

RESOLUTION 2014-005

BORDENTOWN SEWERAGE AUTHORITY
COUNTY OF BURLINGTON

**RESOLUTION OF THE BORDENTOWN SEWERAGE
AUTHORITY, IN THE COUNTY OF BURLINGTON,
STATE OF NEW JERSEY AUTHORIZING THE FORM OF
A PROPOSED PROJECT DEVELOPMENT AGREEMENT
AND DEFERRED CONNECTION FEE AGREEMENT
BETWEEN THE AUTHORITY AND ROCK - IDI CENTRAL
CROSSINGS, L.L.C.**

WHEREAS, Rock - IDI Central Crossings, L.L.C. (the “Developer”) is interested in securing sanitary sewer service for Building No. 1 located in the Central Crossing Business Park located at 401 Bordentown-Heading Road in Bordentown Township and also known as Block 138, Lots 5.01 and 5.02 (the “Property”) on the official tax map of the Township of Bordentown;

WHEREAS, the Authorities’ Executive Director after consultation with the Authorities’ consulting engineer and the Authorities’ solicitor believes that it is in the best of the rate payers of the Authority for the Developer to pay all related costs and fees associated with the extension of any sanitary sewer service that will further the development of the Property;

WHEREAS, the Authority believes that before it is prepared to provide any written consent for the project to commence from a state regulatory approval perspective, the Authority must be assured that certain terms and conditions will be adhered to by the Developer;

NOW, THEREFORE, BE IS RESOLVED, by the Board Members of the Bordentown Sewerage Authority, in the County of Burlington, State of New Jersey that:

1. The form of Project Development Agreement and the form of Deferred Connection Fee Agreement between The Bordentown Sewerage Authority and Rock – IDI Central Crossings, L.L.C. attached hereto as Appendix “A” are hereby approved in their present form by the Authority.
2. The Authorities’ Executive Director and Administrative Manager are hereby authorized to undertake any and all necessary actions to distribute the agreements in draft form to the Developer and their designated representatives for the purpose of the Developer’s execution of the same.
3. The Authorities’ Executive Director is hereby authorized to execute the agreements on behalf of the Authority.
4. Any and all resolutions inconsistent with this resolution are hereby repealed to the extent of such inconsistencies.

THE BORDENTOWN SEWERAGE AUTHORITY

By: 

, Chairman

ATTEST:



, Secretary

Date of adoption: January 27, 2014

PROJECT DEVELOPMENT AGREEMENT

This Agreement (the "Agreement") is made as of this 18th day of February, 2014 by and between THE BORDENTOWN SEWERAGE AUTHORITY, 954 Farnsworth Avenue, Bordentown, NJ 08505 (the "Authority") and ROCK-IDI CENTRAL CROSSINGS, LLC (the "Applicant").

WHEREAS, the Applicant has submitted an application to the Authority for sanitary sewer service for Central Crossings Business Park, Building #1, a proposed commercial office/warehouse facility that received preliminary and final site plan approval from the Bordentown Township Planning Board ("Site Plan Approval") but which has not yet been constructed (the "Project"), 401 Bordentown-Hedding Road, Bordentown, NJ 08505, also known presently as Block 138.12 (otherwise identified as Block 138.06 on the Bordentown Township Tax Map, to be updated to reflect Block 138.12), Lots 5.01 and 5.02, on the Tax Assessor's Records of the Township of Bordentown; and

WHEREAS, the Applicant has represented to the Authority that if and when the Project is constructed in accordance with the Site Plan Approval, it will consist of 1,474,980 square feet of commercial floor space, comprised of 63,434 square feet of office space and 1,411,546 square feet of warehouse space; and

WHEREAS, based upon projected flow figures established by the Authority, the projected sewage flows from the Project, as currently proposed by the Applicant, are:

OFFICE FLOW: (Based on column centerline dimensions)

63,434 square feet x 0.10 gal/sf = 6,344 gallons per day

WAREHOUSE FLOW: (Based on column centerline dimensions)

1,411,546 square feet x 0.02 gal/sf = 28,231 gallons per day

PROJECTED SEWAGE FLOWS: 34,575 gallons per day

WHEREAS, the projected sewage flows indicated above would increase: (a) if the size of the Project were increased; or (b) the actual outside face of wall dimensions are incorporated once the design is completed or (c) the uses within the Project were changed to permissible uses for which the projected sewage flows would be greater; and

WHEREAS, the Applicant currently possesses a Treatment Works Approval for Central Crossings Business Park, wherein Building 1, which is the subject of the Project, was allocated 61.74% of the approval flow of 0.0164 MGD or 10,125 gpd; and

WHEREAS, the Applicant is intending to obtain a new or amended Treatment Works Approval for anticipated additional sewage flow onsite and a Treatment Works Approval for certain Improvements (hereinafter defined) required for the Project that will be required by the end user of Building 1, based on flow calculations using N.J.D.E.P. criteria (collectively, the "Applicant's TWA Applications"); and

WHEREAS, the Authority has determined that the sewage flow anticipated from the Project will require the Applicant to construct off-tract conveyance system improvements consisting of a force main along Route 206 to be connected upstream to the Authority's existing six (6) inch force main northwest of the New Jersey Turnpike ramp and downstream to an existing manhole in the right-of-way of Route 206, North of Dunns Mill Road (collectively, the "Improvements"); and

WHEREAS, the Authority is prepared to consent to and endorse the Applicant's TWA Applications, provided the Applicant executes this Agreement with the Authority acknowledging and agreeing that, if the Applicant constructs the Project, then it will construct the Improvements, and to insure certain Authority conditions will be satisfied in conjunction therewith; and

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

I. THE AUTHORITY'S CONSENT TO THE APPLICANT'S TWA APPLICATIONS

A. The Authority agrees that it shall execute and endorse the Applicant's TWA Applications for the Project upon execution of this Agreement in consideration of the Applicant's willingness to satisfy the following conditions in connection with the construction of the Project and the Improvements:

- (i) The Applicant will obtain from the necessary county or state agencies the necessary wastewater management plan approval to include Building No. 1 which sits on Block 138.12, Lots 5.01 and 5.02 and incorporate Lot 5.02 into the Authority's wastewater management plan;
- (ii) The Applicant agrees that the connection point to the existing Authority 6" force main will be established based on hydraulic calculations performed by the Applicant's engineer and reasonably accepted by the Authority;
- (iii) The Applicant will provide the Authority with a set of detailed final construction design plans and specifications for the Improvements, together with a bona fide good faith construction estimate for the costs of the Improvements;
- (iv) The Applicant will work diligently with the Authority's consulting engineer to finalize a final construction cost estimate for the Improvements and will, upon finalizing the construction costs estimate, calculate with the Authority the appropriate performance guarantee in an amount that is 120% of the final

construction costs estimate for the Improvements in conformance with the Authority's Rules and Regulations (the "Performance Guarantee");

(v) The Applicant agrees that there will be no third party reimbursement form of agreement from any other upstream or downstream users of the Improvements; and

(vi) The Applicant agrees that it will execute a deferred connection fee agreement with the Authority at the time the Applicant applies for a connection permit for the Project.

II. AGREEMENT TO INDEMNIFY AND HOLD HARMLESS

A. The Applicant agrees that it will indemnify and hold harmless the Authority, its board members, its officers, its employees, and its agents from any and all liability whether anticipated, as a result of or arising from the Project and the Applicant's construction of the Improvements"), provided that the Applicant shall have no obligation hereunder with respect to liabilities arising from, or relating to, the actions, conduct and/or omissions of the Authority. The Applicant further agrees that it will hold harmless and indemnify the Authority with respect to any challenge or lawsuit that may arise from any upstream or downstream user of the Improvements or any other wastewater discharger located within the Central Crossings Business Park as a result of either the construction of the Improvements or the Authority's consent to the Applicant's TWA Applications for the Project and/or the Improvements, provided that any such challenge or lawsuit does not arise from or relate to the actions, conduct and/or omissions of the Authority.

B. The Applicant's agreement to hold harmless and indemnify the Authority pursuant to the provision of this Section II shall include the Applicant's agreement to pay all reasonable

attorney's and engineering fees incurred by the Authority in connection with its defense of any related action.

III. MISCELLANEOUS

A. The Applicant agrees that, if it proceeds with the Project, it will obtain all licenses/permits that are necessary to construct both the Project and the Improvements, including but not limited to, if applicable, NJDEP Treatment Works Approvals, Burlington County Soil Erosion Permit, NJTA License(s) and NJDOT Utility Opening Permit.

B. The Applicant agrees to pay for all costs related to construction of both the Project and the Improvements, including legal fees, engineering and engineering inspection fees and licensing/permitting fees.

C. At the conclusion of the construction of the Improvements and upon final acceptance by the Authority, the Applicant will dedicate the Improvements to the Authority. At the time of acceptance, the Applicant will provide the Authority with a two (2) year maintenance guarantee in an amount established by the Authority's engineer in accordance with the Authority's Rules and Regulations.

D. The Applicant agrees to provide the Performance Guarantee to the Authority within forty-five (45) days after the Applicant has received the Treatment Works Approval for the additional sewage flow onsite and the Treatment Works Approval for the Improvements, and prior to requesting a connection permit for either the Project or the Improvements from the Authority. In addition, no work on any Project wastewater facility will commence construction until the Authority accepts the Performance Guarantee.

E. The Applicant agrees to schedule the work such that the Improvements will be dedicated to the Authority prior to requesting a temporary certificate of occupancy from Bordentown Township for Building #1.

F. The Applicant agrees that in connection with its development of the Project and the Improvements, it will comply with the provisions of the Authority's Rules and Regulations governing the construction of sanitary sewer improvements, connection fees and connection permits, and agrees that this Agreement shall only be valid for the specific Project referenced herein.

G. This Agreement is assignable by the Applicant, shall run with the land and shall be binding upon the Applicant's heirs, successors, assigns or to those who succeed to the Applicant's interest in title in whole or in part (collectively, the "Successor"). In the event of any transfer of interest in title to the land and/ or any assignment of this Agreement, the Successor shall assume all obligations and liabilities of the Applicant and the Applicant shall be relieved of any further obligations and/or liability under this Agreement. The Applicant shall be under a duty to notify the Successor of this Agreement, but the failure of the Applicant to do so shall not relieve the Successor of the obligations and liabilities contained herein.

H. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. To the extent that any dispute arises with respect to this Agreement, the Superior Court of New Jersey, County of Burlington shall be the valid forum where any disputes shall be settled.

I. If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

J. This Agreement may be executed in counterpart and the assemblage of countersigned signature pages shall constitute one signed agreement.


K. The Applicant represents that the authorized officer executing this Agreement on behalf of the Applicant has been duly authorized to execute this Agreement on behalf of the Applicant and that nothing contained herein shall be deemed to violate any provision of the Applicant's Operating Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have set their hands and seals on the date and year first written above.

Attest:

THE BORDENTOWN SEWERAGE AUTHORITY




Judith H. Wilson

By: 

Richard D. Eustace, Executive Director


Attest:

ROCK-IDI CENTRAL CROSSINGS, LLC, a Delaware limited liability company



Leslie E. Smith, Jr.
Sr. Vice President

By: Rock-Miramar, Inc., a New York corporation, its managing member

By: 

Name: Clark Machemer
Title: Vice President

DEFERRED CONNECTION FEE AGREEMENT

This Agreement (the "Agreement") is made as of this 10 day of February, 2014 by and between THE BORDENTOWN SEWERAGE AUTHORITY, 954 Farnsworth Avenue, Bordentown, NJ 08505 (the "Authority") and ROCK-IDI CENTRAL CROSSINGS, L.L.C., (the "Applicant").

WHEREAS, the Applicant has submitted an application to the Authority for sanitary sewer service for Central Crossings Business Park, Building #1, (the "Project"), 401 Bordentown-Hedding Road, Bordentown, NJ 08505, also presently known as Block 138.12 (otherwise identified as Block 138.06 on the Bordentown Township Tax Map, to be updated to reflect Block 138.12), Lots 5.01 and 5.02, on the Tax Map of the Township of Bordentown; and

WHEREAS, the Applicant has represented to the Authority that the Project will consist of 1,474,980 square feet of commercial floor space consisting of 63,434 square feet of office space and 1,411,546 square feet of warehouse space (the "Building"); and

WHEREAS, based upon projected flow figures established by the Authority ("BSA Flow Figures"), the projected sewage flows from the Project, as currently proposed by the Applicant, are:

OFFICE FLOW: (Based on column centerline dimensions)

63,434 square feet x 0.10 gal/sf = 6,344 gallons per day

WAREHOUSE FLOW: (Based on column centerline dimensions)

1,411,546 square feet x 0.02 gal/sf = 28,231 gallons per day

PROJECTED SEWAGE FLOWS: 34,575 gallons per day

WHEREAS, the projected sewage flows indicated above will increase if the size of the Project were increased, actual outside face of wall dimensions are incorporated once the design is

complete or the uses within the Project were changed to permissible uses for which the projected sewage flows would be greater; and

WHEREAS, the Authority has the legal ability to impose connection fees for the Project based upon the maximum potential projected sewage flows from the Project; and

WHEREAS, the Applicant has requested that the Authority impose connection fees only for the size and uses that are currently planned for the Project, provided the Applicant agrees that, in the event the currently known or planned use is changed in the future to a size or use that will generate additional projected flows, the Applicant will pay an additional amount to the Authority for connection fees which would result from such change in size or use; and

WHEREAS, in reliance of the promise of the Applicant to pay such connection fees for the Project in the future as may be determined by the Authority in accordance with the terms of this Agreement, its Rate Schedule and its Rules and Regulations, the Authority has agreed to defer payment of the balance of the full amount of the connection fees that would otherwise be due for the Project to a point in time, if any, that the currently known or planned use is changed to a size or use that will generate additional projected flows.

NOW THEREFORE, for the consideration of \$1.00 and other mutual promises and covenants contained herein, including, but not limited to the agreement of the Authority to defer the payment of the balance of the full amount of the connection fees that are due for the Project to a point in time, if any, that there is a change in the planned use to a size or use that will generate additional projected flows as provided herein, and the promise of the Applicant to pay such connection fees for future uses within the Project as may be determined by the Authority in accordance with the terms of this Agreement, its Rate Schedule and its Rules and Regulations, the parties do hereby agree as follows:

I. DEFERRAL OF CONNECTION FEES

1.01 The Authority shall impose and the Applicant agrees to pay preliminary connection fees for the Project based upon the size and uses that are currently known and planned for the Project, based upon the following current proposed size and uses of the Project:

OFFICE FLOW: (Based on column centerline dimensions)

63,434 square feet x 0.10 gal/sf = 6,344 gallons per day

WAREHOUSE FLOW: (Based on column centerline dimensions)

1,411,546 square feet x 0.02 gal/sf = 28,231 gallons per day

PROJECTED SEWAGE FLOWS: 34,575 gallons per day

1.02 The preliminary connection fees to be charged for the Project shall be based upon the connection fee rate then prevailing in the Authority rate schedule at the time that a proper and complete application for an S-4 Sewer Connection Permit for the Project is presented to the Authority.

1.03 Payment by the Applicant of the preliminary connection fees for the size and usage referred to above shall not constitute payment in full for all connection fees that are due for the Project or for any unit or uses within the Project in the event that the currently known or planned use is changed in the future to a size or use that will generate additional projected flows.

1.04 In the event that there is any increase in the projected flow from any current or future unit or use within the Project based upon a change in size or use, actual outside face of wall dimensions are determined, or a physical or operational change not involving a change in size or use for which a building permit, site plan, subdivision or other municipal approval is required, the Applicant agrees to pay balance of the full amount of the connection fees that are due for the Project to the Authority. The balance of the full amount of the connection fees that would be due hereunder shall be based

upon the connection fee rate then prevailing in the Authority rate schedule, multiplied by the projected additional flows, as determined by BSA Flow Figures, if established, or in the absence thereof, by the Authority in its reasonable discretion.

1.05 The Applicant shall be obligated to notify the Authority of any change of size or use, or a physical or operational change, of any unit or use within the Project in order that the Authority may determine whether any balance in connection fees are due, as provided herein.

II. PAYMENT SCHEDULE FOR PRELIMINARY CONNECTION FEES

2.01 The Authority shall permit the Applicant to pay the preliminary connection fee that is due for the connection of the Building in the following manner:

- a) The Applicant shall pay forty (40%) percent of the preliminary connection fee for the Building to be constructed to the Authority at the time that an S-4 Connection Sewer Permit is requested from the Authority for the Building. Upon receipt of such payment and subsequent approval by the Authority, the Authority shall issue a S-4 Sewer Connection Permit for the Building. The Applicant acknowledges and agrees that it must obtain an S-4 Sewer Connection Permit for the Building from the Authority prior to the submission of an application for a Bordentown Township construction permit for the Building.
- b) The remaining balance of sixty (60%) percent of the preliminary connection fee for the Building shall be paid by the Applicant to the Authority in twelve (12) equal and consecutive monthly installments, plus interest calculated at the rate of one (1% per

percent per month on the unpaid balance of the connection fee, commencing thirty (30) days following the issuance of the revocable S-4 Sewer Connection Permit.

- c) Notwithstanding anything contained in this Agreement, the connection fee for the Building shall be paid in full prior to the issuance of a Certificate of Occupancy (of any type) for the Building and in no event shall the Applicant be entitled to extend any payment past the date that a Certificate of Occupancy (of any type) for the Building is requested. In the event that a Certificate of Occupancy (of any type) is requested by the Applicant prior to the date that final payment of the connection fee, plus interest, is made, the entire unpaid balance of the connection fee, plus interest shall be immediately due and payable to the Authority.

III. GENERAL REQUIREMENTS

3.01 All sizes and uses referred to herein are subject to field verification by the Authority and any variances shall be adjusted accordingly.

3.02 The Applicant agrees to comply with the provisions of the Authority's Rate Schedule and Rules and Regulations governing connections fees and connection permits, and agrees that any connection permits issued by the Authority shall be valid only for the number of buildings, uses and flows actually paid for by the Applicant, and only for the period of time as provided by the Rules and Regulations.


3.03 This Agreement shall be assignable by the Applicant, shall run with the land and shall be binding upon the Applicant's heirs, successors, assigns or to those who succeed to the Applicant's interest in title in whole or in part (collectively, the "Successor"). In the event of any transfer of

interest in title to the land and/ or any assignment of this Agreement, the Successor shall assume all obligations and liabilities of the Applicant and the Applicant shall be relieved of any further obligations and/or liability under this Agreement. The Applicant shall be under a duty to notify the Successor of this Agreement, but the failure of the Applicant to do so shall not relieve the Successor of the obligations and liabilities contained herein.

3.04 The Applicant represents that the person signing this Agreement on its behalf has been duly authorized to execute this Agreement on behalf of the Applicant.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date and year first written above.

Attest:



Leslie E. Smith, Jr.
Sr. Vice President

ROCK-IDI CENTRAL CROSSINGS, LLC, a Delaware limited liability company

By: Rock-Miramar, Inc., a New York corporation, its managing member

By: 

Name: Clark Machemer
Title: Vice President

Attest:



Judith A. Wilson

THE BORDENTOWN SEWERAGE AUTHORITY

By: 

Richard D. Eustace, Executive Director