutes the entire understanding of the parties.

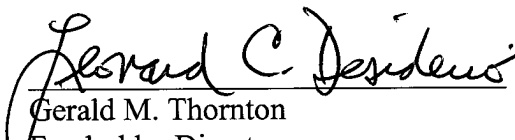
(End of Article IV)

IN WITNESS WHEREOF, the County and the Municipality have caused their respective seals to be hereunto affixed and attested and this Agreement to be signed by their respective, duly authorized officers and to be dated as of the day and year first written above.

ATTEST:

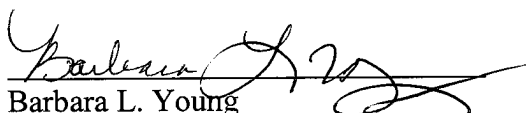

Elizabeth Bozzelli
Clerk of the Board
[SEAL]

COUNTY OF CAPE MAY

BY: 
Gerald M. Thornton
Freeholder Director

Date: 4-8-14

ATTEST:

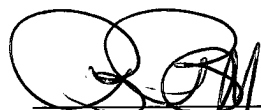

Barbara L. Young
Township Clerk
[SEAL]

TOWNSHIP OF UPPER

BY: 
Richard Palombo
Mayor

Date: 7-28-14

APPROVED AS TO FORM:


Barbara Bakley-Marino, Esquire
County Counsel