

CITY OF VINELAND

RESOLUTION NO. 2018-_____

RESOLUTION AUTHORIZING THE EXECUTION OF A SHARED SERVICES AGREEMENT BY AND BETWEEN THE CITY OF VINELAND AND THE CUMBERLAND COUNTY IMPROVEMENT AUTHORITY IN ACCORDANCE WITH THE SHARED SERVICES AND CONSOLIDATION ACT N.J.S.A. 40A:65-1 ET SEQ. FOR A FEASIBILITY STUDY FOR THE CREATION OF AN INTERNET SERVICE PROVIDER UTILITY

WHEREAS, the City of Vineland is the owner of an electric distribution network inclusive of poles wiring and fiber optic cable and related facilities which have the capability of providing internet service through a portion of the City; and

WHEREAS, the City has a substantial industrial, commercial and professional base which could benefit from the City becoming a “Smart City” and becoming an Internet Service Provider; and

WHEREAS, the City is currently investigating the possibility of becoming an Internet Service Provider (ISP) to better serve its customer and potentially its residential users which will require the development of a business plan, investigate a funding source and existing electric infrastructure including its fiber optic assets; and

WHEREAS, the Cumberland County Improvement Authority (CCIA) has technical service partners and vendors who may assist the City in exploring the feasibility in becoming an ISP; and

WHEREAS, the Parties recognize the benefits and economies to be achieved by utilizing shared services for the performance of services that can be done more efficiently in combination then separately and the Parties are authorized, pursuant to the Uniform Shared Services Consolidation Act, N.J.S.A.40A: 65-1, et seq., to enter into a shared services agreement with any other local unit to provide or receive any service that each local unit could perform on its own.

WHEREAS, the Parties recognize that the cost for such services is estimated to be \$60,000.00 and that the Parties further wish to outline their respective duties and obligations relative to the performance of a feasibility study including the development of a business plan and funding for the project.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland that the Mayor and Clerk are authorized to execute a Shared Services Agreement with the Cumberland County Improvement Authority vendors for a feasibility study for the creation of an Internet Service Provider Utility in the form and substance as is contained in the agreement attached hereto and made a part thereof.

Adopted:

President of Council

ATTEST:

City Clerk

**SHARED SERVICES AGREEMENT
BETWEEN
THE CITY OF VINELAND
AND
THE CUMBERLAND COUNTY IMPROVEMENT AUTHORITY**

**FOR THE PROVISION OF A FEASIBILITY STUDY FOR THE CREATION OF
AN INTERNET SERVICE PROVIDER UTILITY FOR THE CITY OF
VINELAND**

THIS AGREEMENT made this _____ day of _____, 2018, (“Effective Date”) by and between the City of Vineland, a body corporate and politic of the State of New Jersey, having its principal offices located at 640 East Wood Street, Vineland, New Jersey 08360 (“City” or “Vineland”) and the Cumberland County Improvement Authority, having its principal offices located at 2 North High Street, Millville, New Jersey 08332, (“CCIA”), collectively referred to individually as a “Party” or collectively as the “Parties.”

WITNESSETH:

Whereas, the City desires to explore the ability to become an Internet Service Provider (“ISP”); and

Whereas, in order to explore this option, the City first desires to conduct a feasibility study; and

Whereas, if the City determines this option is feasible, this will then be a multi-phased project with the City then needing to develop a business plan, seek funding sources, and seek personnel; and

Whereas, the City desires access to the CCIA’s technical service partners and vendors to assist the City of Vineland with the steps necessary to explore becoming an ISP; and

Whereas, the CCIA is capable of providing and wishes to provide this access to the City; and

Whereas, to that end, the City and the CCIA have negotiated this Shared Services Agreement between the City of Vineland and the Cumberland County Improvement Authority (“Agreement”) with respect to this access; and

Whereas, the Parties have the legal authority to enter into this Agreement under the Uniform Shared Service and Consolidation Act, N.J.S.A. 40A:65 et seq. (the “Act”); and

Whereas, City Council has adopted Resolution _____ authorizing the execution of this Shared Services Agreement; and

Whereas, the CCIA has adopted Resolution _____ authorizing the execution of this Shared Services Agreement; and

Now, Therefore, and in consideration of mutual promises, agreements and other considerations made by and between the Parties, the City and the CCIA do hereby agree as follows:

AGREEMENT

I. BRIEF DESCRIPTION.

The City of Vineland seeks to partner with the Cumberland County Improvement Authority with the CCIA providing access to its technical service partners and vendors to assist the City of Vineland with the steps necessary to explore becoming an ISP.

II. SCOPE OF SERVICES.

The CCIA shall make available to the City its technical service partners and vendors to assist the City of Vineland with the steps necessary to explore becoming an ISP. The CCIA, through its vendors, will provide the City with options on how to best provide broadband services to its constituents. The CCIA will at a minimum provide to, or assist, the City with the following:

- A) Access to a Project Manager.
- B) Development of a Business Plan.
- C) Defining necessary steps towards the City becoming its own ISP.
- D) Assistance with seeking the most cost-effective partners for the resale of broadband services.
- E) Assistance with defining Key Performance Indicators and what constitutes a successful pilot program.
- F) Assistance with defining the steps to continue in moving the City towards becoming its own ISP assuming a successful pilot program.
- G) Assistance with seeking potential grant funding.
- H) Assistance with determining needed personnel.
- I) Assistance with determining best location for ISP personnel.

III. FEE FOR SERVICES.

The CCIA utilizes the services of various vendors, who bill the CCIA at various rates. For services performed within the scope of this Agreement, the City shall be wholly responsible for the cost of any services provided to the City. When the CCIA is invoiced by a vendor for services provided to the City under this Agreement, the CCIA will prepare an invoice for the City to reflect the full cost of all services related to this Agreement. The City shall pay this invoice within thirty (30) days. It is estimated that the cost for such service shall be \$60,000.00 of which the City shall be responsible for payment thereof. The specifications for the service shall provide for the periodic modification of this estimate dependent upon the actual services to be provided as may be amended.

IV. STANDARD OF CARE.

The Parties, their employees, agents and independent contractors shall at all times act and render Services utilizing reasonable business efforts. Nothing in this section shall be construed as to limit any higher standard of care that may be required by law.

V. TERM AND TERMINATION.

This Agreement shall begin on the Effective Date and shall remain in effect for a period of one (1) year or until such time that this Agreement is terminated pursuant to this Paragraph. Upon thirty (30) days written notice to the other Party, any Party may terminate this Agreement with or without cause.

VI. RENEWAL.

This Agreement shall automatically renew for an additional one year term, unless a Party provides thirty (30) days written notice of its intention not to renew the Agreement.

VII. MUTUAL COOPERATION.

The Parties agree to mutually cooperate with one another in performing the duties and responsibilities delineated herein. Such cooperation shall include but not be limited to enforcement or the assistance in the enforcement of any warranty or service to be provided to the City by CCIA vendors.

VIII. INDEMNIFICATION.

A. The City shall indemnify and hold the CCIA, its governing body, its officers, employees, and agents harmless against any and all liability, losses, costs,

damages, claims, judgments or expenses, which shall be incurred by reason of any claim, suit or action which is based upon personal injury, death, or damage to property, whether real, personal or both, arising out of or in any way related to the negligent performance of or any act or omission of the City or its employees under this Agreement.

B. The CCIA shall indemnify and hold the City, its governing body, its officers, employees, and agents harmless against any and all liability, losses, costs, damages, claims, judgments or expenses, which shall be incurred by reason of any claim, suit or action which is based upon personal injury, death, or damage to property, whether real, personal or both, arising out of or in any way related to the negligent performance of or any act or omission of the CCIA or its employees under this Agreement

C. No Service providers subject to this Agreement shall be considered employees, agents or assigns of the City.

IX. ASSIGNMENT.

This Agreement shall not be assignable by either Party, except upon written agreement signed by both Parties.

X. REMEDIES.

A. Controversies and Claims Subject to Mediation. Any controversy or claim arising out of or related to this Agreement, or the breach thereof, shall be settled by mediation. If a dispute between the CCIA and the City arises during the course of this Agreement, the Parties will make a good faith effort to resolve the dispute through mediation.

B. Performance Pending Mediation. During mediation proceedings, the CCIA and the City shall continue to perform all duties and responsibilities described in this Agreement subject to the terms of Paragraph V herein.

C. When Mediation May be Demanded. Prior to either Party submitting a demand for mediation, the aggrieved Party shall attempt to resolve the problem directly with the other Party. The aggrieved Party shall submit a written notice of dispute to the other Party. The receiving Party shall respond in writing.

D. Demand for mediation of any claim shall not be made until the earlier of the following:

1. Five (5) business days after the receiving Party has provided its written response to the aggrieved Party's notice of dispute; or

2. Thirty (30) days have passed after submission of the original, written notice of dispute by the aggrieved Party and the receiving Party has not responded.

3. If the written response from the receiving Party does not resolve

the dispute, the aggrieved Party shall have thirty (30) days from the date of the receiving Party's response to file a demand for mediation ("Mediation Demand"). If the aggrieved Party fails to do so, it shall be deemed to have waived its right pursuant to this Agreement to demand mediation with regards to the dispute.

E. A Party who files a Mediation Demand must assert all claims then known to that Party for which mediation may be demanded. Any claim that the Party fails to assert shall be deemed waived. If a Party fails to include a claim because of excusable neglect, or when a claim has matured or is subsequently acquired, the mediator or mediators may permit amendments.

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

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

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

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

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

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

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

G. Procedures at Mediation. The mediation shall be conducted in such reasonable and efficient manner as may be agreed between the Parties and the mediator or, if the Parties cannot agree, as may be determined by the mediator. The Parties will not be bound by the Rules of Evidence in presenting their positions before the mediator.

H. Cost of Mediation. Each Party will bear its own cost of participation in the mediation. The mediator's fee will be divided equally between the Parties.

I. Failure of Mediation. If a good faith effort to resolve the dispute through mediation is unsuccessful, either Party may terminate the mediation by written notice to

the mediator and to the other party. Thereafter, any Party may submit the dispute to the Superior Court of New Jersey, Cumberland County, for adjudication, which court shall have exclusive original jurisdiction over the dispute.

J. Should any dispute arise pertaining to any Invoice issued by the CCIA, the City shall provide written notification of such dispute within five (5) business days of receiving the Invoice. Notwithstanding the provision of written notice of a dispute, the City shall render performance in accordance with Paragraph III. The Parties shall work together to negotiate in good faith a reasonable resolution with regards to the dispute. If the Parties are unable to reach a resolution, the Parties shall act in accordance with this Paragraph. If through subsequent negotiation, arbitration or litigation the amount due shall be determined, agreed or adjudicated to be less than was actually so paid, then the Party having received the payment shall forthwith repay the excess.

XI. INSURANCE.

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

XII. WAIVER.

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

XIII. NO PERSONAL LIABILITY.

No covenant, condition or agreement contained in this Agreement shall be deemed to be the covenant, condition or agreement of any past, present or future officer, agent or employee of either the City or the CCIA, in his or her individual capacity, and neither the officers, agents or employees of the City and the CCIA, nor any official executing this Agreement shall be liable personally on this Agreement by reason of the execution hereof by such person or arising out of any transaction or activity relating to this Agreement.

XIV. MISCELLANEOUS.

A. Relationship Between the Parties. Pursuant to the Act, any Party performing a service under this Agreement is the general agent of any other Party on whose behalf that service is performed, and that agent-Party has full powers of performance and maintenance of the service contracted for, and full powers to undertake any ancillary operation reasonably necessary or convenient to carry out its duties, obligations and responsibilities under the agreement. These powers include all powers of enforcement and administrative regulation which are, or may be, exercised by the Party

on whose behalf the agent-Party acts pursuant to the Agreement, except as the powers are limited by the terms of the Agreement itself.

B. Either Party may freely enter into another agreement or agreements with any other eligible entities for the performance of any service or services pursuant to the Act. The participation in one agreement shall not bar participation with the same or other parties in any other agreement.

C. Amendment. This Agreement may not be amended or modified for any reason without the express prior written consent of the Parties hereto. Any amendment to this Agreement must be signed by both Parties and attached hereto.

D. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

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

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

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

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

I. The Paragraph and Section headings in this Agreement are included herein for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

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

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

XV. COMPLIANCE WITH THE UNIFORM SHARED SERVICES AND

CONSOLIDATION ACT.

In accordance with N.J.S.A. 40A:65 *et seq.*, this Agreement shall be filed with the Division of Local Government Services.

ATTEST

CITY OF VINELAND

Dated:

ATTEST

**CUMBERLAND COUNTY
IMPROVEMENT AUTHORITY**

Dated: