

HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY ACCESS AGREEMENT WITH THE INDIAN FIELD HOMEOWNER ASSOCIATION

WHEREAS, the Hardyston Township Municipal Utilities Authority (the "Authority") owns and operates a water and wastewater conveyance system servicing the residents of Hardyston Township (the "System"); and

WHEREAS, the System connects to certain irrigation equipment and meter pits located within the Indian Field development (the "Irrigation Facilities"); and

WHEREAS, in order to ensure safe and efficient access to said Irrigation Facilities, the Authority's Operator and Engineer have recommended that certain improvements be undertaken as set forth in the Authority's Engineer's memorandum, dated May 1, 2015, attached hereto and made a part hereof as **Exhibit A**; and

WHEREAS, in order to undertake said improvements, it is necessary for the Authority to gain access to the Irrigation Facilities;

NOW, THEREFORE, BE IT RESOLVED by the Board of the Hardyston Township Municipal Utilities Authority as follows:

1. That the Authority's Administrator is authorized and directed to execute a Temporary Access Agreement, in a form substantially similar to the agreement attached hereto and made a part hereof as **Exhibit B**, with the Indian Field Homeowners Association to allow the Authority to undertake improvements of same.

	YES	NO	ABSTAIN	ABSENT
Chairman Cicerale	X			
Vice Chairman Kula	X			
Secretary Marples	X			
Treasurer Albanese				X
Roof	X			
Kaminski				X
O'Grady				X

Certified to be a true copy of the Resolution adopted by the HTMUA at a meeting held on July 6, 2015



Gail C. Hensal, Recording Secretary

EXHIBIT A
ENGINEER'S MEMORANDUM

See attached

EXHIBIT B
TEMPORARY ACCESS AGREEMENT

See attached

ACCESS AGREEMENT

THIS ACCESS AGREEMENT, made of this 6th day of ~~May~~ July 2015 (“Agreement”) by and between the Hardyston Township Municipal Utilities, a public body corporate and politic of the State of New Jersey, with offices located at 149 Wheatsworth Road, Hardyston, New Jersey 07419 (hereinafter, the “Authority”); and

Indian Field Homeowners Association, with offices located at 80 Meadow Pond Road, Hamburg, New Jersey 07419, (hereinafter, the “Property Owner”).

RECITALS:

WHEREAS, Property Owner owns certain common areas that are contained within and throughout the Indian Field Development (the “Property”); and

WHEREAS, located on the Property are certain common irrigation systems and public community water supply systems servicing the common areas and residents of Indian Field, respectively which are owned and operated by the Property Owner; and

WHEREAS, the Authority has determined that certain deficiencies exist within the common irrigation and public community water supply systems serving the common areas and residents of the Indian Field Development which if left uncorrected could potentially threaten the health, safety and welfare of the Indian Field residents and the staff of the Authority; and

WHEREAS, said deficiencies are set forth in detail in a memorandum provided by the Authority’s engineer, dated May 1, 2015, attached hereto and made a part hereof as Exhibit A (the “Deficiencies”); and

WHEREAS, in order to correct the Deficiencies in the most effective and efficient manner possible, the Authority has agreed to undertake certain corrective work associated with the common irrigation and public community water supply systems; and

WHEREAS, the corrective work is set forth in detail in Exhibit A (Corrective Work”); and

WHEREAS, the Authority will be responsible for the costs associated with the Corrective Work; and

WHEREAS, the Authority requires access to the Property to undertake the Corrective Work; and

WHEREAS, the Property Owners desire to have the Authority undertake the Corrective Work, pay for said Corrective Work and grant the Authority access to the Property for said purpose.

NOW THEREFORE, in consideration of the foregoing and conditioned upon the mutual covenants, promises and agreement stated herein, the parties hereto agree as follows:

1. **Incorporation of Recitals.**

The foregoing recitals are hereby incorporated by reference and shall have meaning as if fully set forth herein.

2. **Grant of Access.**

Property Owner hereby grants a revocable, non-exclusive access (the "Access"), as further provided herein, for the term of this Agreement to the Authority and the Authority's designated and qualified representatives (hereinafter collectively referred to as "Authority Representatives"), to enter onto the Property for the limited purpose of conducting the Corrective Work, which is more particularly as described in Exhibit A hereto.

3. **Term of Agreement.**

This Agreement shall commence upon execution by both parties (the "Effective Date"). Unless extended in writing by Property Owner, this Agreement shall automatically terminate one-hundred and eighty (180) days from the Effective Date.

4. **Limitations on Access.**

The parties acknowledge and agree that:

- (a) the Authority shall undertake all Corrective Work in accordance with all approvals to be issued by NJDEP and/or any other agency with jurisdiction over the Corrective Work.
- (b) the Authority shall not, during the course of performing the Corrective Work permitted by this Agreement, cause or contribute to any environmental contamination on the Property.
- (c) the Authority Representatives shall provide advance written notice to the Property Owner prior to entry onto the Property. Such written notice shall specify the date and approximate time of entry, the name of person(s) who will be on the Property and their affiliation, and the activities which will take place on the Property. Unless notified by Property Owner to the contrary, prior to the date of such entry, the access requested in the notice shall be deemed permitted.
- (d) the Authority Representatives shall undertake all activities authorized by this Agreement in a safe and workmanlike manner, in accordance with all

applicable laws, regulations and industry standards, and so as not to impact, except as provided for herein, Property Owner's use and enjoyment of the Property in an unreasonable manner.

- (e) once completed by the Authority all Corrective Work shall become the property of the Property Owner and the Property Owner shall assume all responsibility for the maintenance, repair and eventual replacement, if any, of said Corrective Work.

5. **Costs.**

The Authority agrees to pay for the Corrective Work.

6. **Hazardous Waste.**

~~The Authority shall not dump toxic or hazardous wastes anywhere within the Property, nor shall the Authority violate any land use law as such may apply to the Property.~~

7. **Insurance.**

The Authority and the Authority Representatives shall prior to entering, or causing any of its representatives to enter upon the Property, obtain at its sole costs and expense insurance in the types and in the amounts necessary to address the activities being undertaken as part of the Corrective Work.

8. **Indemnity.**

- (a) The Authority shall indemnify, defend and hold the Property Owner, its officers, directors, employees, agents, servants, contractors, engineers, surveyors, invitees (collectively referred to as "Property Owner Indemnified Parties"), and their successors and permitted assigns, harmless from and against any and all losses, damages, penalties, and/or liabilities (including, without limitation, reasonable attorneys', consultants' and experts' fees incurred in defense of claims or actions for same, except if the Authority undertakes defense of the Property Owner Indemnified Parties hereunder), resulting from Authority Representative's intentional, negligent or otherwise wrongful acts or omissions during the Authority's entry onto and activities on the Property under this Agreement.
- (b) The Property Owner shall indemnify, defend and hold the Authority, its board members, officers, directors, employees, shareholders, agents, servants, contractors, engineers, surveyors, invitees (collectively referred to as "Authority Indemnified Parties"), and their successors and permitted assigns, harmless from and against any and all losses, damages, penalties, and/or liabilities (including, without limitation,

reasonable attorneys', consultants' and experts' fees incurred in defense of claims or actions for same, except if the Property Owner undertakes defense of the Authority Indemnified Parties hereunder), resulting from Property Owner's intentional, negligent or otherwise wrongful acts or omissions during the Authority's entry onto and activities on the Property under this Agreement.

- (c) The indemnity contained in this Section 8 shall survive the expiration or earlier termination of this Agreement with respect to entry and activities occurring before such termination.

9. **Assignment.**

The Authority shall not have the right, power or authority to assign any of its rights hereunder without the prior written consent of the Property Owner. Any such assignment made without the prior written consent of the Property Owner shall be null and void and of no force and effect.

10. **Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

11. **Severability.**

In the event and to the extent that any provision hereunder may be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, then this Agreement shall be read and interpreted as if such provision(s) did not exist and the balance of this Agreement shall remain in full force and effect.

12. **Successors and Assigns.**

Subject to and without waiver of the provisions in Section 9, all of the rights, duties, benefits, liabilities and obligations of the parties hereto shall inure to the benefit of, and be binding upon, the parties' respective successors and permitted assigns.

13. **Access Only.**

This Agreement creates an access right only and the parties acknowledge that nothing contained in this Agreement nor any act of the Property Owner or the Authority shall create or be deemed to create an employer/employee, master/servant, principal/agent, joint venture, partnership, landlord/tenant or independent contractor relationship between Property Owner and the Authority. The Authority shall be solely and entirely responsible for the Corrective Work on the Property and for the supervision, control and direction of

all persons performing any portion of the Corrective Work authorized under this Agreement.

14. **Waiver.**

No delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

15. **No Recordation.**

This Agreement shall not be recorded.

16. **Governing Law.**

This Agreement shall be governed by the laws of the State of New Jersey without reference to conflict of laws rules.

17. **Amendment.**

This Agreement shall not be amended, modified or supplemented without prior written agreement signed by an authorized representative of each of the parties. This provision cannot be orally waived.

18. **Entire Agreement.**

This Agreement contains the entire agreement between the parties concerning its subject matter.

19. **Interpretation.**

The parties acknowledge that this Agreement is the result of negotiations and shall not be construed for or against either party as a result of the author. The parties further acknowledge that this Agreement is the result of arms-length negotiations between the parties hereto and the advice and assistance of their respective counsel. Notwithstanding any rule of law to the contrary: (i) the fact that this Agreement or portions thereof were prepared by the Authority's or Property Owner's or their counsel as a matter of convenience shall have no importance or significance, and any uncertainty or ambiguity in this Agreement shall not be construed against Property Owner or the Authority because of drafting. No deletions from prior drafts of this Agreement shall be construed to create the opposite intent.

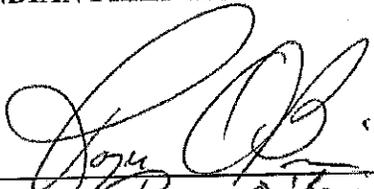
[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

PROPERTY OWNER:

Witness:

INDIAN FIELD HOMEOWNERS ASSOCIATION


Name: Roger O'Brien
Title: PRESIDENT IFHOA

THE AUTHORITY:

Witness:

HARDYSTON TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

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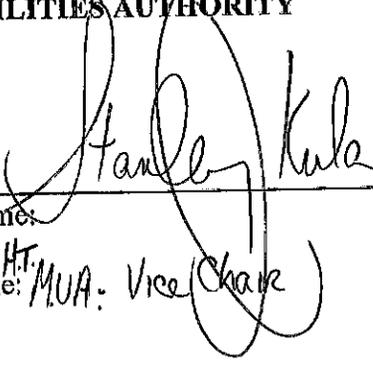
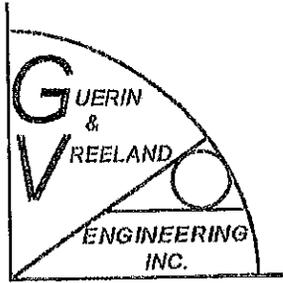

Name: _____
Title: H.T. MUA: Vice (Chair)

EXHIBIT A

(Memorandum provided by the Authority's engineer, dated May 1, 2015)



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MEMORANDUM

TO: Hardyston Township MUA
FROM: Michael Vreeland, Authority Engineer
CC: R. Scerbo, Authority Attorney
RE: Irrigation Water Meter Work Plan
Indian Field Service Area
Hardyton Township
DATE: May 1, 2015

As you are aware several connections have been made between common irrigation systems and the public community water supply system serving the Indian Field Development. Pursuant to your request we have discussed these connections with the water and sewer operator and offer the following:

1. General

- 1.1. All connections between the irrigation systems and the public community water supply system need to be equipped with appropriate devices to protect the potable water supply from backflow. Permits for these devices should be obtained from the Hardyston Township Building Department.
- 1.2. A copy of the permit approvals for the backflow prevention devices should be provided to our office and to the Authority.
- 1.3. All irrigation system connections should be equipped with appropriate water meters and remote water meter reading devices.
- 1.4. A copy of a receipt indicating that acceptable metering equipment has been installed should be provided to the Authority. In order to obtain the required receipt, our office should be contacted to request an inspection of the installation. We will test the Touch Pads once the extensions are completed to ensure proper operation and document our findings on a receipt form.
- 1.5. The location of each irrigation system connection should be illustrated on utility as-built plans. Paper and electronic copies of the complete as-built plans should be submitted to our office and the Authority.

2. Existing Installations

- 2.1. Several different brands of meters are located within pits and are not equipped with Touch Pad Extensions.
- 2.2. Several of the installations do not have backflow prevention devices.
- 2.3. Documentation indicating that the existing backflow prevention devices are working properly is either outdated or does not exist.
- 2.4. Documentation indicating that the existing meters are accurate is either outdated or does not exist.

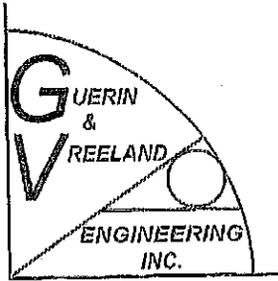
3. Recommended Upgrades

- 3.1. Install appropriate backflow prevention devices.
- 3.2. Replace existing water meters with the same brand meter being installed for the residential services.
- 3.3. Equip each installation with a Touch Pad Extension. Touch pads should be extended and placed in a location free of obstructions and readily accessible for efficient water meter reading purposes. Quality wiring should be used for extension of touch pads. The wire shall have at least three conductors with each individual conductor securely connected to the extension. In addition, a single heat shrink tubing encasing should be installed over the entire splice for the purpose of obtaining a watertight seal. Crimp butt splice connectors or electrical tape rap is not recommended.
- 3.4. A preliminary cost estimate for the recommended upgrades is attached.

4. Recommended Policy

- 4.1. Prior to seasonal use of the irrigation systems the Homeowner Association and/or Management Company should:
 - 4.1.1. Have the irrigation systems tested for leaks.
 - 4.1.2. Have the irrigation heads checked to ensure efficient watering.
 - 4.1.3. Have rain sensors installed and tested to ensure efficient watering.
 - 4.1.4. Have backflow prevention devices tested.
 - 4.1.5. Provide the Authority copies of all test reports.
 - 4.1.6. Provide the Authority the anticipated seasonal irrigation schedule
- 4.2. During the irrigation season the Authority should:
 - 4.2.1. Regularly read the irrigation meters.
 - 4.2.2. Regularly monitor the water supply to determine if irrigation water use is impacting its ability to provide potable water and/or its water diversion permit.
 - 4.2.3. Provide monthly bills for the Irrigation water usage.
 - 4.2.4. Notify the Homeowner's Association and Management Company if the irrigation water use is impacting its ability to provide potable water and/or its water diversion permit.
 - 4.2.5. Notify the Homeowner's Association and Management Company when inefficient irrigation practices are observed.

Please contact me should you have any questions.



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ENGINEER'S ESTIMATE
Irrigation Water Meter Work Plan Upgrades
 Indian Field Service Area
 Hardyston Township

DATE:05/01/16
 PAGE 1 OF 1

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
1	2" METER	EACH	3	\$960	\$2,880
2	1.5" METER	EACH	5	\$850	\$4,250
3	1" METER	EACH	4	\$250	\$1,000
4	2" BACKFLOW PREVENTER	EACH	3	\$550	\$1,650
5	1.5" BACKFLOW PREVENTER	EACH	5	\$500	\$2,500
6	1" BACKFLOW PREVENTER	EACH	4	\$350	\$1,400
ESTIMATE OF PROBABLE COST					\$13,650

Prepared By: Michael G. Vreeland

Signature: *Michael G. Vreeland*

Title: Authority Engineer