

RESOLUTION NO. 2015-042

**RESOLUTION OF THE BORDENTOWN SEWERAGE
AUTHORITY, IN THE COUNTY OF BURLINGTON, NEW
JERSEY AUTHORIZING THE AUTHORITY'S EXECUTIVE
DIRECTOR TO EXECUTE AN APPLICATION FOR A NEW
JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION PERMIT FOR IMPROVEMENTS TO BE
CONSTRUCTED IN THE BORDENTOWN WATERFRONT
COMMUNITY**

WHEREAS, Bordentown Waterfront Community, LLC (the "Developer") is the developing land in Bordentown Township known as the Bordentown Waterfront Community (the "Property");

WHEREAS, the Developer is desirous of constructing certain sanitary sewerage improvements which consist of a Emergency Generator and a back flow preventer (the "Improvements") which when constructed, will assist in the deliverance of wastewater from the Property to the Bordentown Sewerage Authority ("Authority") for treatment;

WHEREAS, in order for the Developer to construct the proposed sanitary sewerage Improvements, it must first obtain from the New Jersey Department of Environmental Protection ("DEP") certain approvals and permits (the "Permit");

WHEREAS, in order to obtain the approvals and the Permit, the Developer must have the Authority apply for the same in the name of Developer;

WHEREAS, the Developer has presented the Authority with a form of Indemnification and Hold Harmless Agreement (the "Agreement") in connection with the construction of the Improvements;

WHEREAS, the Authority wishes this resolution to memorialize its review and acceptance of the Agreement and further authorizes the Authority's Executive Director to sign the Agreement and submit the required application.

NOW, THEREFORE, BE IT RESOLVED BY THE BORDENTOWN SEWERAGE AUTHORITY, IN THE COUNTY OF BURLINGTON, NEW JERSEY, THAT:

1. The Indemnification and Hold Harmless Agreement submitted to the Authority by Bordentown Waterfront Community, LLC (attached hereto as Exhibit "A") is hereby approved and accepted.
2. The Authority hereby authorizes its Executive Director to sign the Agreement and submit the required permit application to DEP subject to the Developer satisfying its obligation under the Agreement.

Attest:
Adopted this 20th day of April, 2015

BORDENTOWN SEWERAGE AUTHORITY



Stephen Monson, Secretary of the Authority

By: 

RONALD MARINO, Chairman

Exhibit "A"

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

This Agreement is made as of the 20 day of April, 2015 by and between THE BORDENTOWN SEWERAGE AUTHORITY, 954 Farnsworth Avenue, Bordentown, NJ 08505 (the "Authority") and BORDENTOWN WATERFRONT COMMUNITY, LLC, 19 Longview Drive, Princeton, NJ 08540 (the "Applicant").

WHEREAS, the Applicant has submitted an application to the Authority for sanitary sewer service for the Bordentown Waterfront Community Development, known as Lots 5-8, 10-16, 18 & 19, Block 140 & Lot 4, Block 141 on the Tax Map of the Township of Bordentown (the "Project"); and

WHEREAS, as part of the construction of the Project, the Applicant must construct and install, *inter alia* and at its sole expense, a pump station emergency generator and a back flow preventer (the "Improvements"); and

WHEREAS, the New Jersey Department of Environmental Protection ("DEP") requires that the application for approval to construct the Improvements be submitted and executed and any required fees be paid before construction can begin on the Improvements; and

WHEREAS, the DEP approval process can be expedited provided the Authority is the named as the applicant for, and permittee under, the application; and

WHEREAS, the Applicant has requested that the Authority submit the application for the approval of the required permit to construct (the "Permit") to DEP in the name of the Authority and act as the permittee under the Permit issued by DEP for the construction of the Improvements; and

WHEREAS, the Authority will consent to submit the application for the Permit and act as the permittee under the Permit, subject to the conditions contained herein; and

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

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 promise of the Applicant to defend, indemnify and hold harmless the Authority from any and all claims of DEP or any other person related to the construction of the Improvements, the parties do hereby agree as follows:

1. The Authority agrees to submit the application for the required Permit to DEP in the name of the Authority and act as the permittee under the Permit to be issued by DEP for the construction of the Improvements.
2. The Applicant shall construct the Improvements at its sole cost and expense in strict compliance with the terms of the application for the Permit and, the plans and specifications that were submitted to and approved by DEP and the Rules, Regulations and Specifications of the Authority.
3. The Applicant shall assume exclusive responsibility for compliance with the application for the Permit issued by DEP for the construction of the Improvements, including but not limited to the conditions expressly stated or implied in the application for the Permit.
4. The Applicant shall defend, indemnify and hold harmless DEP, 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 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 under the application for the Permit and for the construction of the Improvements.

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 to be performed under the application for the Permit for the construction of the Improvements.
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 under the application for the Permit for the construction of the Improvements 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. The Applicant shall pay all DEP fees associated with the permit including but not limited to, an initial application fee, rent, application review fees, inspection fees, and an annual occupancy fees.
8. This agreement shall be binding upon the parties, their respective personal representatives, their successors and assigns and may not be modified unless by the express written consent of both parties.

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

Attest:

BORDENTOWN WATERFRONT COMMUNITY, LLC



By:



Jeffrey B. Albert, Managing Member


Attest:

THE BORDENTOWN SEWERAGE AUTHORITY



Stephen Monson, Secretary

By:



Richard D. Eustace, Executive Director