

RESOLUTION 2014- 27A

RESOLUTION APPROVING INDEMNIFICATION AND
HOLD HARMLESS AGREEMENT

BE IT RESOLVED by The Bordentown Sewerage Authority this 17th day of March, 2014, that a form of Agreement by and between THE BORDENTOWN SEWERAGE AUTHORITY and ROCK-IDI CENTRAL CROSSINGS, LLC is hereby approved in the form on file in the Authority office:

INDEMNIFICATION AND
HOLD HARMLESS AGREEMENT

BE IT FURTHER RESOLVED that the Executive Director and Secretary be and the same are hereby authorized and directed to execute and deliver the aforesaid Agreement on behalf of the Authority.

THE BORDENTOWN SEWERAGE AUTHORITY

By: 
Ronald L. Marino, Chairman

Attest:


Nancy A. Liberman, Secretary

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

This Agreement is made as of the 21st day of April, 2014 by and between THE BORDENTOWN SEWERAGE AUTHORITY, 954 Farnsworth Avenue, Bordentown, NJ 08505 (the "Authority") and ROCK-IDI CENTRAL CROSSINGS, LLC, 500 International Drive, Suite 345, Mount Olive, New Jersey 08505 (the "Applicant").

WHEREAS, the Applicant has submitted an application to the Authority for sanitary sewer service related to the construction of Central Crossings Business Park, Building 1 (the "Project"), 401 Bordentown-Hedding Road, Bordentown, NJ 08505, also 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 Assessor's Records of the Township of Bordentown (the "Property"); and

WHEREAS, if the Applicant undertakes the Project, as part of the construction of the Project, the Applicant must construct, *inter alia* and at its sole expense, a twelve (12") inch sanitary H.D. sewer force main along Route 206 from the New Jersey Turnpike entrance to just past Dunns Mill Road a distance of approximately 1,100 feet (the Force Main"); and

WHEREAS, if the Applicant undertakes the Project, the Force Main will be constructed in the existing shoulder pavement of Route 206, which is under the jurisdiction of the New Jersey Department of Transportation ("NJDOT"); and

WHEREAS, NJDOT requires that an "Application for Utility Opening" be submitted and a road opening permit issued before construction can begin on the Force Main; and

WHEREAS, the NJDOT approval process would be expedited if the Authority were the named applicant for, and permittee under, the road opening permit; and

WHEREAS, the Applicant has requested that the Authority submit the “Application for Utility Opening” to NJDOT in the name of the Authority and act as the permittee under the road opening permit issued by NJDOT for the construction of the Force Main; and

WHEREAS, the Authority will consent to submit the “Application for Utility Opening” and act as the permittee under the road opening permit, under the conditions set forth herein; and

WHEREAS, Applicant has expressly consented to defend, indemnify and hold harmless the Authority from any and all claims of NJDOT or any other person related to the construction of the Force Main.

NOW THEREFORE, for the consideration of \$1.00 in hand received and the other mutual promises and covenants contained herein, including, but not limited to the promises of the Applicant to defend, indemnify and hold harmless the Authority as set forth herein below, the parties do hereby agree as follows:

1. The Authority agrees to submit the “Application for Utility Opening” to NJDOT in the name of the Authority in the form attached to this Agreement and act as the permittee under the road opening permit to be issued by NJDOT for the construction of the Force Main.
2. If Applicant undertakes the Project, the Applicant shall construct the Force Main at its sole cost and expense in strict compliance with the terms of the “Application for Utility Opening” and road opening permit issued by NJDOT, the plans and specifications that were submitted to and approved by NJDOT and the Rules, Regulations and Specifications of the Authority.
3. The Applicant shall assume exclusive responsibility for compliance with the “Application for Utility Opening” and road opening permit issued by NJDOT for

the construction of the Force Main, including but not limited to the conditions expressly stated in the “Application for Utility Opening” and road opening permit.

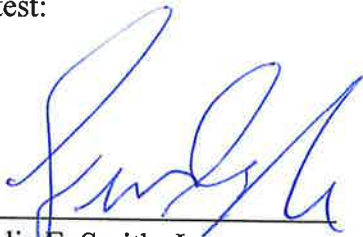
4. The Applicant shall defend, indemnify and hold harmless NJDOT, the State of New Jersey and their agents, servants and employees from and against any and all suits, claims, losses, demands or damage of whatsoever nature claimed to arise out of, any negligent act, error or omission of the Authority and its agents, servants and employees, and/or the Applicant and its agents, servants, employees and contractors, concerning the performance of the work performed by the Applicant under the “Application for Utility Opening” and road opening permit for the construction of the Force Main.
5. The Applicant shall defend, indemnify and hold harmless the Authority and its agents, servants and employees from and against any and all suits, claims, losses, demands or damage of whatsoever nature arising out of or claimed to arise out of, any negligent act, error or omission of the Applicant and its agents, servants, employees and contractors concerning the performance of the work performed by the Applicant under the “Application for Utility Opening” and road opening permit for the construction of the Force Main.
6. The Applicant shall pay on behalf of the Authority any judgments or settlements resulting from any and all suits, claims, losses, demands or damage of whatsoever nature arising out of or claimed to arise out of, any negligent act, error or omission of the Authority and its agents, servants and employees, and/or the Applicant and its agents, servants, employees and contractors concerning the performance of the work to be performed by the Applicant under the “Application for Utility Opening” and road opening permit for the construction of the Force Main and shall pay all

costs of defense of the Authority in defending such claims or in prosecuting the enforcement of this Agreement against Applicant, including reasonable counsel fees and costs of suit.

7. The Applicant shall comply with all Rules, Regulations and Specifications of the Authority. Nothing in this Agreement shall be deemed a waiver by the Authority of any of its Rules, Regulations or Specifications.
8. This Agreement shall be assignable by the Applicant to any third party that purchases the Applicant's property and undertakes the Project (the "Assignee"). In the event that this Agreement is assigned by the Applicant to the Assignee, the Assignee shall assume any and all obligations and liabilities of the Applicant hereunder and the Applicant shall be relieved of any further obligations or liabilities under this Agreement. All references herein to the Applicant shall be deemed to refer to the Assignee in the event of an assignment of the Agreement.

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: 
Clark Machemer, Vice President

Attest:


Nancy Liberman, Secretary

THE BORDENTOWN SEWERAGE AUTHORITY

By: 
Richard D. Eustace, Executive Director