

**SECOND AMENDED AND RESTATED
FIRE SERVICES REGIONAL SERVICE AGENCY AGREEMENT
BETWEEN
THE TOWNSHIP OF MAPLEWOOD
AND
THE TOWNSHIP OF SOUTH ORANGE VILLAGE

FOR THE FORMATION OF A REGIONAL SERVICE AGENCY
PURSUANT TO N.J.S.A. 40A:65-1 et seq
TO BE KNOWN AS THE

SOUTH ESSEX FIRE DEPARTMENT**

THIS FIRE SERVICES REGIONAL AGENCY AGREEMENT (“this Agreement”) is made on this 30th day of June, 2023, and effective as provided herein, by and between the Township of Maplewood (“Maplewood”) a municipal corporation of the State of New Jersey, County of Essex, with offices at 574 Valley Street, Maplewood, New Jersey 07040 and the Township of South Orange Village (“South Orange”) a municipal corporation of the State of New Jersey, County of Essex, with offices at 76 South Orange Avenue, South Orange, New Jersey 07079 (each a “Party”, and collectively, the “Parties”).

WHEREAS, the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1 *et seq.* (the “Act”) was enacted to encourage municipalities to reduce waste and duplicative services; and

WHEREAS, both Maplewood and South Orange have paid fire departments; and

WHEREAS, in 2015, Maplewood and South Orange established a Joint Exploratory Committee to investigate a shared fire department that would (1) provide the highest quality fire services to the residents of Maplewood and South Orange (2) maintain an appropriate level of firefighting personnel and equipment to adequately respond to fire, emergency and hazardous incidents in Maplewood and South Orange, and (3) achieve economic and operational efficiencies; and

WHEREAS, in October 2017 the governing bodies of Maplewood and South Orange unanimously accepted the recommendation of the Manitou Report finding that “the communities of Maplewood and South Orange would be better served by combining their fire departments into a single entity ... under a common set of operational procedures and leadership ... [and] governed through an inter-municipal body;” and

WHEREAS, in June 2021 a supplement to the original Manitou Report spoke of the continued enthusiasm “at the potential for both agencies to merge, which will create a higher level of service for both communities and enhance the number of personnel available on initial alarms ... [the agencies] are poised to move forward and undertake consolidation as a step toward more effective operations by both agencies.”

WHEREAS, the Parties entered into an agreement for the formation of a regional service agency, (the “Fire Services RSA Agreement”) and created a public body corporate and politic constituting a political subdivision of the State of New Jersey (the “State”) for the exercise of public and essential governmental functions to provide for the operation of firefighting, fire protection, rescue and emergency services, coordinated communications, and other inter-related governmental services (collectively, the “Fire Services”); and

WHEREAS, paragraph 15 of the Fire Services RSA Agreement provides that such agreement may be amended at any time by resolution of the governing bodies of each of the local units as provided by N.J.S.A. 40A:65-16b (3); and

WHEREAS, effective July 1, 2022, the Parties entered into a First Amended Fire Services Regional Service Agency Agreement; and

WHEREAS, the Parties wish to codify, further amend and restate the Fire Service RSA Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, and for good and valuable consideration, pursuant to the Act the parties agree as follows:

§1. Formation

§1.1 Pursuant to resolutions adopted on March 28, 2022 by South Orange and on April 5, 2022 by Maplewood, the Parties hereby formed a regional service agency pursuant to the Act to be known and designated as “South Essex Fire Department” (“SEFD”).

§1.2 The SEFD shall be a public body corporate and politic constituting a political subdivision of the State and shall have all powers and authority permitted by the Act, which powers shall be exercised pursuant to the terms of this Agreement and any amendments thereto.

§1.3 The principal place of business and/or an agent for service will be 56 Sloan Street, South Orange, NJ 07079.

§2. Defined Terms In addition to terms separately defined throughout this Agreement, the following terms are defined as follows:

- **Board of Trustees**: The governing body of South Orange.
- **Capital Repairs**: Repair of roofs, structural elements and HVAC components of firehouses.
- **Capital Asset**: Two fire stations located at 105 Dunnell Road and 249 Boyden Avenue within the Township of Maplewood and one fire station located at 56 Sloan Street within the Township of South Orange together with all fire trucks, fire engines, fire utility vehicles and vehicles assigned to the Chief, Deputy Chief and Tour Deputy Chief that are owned by the Township of Maplewood and the Township of South Orange.
- **Commencement Date**: July 1, 2022.

- Committee: The management committee set forth in N.J.S.A. 40A:65-20.
- DLGS: The Division of Local Government Service, in the Department of Community Affairs of the State
- Effective Date: The date of the Fire Services RSA Agreement.
- Fire Chief: The superior officer of the SEFD.
- Rolling Stock/Equipment: All fire fighting tools, turnout gear and other fire fighting equipment, computers, radios and other electronic devices presently used by the respective Fire Departments in the functioning of their duties.
- Routine Maintenance, Repairs and Replacements: shall include all maintenance, repairs, replacements (including preventative maintenance, corrective maintenance and the cleaning, lubrication, calibration and adjustment of all fire department equipment) of all materials and/or equipment necessary for the proper and effective provision of fire protection in both Maplewood and South Orange.
- SEFD: The newly formed regional service agency, to be known as the “South Essex Fire Department.”
- Township Committee: The governing body of Maplewood.
- Transition Period: The period of time between the approval of this Agreement and the amendment thereof, effectuating the Commencement Date.

§3. Term

§3.1 Pursuant to N.J.S.A. 40A:65-14, the initial term of this Agreement shall be ten (10) years from the Commencement Date, the date on which the transition plan has been completed and this Agreement amended accordingly.

§3.2 Two (2) years prior to the termination of this Agreement, Maplewood and South Orange shall each advise the other of their respective intentions to extend or terminate this Agreement in their sole discretion. Should the Parties agree to extend the initial ten (10) year term of this Agreement, they may extend this Agreement for an additional term up to thirty (30) years. The term of this Agreement and its extensions shall comply with N.J.S.A. 40A:65-14a and shall not exceed forty (40) years unless allowed by law. This Agreement shall be extended upon such other terms and conditions as the Parties may agree upon according to applicable law, including but not limited to revised or new terms and conditions based upon a review and of the allocations provided for by Subsections **§6.1.1 (operating expenses)** and **§6.2.1 (capital costs)** and any other issues that the Parties seek to review and negotiate.

§3.3 Should either party elect not to extend this Agreement, the Agreement shall expire at the end of the initial or renewal term, as applicable.

§4. Services to be Provided by SEFD

§4.1 SEFD shall provide all services required by law and regulation, New Jersey Division of Fire Safety and New Jersey Office of Emergency Medical Services.

§4.2 SEFD shall provide emergency medical services to Maplewood at the cost stated in Section 6.

§4.3 Annually, the Committee shall designate an SEFD employee for each Party who shall act as their respective appointment for Office of Emergency Management (“OEM”) Deputy Coordinator selected within SEFD for its respective municipality.

§4.4 No employees and/or the Chief Executive Officer of SEFD can be appointed as the OEM Coordinator of a Party.

§5. Governance/Administrative Responsibilities/Employees

§5.1 Except as provided within this Section (§5 *et seq*), SEFD shall be governed solely by the Committee.

§5.2 Membership. The Committee shall consist of a total of three (3) members. Each of the Parties shall appoint one (1) member, pursuant to the requirements of N.J.S.A. 40A:65-20. The appointed Committee members shall appoint a third member. Each member of the Committee shall hold office for the term of one (1) calendar year beginning January 1st and until the member’s successor has been appointed and qualified. In the event of a member leaving prior to the end of the calendar year the respective party shall appoint a new member to fill existing term. In the event that the third member shall leave, before term expires, the Committee members shall appoint a third member. Each of the Parties shall appoint one (1) alternate member, who may only vote in the absence of the member from the same Party. The Committee members and alternate members shall serve without compensation from SEFD.

§5.3 Election. The Committee shall elect annually from among the Committee membership a Chair to preside over its meetings and a Vice Chair at the beginning of the calendar year.

§5.4 Rules and Regulations. The Committee shall adopt its own rules and regulations for the orderly conduct of its meetings and shall set forth the duties and powers of the Chair and Vice Chair, and such other officers and employees as may be appointed pursuant to Subsection §5.6. The Committee shall follow Roberts Rules of Order.

§5.5 Conduct of Business. Any meetings and business must comply with the Open Public Meetings Act (“OPMA”) N.J.S.A. 10:6-4 *et seq* and Open Public Records Act (“OPRA”) N.J.S.A. 47:1A-1 *et seq* and any applicable DLGS rules and regulations. Two members of the Committee must be present to constitute a quorum. All actions of the Committee shall require a 2/3rd votes from all members and shall be binding upon the Parties. Overall budget and/or any capital and operating purchases over \$17,500, hiring and expansion of members and changes to the table of organization must be a unanimous vote among all members.

§5.6 Pursuant to N.J.S.A. 40A:65-20b, the Committee may appoint such other officers and employees.

§5.7 The Administrators of the Parties shall be appointed as non-voting, ex-official members of the Committee and their appointments shall be coterminous with their respective employment with the Parties.

§5.8 The Chief Executive Officer of the SEFD shall be appointed by the Committee and have ultimate responsibility for and authority over SEFD operations. The Chief Executive Officer shall, under the direction and supervision of the Committee:

- A. Enforce the provisions of this Agreement;
- B. Supervise the SEFD Fire Chief;
- C. Require the SEFD, through the Fire Chief, to report as the Chief Executive Officer directs;
- D. Report to the Committee as the Committee believes advisable;
- E. Make recommendations to the Committee that the Chief Executive Officer believes are in the public interest;
- F. Prepare the annual budget for presentation to the Committee and review and analyze budget operations on a continuous basis;
- G. Administer a uniform purchasing program;
- H. Be responsible for the development and administration of a sound personnel system, acting as personnel officer and having full charge of all matters pertaining to personnel administration; and
- I. Be responsible for providing the overall management and administration of the SEFD and providing guidance to the Committee and SEFD and shall be paid annual compensation to be determined and by paid by the SEFD.

§5.9 The Fire Chief, subject to the supervision of the Chief Executive Officer, shall exercise day-to-day control over the SEFD, subject to all applicable statutes, ordinances and regulations. The Fire Chief, who shall serve as the onsite administrator and manager of the Fire Department, shall be responsible for the efficient operation of the SEFD. The Fire Chief shall, subject to the policies promulgated by the Committee and under the supervision of the Chief Executive Officer, have the power and responsibilities to:

- A. Administer and enforce all of the rules and regulations and such emergency directives for the disposition and discipline of the SEFD and its officers and personnel;
- B. Have, exercise and discharge the functions, powers and duties of the SEFD;
- C. Prescribe the duties and assignments of all subordinates and other personnel;
- D. Delegate such of the Fire Chief's authority as the Fire Chief may deem necessary for the efficient operation of the SEFD, to be exercised under the Fire Chief's jurisdiction and supervision;
- E. Report at least monthly to the Chief Executive Officer in such form as shall be prescribed by the Chief Executive Officer on the operation of the SEFD during the preceding month and make such other reports as may be requested by the Chief Executive Officer;
- F. The Fire Chief shall prepare monthly reports presenting an overview of the previous monthly activity but not limited to: community outreach, call responded to and nature of the calls, major issues or concern being addressed and any other relevant information from the SEFD Committee meetings; and

G. Enforce all rules and regulations of the SEFD, as adopted and amended from time to time by the Committee.

§5.10 In the event of a vacancy in the position of Chief Executive Officer, an interim administrator (or such other individual(s) as the respective Party shall identify to fulfill the functions) shall be eligible for appointment and shall assume the responsibilities of the Chief Executive Officer enumerated in §5.8.

§5.11 The Committee may appoint professional services defined in the Local Public Contract Laws 40A: 11-2 and other administrative assistants including but not limited to: Auditor, Legal, Finance, Risk Manager, Communications, IT, Secretary etc. Such appointments shall be limited to a one (1) year term, subject to annual renewal. Such persons so appointed shall not be members of the Committee and shall serve at the pleasure of the Committee

§5.12 Committee shall establish a table of organization, set pay scales, and may hire such personnel as it may deem necessary and convenient to carry out the purposes of this Agreement. The Committee's powers shall include but not be limited to the hiring of administrative staff, negotiation of labor contracts, the right to purchase and dispose of real property and personal property, hiring counsel and consultants, the purchase and maintenance of workers' compensation insurance, general liability and other types of insurance, and to provide for the defense of legal claims or institution of legal claims, and all such powers as the Committee shall deem necessary and convenient to carry out the purposes of this Agreement.

§5.13 Pursuant to N.J.S.A. 40A:65-19(d)(2), the Parties have determined that the employees of the SEFD shall be subject to Title 11A, Civil Service, of the New Jersey Statutes pursuant to N.J.S.A. 40A:65-19(c) as provided in the Act. The Division of Appeals and Regulatory Affairs, Civil Service Commission has determined that the SEFD shall be entitled to reallocate job titles on a noncompetitive basis for an interim basis, not to exceed one year from the Commencement Date, thereby permitting the transfer of employees under the provisions of New Jersey Administrative Code §4A:3-1.2.

§5.14 Where bargaining units are merged which have contracts negotiated in accordance with the provisions of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.) in existence, the terms and conditions of such fully executed contracts shall apply to the rights of the members of the respective bargaining units. However, to the extent a new contract has not been negotiated, reduced to writing and signed by the parties as provided pursuant to law and regulation promulgated thereunder on or before the execution of this Agreement, the SEFD shall operate under the agreement proposed to the bargaining units prepared by SEFD reflective of its understanding of the binding fact-finding award dated May 25, 2023 in the matter of Fact-Finding Between South Essex Fire Department and FMBA Locals 25 and 240, Docket No. FF-2023-010.

§6. Shared costs:

§6.1 Operating expenses

§6.1.1 Except as provided for in Subsections §6.1.2 & .3, each year the SEFD operating expenses shall be shared by Maplewood and South Orange, based upon the equalized assessed value of properties, including exempt properties, with the exception of costs related to capital assets which are provided for in Subsection 6.2.3.

§6.1.2 The cost to provide Maplewood's emergency medical services shall be excluded from operating and capital expenses. The cost to run the medical services will be a deduction of the actual cost of the two (2) top step firefighters fully loaded (which shall include but not be limited to all compensation considerations for such firefighters such as salary, any stipends, longevity, employee benefits and employer tax and fees) from the total shared costs. Any operating expenses and/or overtime related to the administration of EMS (including, but not limited to training, disability, medical) will be the responsibility of Maplewood.

The SEFD will be responsible for Maplewood EMS billing. The billing receipts will be payable to the SEFD and credited against any amounts owned by Maplewood.

The Parties mutually agree to engage an independent professional to perform a true up of EMS expenses for 2022 and 2023. For any year subsequent to 2023, either Party may call for the engagement of a professional for each year in which it is necessary to true-up EMS expenses.

§6.1.3 All EMS revenue collected must be used to maintain and run the emergency medical equipment, tools, vehicles and services and not shared among the Parties.

§6.1.4 If Maplewood discontinues EMS services, then the deduction of the two (2) top step firefighters fully loaded from the total shared cost would be added back into the total cost share.

§6.1.5 Payments by the Parties shall be made on no less than a quarterly basis on February 15, May 15, August 15, November 15 or as may be requested by the Chief Executive Officer. Any payments received after a 15-day grace period are subject to interest assessed by SEFD at ten (10) percent per annum retroactive to the due date. SEFD shall submit its proposed annual budget to the Parties by December 1 of the preceding year.

§6.1.6 The obligation of each Party to make payment of all amounts due hereunder is a direct, general and irrevocable obligation of such Party for which such Party is obligated to make any required payments under this Agreement out of the first funds becoming legally available for such purpose as a result of an appropriation in the budget or budgets of such Party for the payment of such amounts due hereunder and, if such funds for such payments are not otherwise available from such budgetary appropriations for any reason whatsoever, such Party is obligated immediately to take whatever means necessary to ensure payments will be made when due, which measures include the levy of ad valorem taxes upon all taxable property within such Party without limitation as to rate or amount.

§6.1.7 Sick time shall be as negotiated and set forth in the respective collective bargaining agreements for the new organization to allow firefighters to use this time for a health related issue or be paid out (with any applicable caps) upon retirement. Both Parties shall be responsible for

their prorated payout of this amount based on the number of years served with the original Party (For example, a twenty (20) year firefighter retiring with fifteen (15) years in South Orange and five (5) years with SEFD shall be split: South Orange 75% and SEFD 25% of the total payout).

§6.1.8 All unused vacation, overtime or any other compensatory time due to the individual firefighter must be paid out prior to joining SEFD.

§6.2 Capital costs:

§6.2.1 Capital Repairs of firehouses shall be the obligation of each of the Parties owning such firehouse.

§6.2.2 Debt service payments related to all capital assets on the Commencement Date, including real property, rolling stock and equipment shall remain the obligations of the respective Parties, throughout the term of this Agreement and thereafter.

§6.2.3 The Committee shall make decisions to purchase new capital assets, the cost of which shall be shared by the Parties on a ratio of 60% for Maplewood and 40% for South Orange. The acquisition costs of such capital assets shall be funded via note and bond transactions by each of the respective municipalities pursuant to N.J.S.A. 65-21.

§7. Ownership of Capital Assets As of the Commencement Date, ownership of their respective firehouses, Rolling Stock/Equipment and other Capital Assets, shall be retained by South Orange and Maplewood, respectively but it is hereby understood between the Parties that SEFD shall assume sole care, custody and control of the aforementioned. Except as may be otherwise provided by separate written agreement or lease, the Parties shall lease such Capital Assets and Rolling Stock/Equipment to SEFD for the term of this Agreement for the sum of One (\$1.00) Dollar per year. SEFD shall insure and maintain such insurance for the benefit of itself and the Parties.

§§8. Events of Default

§8.1 Failure by either Party to comply with the terms of this Agreement or the Act shall be deemed an event of default.

§8.2 The non-defaulting Party may take any action at law or in equity as necessary or desirable in order to collect any payments which are then due and payable and thereafter to become due and payable, or to enforce performance and observance of any obligation or agreement of the defaulting Party under the terms of this Agreement

§9. Dispute resolution

§9.1 Mediation: Any dispute shall initially be resolved by mediation before a retired Judge of the Superior Court of the State or the United States District Court. The Parties shall agree upon the appointment of such a mediator and, failing agreement, either Party may petition the

Superior Court, Essex County, to appoint one. The Parties shall equally share the cost of the mediator, but bear their own legal and associated expenses.

§9.2 Arbitration: Any dispute that cannot be resolved by mediation shall be resolved by final, binding, conclusive arbitration before a retired Judge of the Superior Court of the State or the United States District Court, sitting as a single arbitrator in a summary fashion. It is the intention to limit prehearing discovery to such matters as the arbitrator determines to be essential for a just and equitable resolution of the dispute. The Parties shall agree upon the appointment of such an arbitrator and, failing agreement, either party may petition the Superior Court, Essex County, to appoint one. The arbitrator shall determine all procedural rules. The Parties shall equally share the cost of the arbitrator, but bear their own legal and associated expenses.

§10. Insurance Requirements/Indemnification

§10.1 SEFD shall procure, select and contract for general liability insurance through a Joint Insurance Fund.

§10.1.1 SEFD shall maintain, and pay for, a general liability insurance policy in the amount of \$5,000,000, and name Maplewood and South Orange as additional insureds.

§10.1.2 Additional insurance coverage. In addition to general liability coverage, SEFD shall maintain workers' compensation insurance, disability insurance, unemployment insurance and any and all other insurance that may now or hereafter be required by law or regulation. The cost of such insurance shall be included in SEFD operating expenses and shared between Maplewood and South Orange as provided for in Subsection §5.1.1.

§10.2 Each of the Parties agrees to indemnify, hold harmless and defend the other and its elected officials, agents and employees from and against any and all claims, damages, losses, expenses, causes of action and liabilities, including, without limitation, attorney's fees and costs, that may result from an actionable occurrence pursuant to N.J.S.A. 59:4-1 *et seq.*

§11 Termination of Agreement by Mutual Consent Only Termination of this Agreement shall be pursuant N.J.S.A. 40A:65-23, which, as of the Effective Date, requires each Party to adopt a resolution authorizing the termination of this Agreement in order to terminate this Agreement. In the event the Act is amended to permit unilateral termination, the Parties hereby agree to be bound by the terms of the Act, as amended.

§12 Distribution of Assets and Liabilities in the Event of Non-Renewal or Termination by Consent

§12.1 With respect to capital assets owned by a Party as of the Commencement Date, all leases with the SEFD shall be terminated and all property and equipment shall remain in such Party's possession. There shall be no claims made by either Party relating to maintenance costs associated with such assets.

§12.2 With respect to assets acquired after the Effective Date and owned by the SEFD, the SEFD will sell those assets to the Parties with a first right of refusal giving priority to Parties where equipment is primarily stationed, then to sell these items on the open market to alleviate as much debt as possible. Any continued debt or excess revenue received from such sale will be split among the Parties based on the cost share percentage of their payments stated in §6.2.3.

§12.3 The Parties agree to act in good faith to transition employees and resources in the event of a non-renewal of this Agreement. In the event of a termination of this Agreement by consent, the parties shall provide for the terms of the transition in connection with the termination of this Agreement.

§13 Potential for Additional Members Pursuant to N.J.S.A. 40A:65-16. The Parties are amenable to an amendment to this Agreement to add additional members to the SEFD. The existing allocations within this Agreement are based upon the consideration of many factors as provided by N.J.S.A. 40A:65-16a, including but not limited to assessed valuations, the size of the respective populations being served, historical needs of each Party, and the assets and intangibles being contributed by way of the nominal lease from each of the Parties. In the event an additional member is added, the allocations shall not be binding and the Parties shall re-evaluate the allocations according to the circumstances then existing in consideration of the statutory factors.

§14. The Parties' intention is to maximize cost efficiency while retaining existing quality fire services. The Parties agree the table of organization will be set at 71 firefighters as of the Effective Date. This will be done through attrition. Each year the Committee will examine the service being provided and any compelling circumstances which would warrant a change of the table of organization in the interest of public safety and cost efficiency.

§15 By mutual agreement, subject to the requirements of the Act, the Parties may amend this Agreement at any time as provided by N.J.S.A. 40A:65-16b (3).

§16 The Resolutions of adoption of this Agreement by the respective Parties shall be filed with the Director of the Department of Community Affairs of the State of New Jersey as required by N.J.S.A. 40A:65-16b (4).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective authorized corporate officials.

ATTEST: TOWNSHIP OF MAPLEWOOD

CLERK BY: _____
DEAN DAFIS, MAYOR

ATTEST: TOWNSHIP OF SOUTH ORANGE VILLAGE

CLERK BY: _____
SHEENA C. COLLUM, VILLAGE PRESIDENT