

A-1759
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ACCESS AGREEMENT

THIS ACCESS AGREEMENT ("Agreement") is made and entered into this 17th day of February, 2024, by and between the City of Atlantic City (the "City"); and the Atlantic City Municipal Utilities Authority, (the "Authority or ACMUA").

WITNESSETH:

RECITALS

R-1. City is the owner of those certain parcels of real property located and situated in the City, being identified on the schedule at Exhibit B (collectively, the "Property/Properties"), and being identified as on the listing of real estate potentially having Lead Line service pipes installed for drinking water service.

R-2. City acknowledges and understands that the ACMUA has the responsibility to remediate Lead Line service pipes within its Atlantic City service area under New Jersey PL 2021 C 183 (the "Project").

R-3. In accordance with the Project, the ACMUA intends to remove said Lead Service Lines within the Property via authorized contractors at no cost to the City.

R-4. In order to facilitate the Authority's access to the property, the City and the Authority desire to enter into this Agreement, on behalf of themselves and their respective successors and assigns, to set forth their mutual rights and responsibilities with respect thereto.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the City and the Authority, on behalf of themselves and their respective successors and assigns, hereby agree as follows:

1. Access. The Authority and any authorized contractor (collectively, the "Authority Parties" and each an "Authority Party") shall be provided access to the City's property at such times as may be mutually arranged. The City shall provide the Authority with any keys, access codes, security passes, phone numbers, or similar means that are required in order to access the Property. City shall at all times maintain each access route in a reasonably safe and usable condition.

2. Points of Contact. City shall provide the ACMUA's Director of Operations and Maintenance with a point of contact, including e-mail addresses and, if available, cell phone numbers, for the individual(s) responsible for the operation and security of the Property.

3. Release, Indemnity, and Hold Harmless. Authority, on behalf of itself and its successors and assigns, and authorized contractors, does hereby agree to release, indemnify, defend, and hold harmless the City from and against all lawsuits, third-party claims, losses, damages, penalties, judgments, expenses, and liabilities, including, without limitation, reasonable attorney's fees and costs, whether sounding in tort, contract, statute, or otherwise (collectively, "Claims"), arising out of or in any way relating to the Authority Parties' access to the Property pursuant to this Agreement and caused by the negligent acts or omissions of the Authority, its agents, employees and contractors, except those Claims, arising out of or in any way relating to the willful misconduct or negligent acts or omissions of the City. City shall not be liable to the Authority for punitive damages in all Claims or for special or consequential damages in contractual Claims.

4. Miscellaneous.

a. No Conflict. Nothing herein shall be construed to amend, terminate, or nullify the Authority's right of access pursuant to PL 2021 C 183.

b. **Notice.** Any notices that are required to be given or that may be given under this Agreement may be delivered via electronic mail, except that notice of any default hereunder or change in the place or person for the sending of notice shall be delivered by certified mail, return receipt requested, or by a reputable courier service (e.g. FedEx). All notices shall be deemed effective upon delivery or refusal of delivery. The parties shall deliver notices to the following addresses and to the following persons, provided that a party may amend their respective address and persons stated below from time to time by delivering notice of the same, as provided herein, to the other parties:

C. **Insurance** – See Attached Exhibit A.

Atlantic City c/o: Risk Manager 1301 Bacharach Blvd. Atlantic City, NJ 08401 Email: negrie@acnj.gov Phone: (609) 347-5540	
Atlantic City Municipal Utilities Authority c/o Deputy Executive Director of Operations 401 No. Virginia Ave. Atlantic City, NJ 08401 Email: ckeen@acmua.org Phone: (609) 335-7900	With copy to: G. Bruce Ward, Esq. 701 No. Dr. Martin L. King Blvd. Atlantic City, NJ 08401 Email: brucewardesq@gmail.com Phone: (609) 449-0061

c. **Memorandum of Agreement.** This Agreement is intended to be binding upon the parties, and their respective successors and assigns.

d. **Controlling Law.** This Agreement shall be construed in accordance with the laws of the State of New Jersey, without regard to conflicts of law principles.

e. **No Partnership.** Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship


among the parties hereto, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to such parties. Except as expressly provided herein, neither party is or shall act as or be the agent or representative of the other party.

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

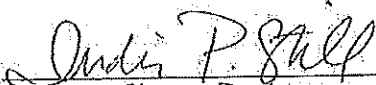
g. Amendment. Except as otherwise set forth above, this Agreement may not be amended, except by the mutual written agreement of the City and the Authority.

THE FOREGOING ACCESS AGREEMENT IS AGREED TO AS OF THE DATE FIRST APPEARING ABOVE.


CITY OF ATLANTIC CITY

By: 
Name: SARAH FINCK
Title: Acting Mayor

ATLANTIC CITY MUNICIPAL UTILITIES AUTHORITY

By: 
Name: INDIA P. STILL
Title: EXECUTIVE DIRECTOR

This Agreement is approved as to form and execution.


Peter T. Sallata, Esq., Assistant City Solicitor

ATTEST

City of Atlantic City

Paula Geletei

Paula Geletei

Date: 2/18/2020

EXHIBIT A

INSURANCE REQUIREMENTS

The Authority Parties and all subcontractors shall maintain at least the limits of liability as set forth below:

Commercial General Liability Insurance

\$1,000,000.00 Each Occurrence (Bodily Injury and Property Damage)

\$2,000,000.00 General Aggregate

\$2,000,000.00 Products/Completed Operations Aggregate

\$1,000,000.00 Personal and Advertising Injury

Contractual liability that will respond to Indemnification shall be included in the policy. The General Liability and Umbrella/Excess Liability policy Aggregate Limits shall apply separately to the project/location as defined in Access Agreement. As an alternative, the Authority Parties may provide Commercial General Liability Insurance with no aggregate.

Comprehensive Automobile Liability Insurance

\$1,000,000.00 Combined Single Limit Bodily Injury and Property Damage. Coverage must include all owned, non-owned and hired vehicles used by the Authority Parties.

Umbrella Liability Insurance

\$4,000,000.00 per Occurrence

\$4,000,000.00 Aggregate

Policy to apply excess of General Liability, Automobile Liability and Coverage B.

Workers' Compensation and Employers' Liability Insurance

\$500,000.00 Each Accident

\$500,000.00 Each Employee for Injury by Disease

\$500,000.00 Aggregate for Injury by Disease

If the Authority Parties are a Sole Proprietor, Partnership or LLC, Insurance Policy and Certificate must indicate that the proprietor/partners/members are "included". This requirement does not apply if inclusion is not allowed by law.

Professional Liability Insurance

\$1,000,000.00 Each Claim

\$3,000,000.00 Aggregate

Authority Parties must confirm that the full limits are available and they have not been reduced by other claims. In the event the Professional Liability coverage is written on a Claims-Made basis, the Authority Parties warrant that the policy retroactive date precedes the date of this Access Agreement and that either continuous coverage or an extended discovery period of two (2) years will be maintained from the date this contract is completed.

The City, along with their respective elected or appointed officials, officers, agents and employees, shall be named as Additional Insureds for Operations and Products/Completed Operations on the Authority Parties'

Commercial General Liability Policy, Business Auto Liability and Excess Policy all of which must be primary and noncontributory with respect to the Additional Insureds.

It is expressly understood by the parties to this Access Agreement that it is the intent of the parties that any insurance obtained by the City is deemed excess, noncontributory and not co-primary in relation to the coverage (s) procured by the Authority Parties, any of their contractor's, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them or by anyone for whose acts any of the aforementioned may be liable by operations of statute, government regulation or applicable case law.

A Waiver of Subrogation clause shall be added to the General Liability, Excess Liability, Automobile Liability and Professional Liability policies in favor of the City and this clause shall apply to the City's elected or appointed officials, officers, agents and employees. It should also apply to the Authority Parties' Worker's Compensation policy if allowed by state law.

In the event the Authority Parties fail to obtain or maintain any insurance coverage required under this Agreement, the City may, at its sole discretion, purchase such coverage as desired for the City's benefit and charge the expense to the Contractor, or, in the alternative, terminate this Agreement. In the event the coverage is cancelled or non-renewed, the insurance carrier(s) will provide 30 days advance notice of the cancellation or non-renewal.