

## **Resolution 14-096**

### **RESOLUTION RATIFYING EXECUTION OF RIGHT OF ENTRY AGREEMENT BETWEEN RVRSA AND THE CITY OF JERSEY CITY**

**WHEREAS**, the Rockaway Valley Regional Sewerage Authority owns and operates a gravity sewer trunk line running adjacent to the Jersey City Reservoir (Reservoir), which trunk line flows to the RVRSA sewage treatment plant; and

**WHEREAS**, the City of Jersey City is the owner of property adjacent to the Reservoir; and

**WHEREAS**, during and as a result of Hurricane Irene, a portion of the sewer trunk line running adjacent to the Reservoir (the "Interceptor") was damaged causing a spillage of sewerage into the Rockaway River upstream of the Reservoir, which Reservoir supplies drinking water to Jersey City; and

**WHEREAS**, in order to temporarily remediate the damage to the Interceptor and cease the further discharge of raw sewage into the Rockaway River upstream of the Reservoir, the RVRSA has constructed a temporary by-pass line and pumping system that is presently conveying raw sewage to the RVRSA treatment plant in place of the Interceptor section that was washed out during Hurricane Irene; and

**WHEREAS**, the temporary by-pass line and pumping system is only designed to temporarily abate discharges of raw sewage into the Rockaway River upstream of the Reservoir, which otherwise would be deleterious to public health, and construction of a permanent remedy to prevent the further discharge of sewage into the Rockaway River upstream of the Reservoir is required; and

**WHEREAS**, in order to permanently remediate the damage to the Interceptor, the RVRSA proposes to construct a permanent direct connection (the "Monroe Street Pumping Station and Force Main and Morris Avenue Gravity Sewer Project" or the "Project"); and

**WHEREAS**, the Project requires that the RVRSA, and its contractors, be granted temporary access over property owned by the City of Jersey City for the purposes of construction, installation, modification, operation, maintenance, replacement, repair, monitoring, restoration, and other similar activities related to a new 12 inch DIP Force Main, a 6' Vortex Drop Manhole and a new Manhole into the existing Interceptor; and

**WHEREAS**, it is necessary for the RVRSA to obtain access to a portion of the property owned by Jersey City to perform and facilitate the Project, as well as a permanent easement for the purpose of the operation, maintenance, replacement, repair, monitoring, restoration, and other similar activities related to the Project; and

**WHEREAS**, the RVRSA and the City of Jersey City have negotiated the terms of a Right of Entry Agreement providing for access to that portion of the property of the City of Jersey City necessary for the purposes of construction and other related activities relevant to the Project and which Agreement in its final form is attached hereto and made a part hereof; and

**WHEREAS**, due to the urgent need to replace the temporary bypass with a permanent remedy and in order to expedite the process of obtaining approval of the Right of Entry Agreement, which approval is required prior to the commencement of the bidding process needed to award a contract for the construction of the permanent repairs, the Executive Director has executed the Right of Entry Agreement attached hereto, and has forwarded the executed copy of the Right of Entry Agreement to the City of Jersey City for consideration and execution.

**NOW, THEREFORE, BE IT RESOLVED, BY THE ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY AS FOLLOWS:**

1. The RVRSA hereby ratifies the execution by JoAnn Mondsini, Executive Director, of the attached Right of Entry Agreement between the RVRSA and the City of Jersey City.
2. Copies of the Right of Entry Agreement shall be on file for public inspection pending execution of the same.
3. This Resolution shall take effect immediately.

#### **CERTIFICATION**

I hereby certify that this Resolution was adopted at a regularly scheduled meeting of the Rockaway Valley Regional Sewerage Authority held on November 13, 2014

On motion of Hector Schorno

Second by Glenn Corbett

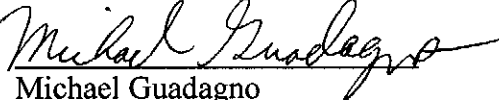
and a Roll Call Vote as Follows:

Yeas: (8) Andes, Cegelka, Corbett, Lowell, Recchia, Schaefer, Schorno, Secco

Nays: (0) None

Abstain: (0) None

Absent: (2) Guadagno and Vincitore

  
Michael Guadagno  
Board Secretary

## RIGHT OF ENTRY AGREEMENT

**THIS RIGHT OF ENTRY AGREEMENT** (hereinafter "Agreement" or "Right of Entry") is made this \_\_\_ day of November, 2014, between **THE CITY OF JERSEY CITY**, having its office at 280 Grove Street, Jersey City, New Jersey 07302(hereinafter "Jersey City" or "Grantor") and the **ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY** (hereinafter "RVRSA" or "Grantee"), having its offices at RD#1, 99 Greenbank Road, Boonton, N.J. 07005. Jersey City and RVRSA be individually referred to as a "Party" and collectively referred to as the "Parties."

### RECITALS

**WHEREAS**, Grantor is the owner of certain real property designated on the tax maps of the Township of Boonton, Morris County, New Jersey as Block 79, Lot 19 and identified in **Exhibit A**, attached hereto(hereinafter "the Property"); and

**WHEREAS**, said Property is adjacent to the Boonton Reservoir, which is owned by Jersey City (the "Reservoir"); and

**WHEREAS**, the RVRSA owns and operates a Trunk Sewer running adjacent to the Reservoir to a sewerage treatment plant administered by the RVRSA; and

**WHEREAS**, during and as a result of Hurricane Irene, a portion of the Trunk Sewer running adjacent to the Rockaway River (the "Interceptor") was damaged causing a spillage of sewerage into the Rockaway River and ultimately the Reservoir which Reservoir supplies drinking water to Jersey City; and

**WHEREAS**, in order to temporarily remediate the damage to the Interceptor, the RVRSA has constructed a temporary by-pass line and pumping system that is presently conveying raw sewage to the treatment plant in place of the Interceptor section that was washed out during Hurricane Irene; and

**WHEREAS**, in order to permanently remediate the damage to the Interceptor, the RVRSA proposes to construct a permanent direct connection to the Interceptor (the "Monroe Street Pumping Station and Force Main and Morris Avenue Gravity Sewer "Project" or the "Project");

**WHEREAS**, the construction of the Project requires that Grantee, and its contractors be granted temporary access over the Property for the purposes of construction, installation, modification, operation, maintenance, replacement, repair, monitoring, restoration, and other similar activities related to a new 12 inch DIP Force Main, a 6' Vortex Drop Manhole and a new Manhole into the existing Interceptor on the Property (the "Improvements"); and

**WHEREAS**, it is necessary for the Grantee to obtain access to a portion of the Property to perform and facilitate installation of the Improvements; and

**WHEREAS**, the portions of the Property where the Grantee seeks temporary access for construction of the Project are identified in the delineated area I attached hereto and made a part hereof as **Exhibit A**, as may be modified as necessary pursuant to the Agreement; and

**WHEREAS**, Grantee and Grantor further intend to enter into a separate Permanent Easement Agreement in order to provide Grantee with access over \_\_\_\_\_ a portion of the Property which will be more specifically identified by a metes and bounds description, for the purpose of the operation, maintenance, replacement, repair, monitoring, restoration, and other similar activities related to the Improvements, and at a price of the value of the Permanent Easement, to be determined based on an appraisal, paid for by Grantee, by a competent and impartial appraiser, agreed to by both parties.

**NOW THEREFORE**, this Agreement is made and entered into by and between the Grantor, its successors and assigns, and Grantee and its successors and assigns.

**THE PARTIES** agree to the following terms and conditions:

1. The “whereas” recital clauses stated above are incorporated herein by reference.
2. The Grantor hereby grants Grantee its successors, assigns, agents, contractors, engineers, consultants and/or designees, as the case may be, on foot and with vehicles and machinery a non-exclusive, non-transferable right to enter on, occupy and use the Temporary Construction Area, for the purpose of conducting any and all necessary acts, studies, testing, preparation, construction and reconstruction only for the purposes set forth in this Agreement, and as described in the Construction Work Plan (“Work Plan”) attached hereto as **Exhibit B** and incorporated herein, together with a non-exclusive, non-transferable right to enter on the Property as necessary to gain entry and access to the Temporary Construction Area.
3. Pursuant to this Right of Entry, Grantee may enter on, occupy and use the Temporary Construction Area to perform any and all tasks necessary to conduct the activities consistent with the Work Plan.
4. Grantee shall obtain, maintain and comply with all applicable licenses, permits and approvals required by the appropriate federal, State and local authorities for the use of the Temporary Construction Area in accordance with this Agreement.
5. Grantee shall, at its sole cost and expense, comply with all duly promulgated and applicable federal, State and local laws, ordinances, rules and orders affecting the Temporary Construction Area, or any part thereof, or the use thereof.

6. The size and location of the Temporary Construction Area may only be modified at the request, or with the approval of, Grantor.

7. The Right of Entry conveyed by this Agreement shall become effective as of the date on which the Agreement is executed by Grantor, dated and forwarded to Grantee ("Effective Date").

8. The Right of Entry shall be in effect for one (1) year, or may be superseded by a subsequent Permanent Easement.

9. In the event of an unsafe condition or emergency on the Property, Grantor shall have the right to terminate this Agreement immediately, without any advanced notice. Grantor shall also have the right to immediately terminate this Agreement if or when the insurance that Grantee is required to maintain hereunder expires or lapses.

10. Each Party reserves the right to terminate this Agreement for any material default of the other Party's obligations under this Agreement upon written notice to such Party of not less than thirty (30) days ("Notice Period"), which notice shall include a statement specifying the alleged material default. The Party receiving the termination notice may within the Notice Period diligently prosecute the curing of any alleged material default, in which case this Agreement shall not terminate. If the Party receiving the termination notice objects in writing to any alleged material default within the Notice Period, the Parties agree to engage in good faith negotiations to resolve the dispute. If the Parties are unable through such good faith negotiations to resolve the dispute, then this Agreement shall terminate at the end of the Notice Period. Upon termination of the Agreement for any reason, Grantee shall, unless otherwise agreed upon by the Grantor in writing, remove within thirty (30) days, or some other longer period of time agreed upon by the parties, all items installed and covered under the terms of this Agreement.

11. Within thirty (30) days of Grantee's receipt of this Agreement duly executed by both parties, Grantee shall pay Grantor the sum of One Dollars (\$1.00), which Grantor agrees is a full and adequate one-time payment for the term of this Agreement

12. As additional compensation for the right to enter on, occupy and use the Temporary Construction Area pursuant to this Agreement, Grantee shall plant the same number of large trees as currently exist, each six (6) inches in diameter, in the area outside of the twenty (20) foot swath [ten (10) feet either side of the new twelve (12) inch force main..

13. (a) Grantee shall perform the Improvements in a good and workmanlike manner and in accordance with all applicable prevailing industry standards, as may be amended from time to time. Grantee shall use reasonable efforts to conduct these tasks in a manner which minimizes, to the extent practicable any inconvenience to and/or interference with Grantor's use and/or occupancy of the Property.

(b) Grantee shall, at its sole cost and expense and unless otherwise directed by

Grantor, restore the Property, including but not limited to the Temporary Construction Area to its grade and condition prior to disturbance as soon as possible after the construction activities, but not more than 60 days after. Without limiting the scope of the preceding sentence, any material excavated by Grantee to facilitate the Improvements shall be replaced and graded by Grantee, and restored to the condition it was prior to the Project activities.

(c) Grantee shall, at its sole cost and expense, take all steps as may be required to protect the Rockaway River and the Reservoir.

14. Grantee shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents and employees to comply with all applicable federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Grantee shall, at its sole cost and expense, obtain and maintain any and all licenses, permits and approvals which may be required by any federal, state or local governmental entity having jurisdiction for any activities Grantee desires to conduct or has conducted pursuant to this Agreement.

15. Grantee, for itself, its officers, officials, agents, employees, successors and assigns, assumes all risks and liabilities arising out of the use or occupancy of the Property and covenants to indemnify, protect and hold harmless Grantor, and hereby releases Grantor, and each and every of its officers, officials, agents, employees, successors and assigns from any and all liability, claims, damages, causes of action, suits, demands, judgments, expenses or costs of any kind which may in any manner arise out of, be occasioned by, or result from the entry, use or occupancy of the premises by Grantee, its officers, agents, employees, contractors, subcontractors, or invitees, express or implied, but not including any and all liability, claims or costs that arise out of, be occasioned by, or result from the sole negligence of the Grantor. This indemnification is not limited by, but is in addition to, the insurance obligations contained in this Agreement. Grantee's liability pursuant to this Paragraph shall continue after termination or expiration of this Agreement with regard to causes of action arising or claimed to arise prior to the termination hereof and/or obligations of Grantee under this Agreement that survive such termination or expiration.

16. Grantee shall, at its sole cost and expense, obtain and maintain at all times during the term of this Agreement, insurance on the Property of the types and minimum amounts outlined in **Exhibit C**, which is attached to and made part of this Agreement.

17. Neither Party to this Agreement is empowered to alter or amend any term of this Agreement unless such alteration or amendment is in writing and has been signed by Grantor and Grantee. This provision cannot be orally waived.

18. Anything to the contrary notwithstanding, the terms and conditions of this Agreement and the rights and obligations created as a result thereof, shall be binding upon and inure to the benefit of, the Parties hereto, their officers, directors, agents, employees, successors, transferees, permitted assigns, heirs, designees, and contractors.

19. With the exception of those persons and/or entities described in Paragraph 18, this Agreement shall not inure to the benefit of any other person and/or entity that is not a signatory to this Agreement.

20. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to Grantee.

21. Grantee shall not permit to be placed against the Property, or any part thereof, any design professionals', mechanics', materialmen's contractors' or subcontractors' liens with regard to Grantee's actions upon the property. Grantee agrees to hold Grantor harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which might be filed against the Property. Grantee shall, as a condition of any contract or subcontract for labor or materials, require all contractors, laborers and materialmen to execute a release of lien against the Grantor.

22. All notices to be provided to Grantor pursuant to this Right of Entry shall be sent to:

City of Jersey City  
280 Grove Street  
Jersey City, New Jersey 07302  
Attn: Robert Kakoleski, Business Administrator

Copy:

Jeremy Farrell  
Corporation Counsel  
280 Grove Street  
Jersey City, New Jersey 07302

All notices to be provided to Grantee pursuant to this Agreement shall be sent to:

Rockaway Valley Regional Sewerage Authority  
R.D. # , 99 Greenbank Road  
Boonton, NJ 07005-9602  
Attn. JoAnn Mondsini, Executive Director

Copy:

Maraziti Falcon, LLP  
150 John F Kennedy Parkway  
Short Hills, New Jersey, 07901  
Attn: Joseph J. Maraziti, Jr. Esq.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date hereinbefore first indicated.

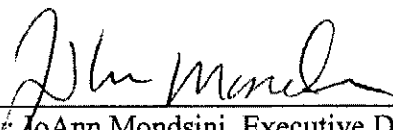
**THE CITY OF JERSEY CITY**

\_\_\_\_\_  
By: Robert Kakoleski, Business Administrator

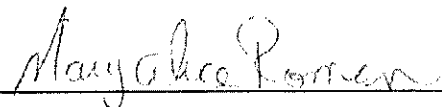
Attest:

\_\_\_\_\_  
Robert Byrne, City Clerk

**ROCKAWAY VALLEY REGIONAL  
SEWERAGE AUTHORITY**

  
\_\_\_\_\_  
By: JoAnn Mondsini, Executive Director

Attest:

  
\_\_\_\_\_  
Maryalice Roman