

RESOLUTION 40-15

**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
BETWEEN THE BOROUGH OF CLAYTON AND THE CLAYTON BOARD
OF EDUCATION FOR THE RESALE OF SNOW REMOVAL CHEMICALS
AS PART OF A COMMODITY RESALE SYSTEM**

WHEREAS, the Borough of Clayton and the Clayton Board of Education have agreed to enter into an Agreement for the Purchase of snow removal chemicals; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That the governing body does hereby approve the attached Agreement between the Borough of Clayton and the Board of Education.

2. That the Mayor be and is hereby authorized to execute said Agreement on behalf of the Borough of Clayton.

ADOPTED, at a regular meeting of the Mayor and Council of the Borough of Clayton held on February 12, 2015.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Attest:



CHRISTINE NEWCOMB, Borough Clerk

CERTIFICATION

I, Christine Newcomb, Borough Clerk, of the Borough of Clayton, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton, held on Thursday, February 12, 2015.



CHRISTINE NEWCOMB, Borough Clerk

**AGREEMENT BETWEEN THE BOROUGH OF CLAYTON AND THE CLAYTON
BOARD OF EDUCATION FOR THE RESALE OF SNOW REMOVAL CHEMICALS AS
PART OF A COMMODITY RESALE SYSTEM**

AN AGREEMENT for the resale of snow removal chemicals made on this 12th day of February, 2015 by and between the Clayton Board of Education and the Borough of Clayton entered into pursuant to the Commodity Resale Provisions of the Cooperative Purchasing Rules (*N.J.A.C. 5:34-7.1 et seq.*).

WHEREAS, Borough of Clayton (hereinafter referred to as "Clayton") owns and operates a deicing material storage facility for its own needs; and

WHEREAS, the Clayton Board of Education (hereinafter referred to as "Board of Education") is desirous of making use of the deicing material storage facility owned by Clayton located at the Clayton Public Works Complex located at Bernard Street and Washington Avenue, Clayton, New Jersey.

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

I. SUPPLY OF SNOW REMOVAL CHEMICALS

1. Clayton does hereby agree to provide access to the Public Works Complex and deicing material storage facility to the Board of Education for the purpose of filling Board of Education vehicles with snow removal chemicals, including salt, for use in inclement weather.
2. Clayton shall load the Board of Education's trucks with snow removal chemicals and both Clayton and the Board of Education shall keep track of how much snow removal chemicals, including salt the Board of Education is using during the course of any given year through a log system to account for each truck load.

II. RATE AND TIME OF PAYMENT

1. Clayton shall invoice the Board of Education on May 1st of each year for all materials used by the Board of Education, with material costs as determined by the contract price of materials paid by Clayton through its agreement with the County of Gloucester.
2. Payment for all materials invoiced to the Board of Education shall be paid by May 31st of each contract year.
3. All invoices shall be sent to Fran Adler, Business Administrator, Clayton Board of Education, 350 E. Clinton Street, Clayton, New Jersey 08312.

III. SNOW REMOVAL CHEMICALS DISPENSING

All snow removal chemicals, including salt to be supplied by Clayton to the Board of Education shall be dispensed at the Clayton Public Works Complex located at Bernard Street and Washington Avenue, Clayton, New Jersey.

IV. EMERGENCIES

In the event of an emergency, Clayton will use its best efforts to provide all snow removal chemicals, including salt that the Board of Education requires.

V. SNOW REMOVAL CHEMICAL RATE CHANGES

Parties to this Agreement acknowledge and understand that the contract cost in Paragraph II fluctuates based upon the contract rate Clayton must pay for the delivery of snow removal chemicals to its facility. Clayton shall notify the Board of Education of any changes in the method of contract cost calculation fourteen (14) days before imposing any such rate change(s).

VI. EXCUSED PERFORMANCE

Clayton agrees to use its best efforts to provide a continuous and regular supply of snow removal chemicals, subject to the terms of this Agreement.

VII. INDEMNIFICATION

1. During the Term of this Agreement, the Board of Education shall indemnify and shall hold Clayton, the members of its governing body, and its officers, agents and employees harmless against, and shall pay any and all liability, loss, cost, damage, claims, judgment or expense of any and all kinds or nature, which shall be imposed by law, which Clayton, its governing body, or its officers, agents and employees may sustain or may be subject to or may be caused to incur by reason of any claim, suit or action brought by an officer, agent or employee of the Board of Education, which is based upon personal injury, death, or damage to property, whether real, personal or both, and which arises from the Board of Education's access to the Facility, unless such liability, loss, etc. is attributed to Clayton's gross negligence or willful misconduct. Should any fees be expended by the Board of Education for any claims, suits or actions arising from Clayton's gross negligence or willful misconduct, Clayton shall reimburse the Board of Education for such costs.

2. The Board of Education at its own cost and expense shall defend any and all such claims, suits and actions which come within the scope of the indemnity set forth in Section VIII(1) above; provided, however, that this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance of its obligation to defend Clayton or any other insured party which may be named in such policy or insurance in connection with any claims, suits or actions which are covered by the terms of such policy. The Board of Education shall not be responsible for such defense for claims, suits and actions arising from Clayton's gross negligence or willful misconduct. Should any fees be expended by the Board of Education

for any claims, suits or actions arising from Clayton's gross negligence or willful misconduct, Clayton shall reimburse the Board of Education for such costs.

3. Clayton shall give an authorized representative of the Board of Education prompt written notice of the filing of each such claim by an officer, agent or employee of the Board of Education.

4. The Board of Education shall provide a Certificate of Insurance to Clayton listing Clayton as an additional named insured.

IX. DEFAULT

Should either party fail to perform in accordance with this Agreement, the opposite party shall provide notice, in writing, of such non-performance. If, after ten (10) days, the non-performing party fails to perform, said party shall be declared to be in default of this Agreement. The non-defaulting party may thereafter seek any remedies it may have in a Court of law.

X. TERMINATION

This Agreement will automatically renew unless otherwise terminated by either party as per the Agreement.

Either party may terminate this Agreement with three (3) months written notice or immediately upon declaring the other party in default under the provisions of this Agreement.

XI. MISCELLANEOUS

1. **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.

2. **Supplements.** The parties shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be required to correct any inconsistent or ambiguous term of the Agreement.

3. **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 herein.

4. **Amendments.** This Agreement may not be amended or modified for any reason without the express prior written consent of the parties hereto.

5. **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.

6. **Successors and Assigns.** This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

7. **Notices.** Unless otherwise provided in writing, any notices to be given or to be served upon any party hereto, in connection with this Agreement, must be in writing and may be delivered personally or be certified or registered mail and, if so mailed, shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise, shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at their following respective addresses or at such other addresses as each party may hereafter designate to the other parties in writing:

If to the BOROUGH OF CLAYTON:

Christine Newcomb, Borough Clerk
Borough of Clayton
125 N. Delsea Drive
Clayton, New Jersey 08312

If to the CLAYTON BOARD OF EDUCATION

David T. Lindenmuth, Superintendent
Clayton Board of Education
350 E. Clinton Street
Clayton, New Jersey 08312

8. **Covenants and Conditions.** 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 the parties, and neither the officers, agents or employees of the parties 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.

9. **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.

10. **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 applicable to agreements made and to be performed entirely within the State of New Jersey, including all matters of enforcement, validity and performance.

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

ATTEST:

BOROUGH OF CLAYTON

Christine Newcomb

By: 

THOMAS BIANCO, Mayor

ATTEST:

CLAYTON BOARD OF EDUCATION

Fran Adlen

By: 

DAVID T. LINDENMUTH, Superintendent