

Temporary Access Agreement for Monitoring Wells

This Temporary Access Agreement is made as of the _____ day of the month of _____ in the year of _____ (“Agreement”) by and between the Township of Clark, having an address at 430 Westfield Avenue, Clark, New Jersey 07066-1704, (“Township” or “Grantor”), _____ (Name of the property owner making the request, “Grantee”) _____ (Address,) _____ (Lot#,) _____ (Block#), _____ (name of Licensed Site Remediation Professional, and/or Licensed Professional Engineer, if applicable), having an office at _____ (“Consultant”), _____, (name of contractor) having an office at _____ (“Contractor”), and _____, (name of utility subcontractor) having an office at _____ (“Utility Subcontractor”) [sometimes there is no Utility Subcontractor; sometimes there is a Drilling Subcontractor;] (collectively, the “Parties”).

1. RECITALS

1.1 Grantor owns certain real property located in the Township of Clark in the County of Union, in the State of New Jersey, known as Lot# _____, Block# _____, and/or Grantor owns right-of-way of roadway entitled _____ located adjacent to Lot# _____ of Block# _____ in the Township of Clark, in the County of Union, in the State of New Jersey, part of which property (the “Property”) Grantee desires to obtain access to for the purpose of having its Contractor conduct a site inspection, and/or conduct utility clearance assessments and utility mark outs, install monitoring wells, perform survey activities of the well, perform waste management and disposal activities for soil cuttings and purge water, perform maintenance and repair activities on the well, and collect groundwater samples from the well soil sampling and ground water sampling, or any other activity as required in an “Off Site Soil Remediation Investigation Work Plan” as approved by the New Jersey Department of Environmental Protection (“NJDEP”) and as may be required by the New Jersey Department

of Environmental Protection (“NJDEP”) and/or in accordance with applicable environmental laws and regulations of NJDEP, or as required by or acceptable to those regulatory agencies exercising appropriate jurisdiction (the “Work”.) All of the Work shall be performed in accordance with all applicable Township, State, and Federal ordinances, statutes and regulations, including the NJDEP’s Technical Requirements for Site Remediation, N.J.A.C. 7:26E (“NJDEP’s Technical Requirements”). The location of the Work is as shown on a diagram labeled “_____,” which is attached hereto as Exhibit A and made part of this Agreement and approximated on the General Property Parcel Map labeled “_____,” which is attached hereto as Exhibit B and made part of this Agreement.

1.2 Grantee has employed Consultant as its Owner’s representative, and Grantee has separately contracted with Contractor and Utility Subcontractor to perform the Work.

1.3 Grantee desires to enter into this Agreement with Grantor in order to have the Work performed on the Property and have access to the Property by Grantee and/or Consultant, Contractor, Utility Subcontractor, and their agents, employees, and representatives (“Representatives”) for the purpose of performing the Work.

2. AGREEMENT

In consideration of the above and the mutual covenants and agreements herein, the Parties agree as follows:

2.1 The recitals of this Agreement are incorporated into this paragraph as though set forth in verbatim.

2.2 Grantor hereby grants Grantee and/or Consultant, Contractor, Utility Subcontractor, and Representatives permission to enter onto the Property for the purpose of performing the Work authorized by this Agreement, subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-5 et seq., and the New Jersey Torts Claims Act, N.J.S.A. 59:13-1 et seq. Grantor authorizes Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives to

release any and all analytical data and site assessment information obtained during the performance of the Work to appropriate government agencies. Copies of such data and information shall also be provided in a timely manner to Grantor by Grantee and at no cost to Grantor. It is understood and agreed that Grantee may not assign the rights granted under this Agreement, other than to any parent, subsidiary or affiliate of Grantee.

2.3 The Work shall not in any way impede the flow of traffic or be detrimental to public safety. Should any stage of the Work require lane or shoulder closures or traffic shifts on (roadway name) _____ and/or its intersection with _____, then traffic control and safety used to accomplish said closure(s) or traffic shift(s) must conform to Township of Clark Police Traffic Bureau Officer's requirements. Grantee and/or Consultant shall contact Township of Clark Police Traffic Bureau to obtain the allowable work hours for this area.

2.4 If the surface of the Property or any improvements thereon shall be disturbed by the Work, then, upon completion of Work, the surface or improvements shall be promptly restored by Grantee and/or Consultant, Contractor, Utility Subcontractor, and Representatives, to its original grade prior to filling, said restoration to include seeding or reseeded to restore a natural ground cover. Any monitoring well(s) shall remain in place until such time as it is no longer required under applicable state statutes and regulations. Grantee shall cause the monitoring wells to be closed and sealed in accordance with all applicable state statutes and regulations. To this end, Grantee shall maintain a Performance Guarantee in accordance with Township of Clark Ordinance Chapter 310, Article II "Permits," Section 310-9 "Fees & Penalties," B(2) and shall not terminate or discontinue the Performance Guarantee until Grantor has confirmed the proper closing and sealing of any monitoring wells.

2.5 This Agreement shall terminate upon the completion of the Work and Grantee's compliance with all provisions of this Agreement.

2.6 Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives shall use reasonable efforts to conduct the Work in a manner so as not to unreasonably interfere with

Grantor's use and occupation of the Property or Grantor's future use of the Property, or that of Grantor's tenants, if any. If the Work may interfere with Grantor's ongoing business operations or future activities on the Property, Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives shall first notify, and consult with, Grantor before commencing the Work. If Grantor determines in its sole discretion that relocation of any monitoring well is necessary, all work shall be done solely at the cost and expense of Grantee.

2.7 This Agreement shall only be assigned upon the prior written consent of all Parties. Furthermore, this Agreement shall bind and inure to the benefit of successors and assigns of the Parties.

2.8 By executing this Agreement, or conducting any Work thereunder, no party waives any rights it may have against any person or entity in connection with any contamination such as may actually or allegedly exist at, or in the vicinity of, the Property.

2.9 Neither this Agreement, nor any Work in furtherance of it, shall constitute or be interpreted or construed as an admission by Grantee, Consultant, Contractor, Utility Subcontractor, or Representatives of liability or fault under any Federal, State or local law, or for any purpose whatsoever.

2.10 This Agreement shall not be for the benefit of nor shall it bind any entity not a party to this Agreement, except that it shall bind Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives and Grantor, and their respective successors and assigns.

2.11 Grantor accepts no liability as to any third parties who may be impacted or injured as a result of the Work.

2.12 This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

2.13 Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives agree that all activities that are performed on the Property shall comply with all approved health and safety

plans as required by the Occupational Health and Safety Act and shall be performed pursuant to NJDEP's Technical Requirements and other applicable federal, state and local laws and regulations and all Work shall be performed in a good and workmanlike manner, pursuant to applicable NJDEP specifications. Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives are to take all reasonably necessary precautions consistent with industry practices for drilling activities to protect any existing utilities or underground systems or other improvements on the Property.

2.14 Grantee warrants that Representatives are qualified to perform remedial activities pursuant to NJDEP's Technical Requirements and any applicable oversight agreements.

2.15 Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives shall be jointly and severally liable for any discharge, leak or contamination that occurs on the Property as a result of the Work, and each shall comply as expeditiously as possible with the requirements of NJDEP in the clean-up and remediation of any such discharge, leak or contamination. Grantor shall not be responsible for any such remediation activities or for any penalties that may be assessed by any governmental entity as a result of any discharge, leak or contamination on the Property from the Work.

2.16 Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives shall be responsible for personal injuries and property damage caused by the actions of Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives occurring during the Work. Grantee, Consultant, Contractor, Utility Subcontractor, Representatives, and their successors and assigns agree to indemnify, defend and hold harmless Grantor, its officials, and employees against claims, liabilities, damages, demands and actions at law and equity, including third-party claims, for injuries, actual and alleged, of whatever kind or nature, including but not limited to personal injury claims, wrongful death claims, property damage claims, and contractual liability claims, arising out of or alleged to arise out of or in connection with the Work, provided, however, that nothing herein shall in any way modify, reduce or alter any of the liabilities, obligations, duties and rights of Grantee with respect to claims relating to the groundwater and/or soil contamination, which is the reason for the Work, under any and all federal and state environmental statutes.

2.17 Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives, at their own expense, shall defend and pay all reasonable charges for attorneys and for all reasonable costs and other expenses arising from any suit or claim covered by the indemnity in paragraph 2.16 or incurred in connection with any such suit or claim; and if any judgment shall be rendered against Grantor in any such action covered by the indemnity in paragraph 2.16, Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives shall, at their own expense, satisfy and discharge the same unless Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives appeal any such judgment and, in connection with such appeal, the payment of such judgment is stayed by a court of competent jurisdiction.

2.18 Contractor shall procure Commercial General Liability Insurance with a minimum liability of \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage together with excess or umbrella coverage such that the primary and excess coverage together equals or is greater than \$2,000,000.00. Consultant shall procure Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance with a minimum liability of \$1,000,000.00 per occurrence. Contractor shall further make Grantor, its officials, and employees, an additional insured on the Commercial General Liability Insurance policy. No later than seven (7) calendar days before commencing any on-site activity, Contractor shall deliver to Grantor a copy of each certificate or policy evidencing the required coverage, with proof of payment of the premium, and a conformed copy of this Agreement. Such proof shall constitute a condition to entry under this Agreement. The coverage to be provided shall be at least as broad as that provided by the standard, basic, unamended and unendorsed, comprehensive general liability coverage forms currently in use in the State of New Jersey, which shall not be circumscribed by an endorsement limiting the breadth of coverage. Moreover, such policy shall be endorsed to delete any exclusion applying to explosions or applying to property damage to underground utilities and collapse of foundations. Such policy shall be maintained for the duration of the remedial investigation. Additionally, such policy shall provide thirty (30) days' notice of cancellation to Grantor.

2.19 Upon notice from Grantor, Contractor shall provide copies of certificates of insurance for Representatives, as well as the qualifications of Representatives.

2.20 Grantee shall require Consultant and Contractor and Utility Subcontractor Contractor agree at their sole risk, cost, and expense to apply for and obtain any necessary roadway and/or public property access permits from the Township of Clark before conducting the Work authorized by this Agreement. Grantee, Consultant, Contractor, Utility Subcontractor, and Representatives, at their sole risk, cost and expense shall obtain all permits and approvals that may be necessary or appropriate to conduct the Work and shall comply with all Township, Federal and State laws and assume all costs, expense, and responsibility in connection therewith, without any liability whatsoever on the part of Grantor. Any permitted access to the Property for the performance of the Work shall be determined under paragraph 2.3 and notice shall be given to Grantor seven (7) business days before conducting any Work on the Property. Grantor shall have the opportunity to be present at any on-site sampling event, and to split any sample Grantee, Consultant, Contractor, Utility Subcontractor, or any Representative takes to the extent the sample can be split.

2.21 Unless otherwise specified, all notices, requests, consents, and other communications hereunder shall be in writing and shall be personally delivered or mailed by first class registered or certified mail, return receipt requested, postage prepaid, or sent by private overnight express delivery, or may be faxed followed by any other means of delivery set forth herein, in each case addressed as follows:

(a) If to Grantee:

(b) If to the Consultant:

(c) If to the Contractor:

(d) If to the Utility Subcontractor:

(e) If to Grantor (Township of Clark):

Business Administrator
430 Westfield Avenue
Township of Clark
New Jersey 07066
Phone: (732) 428-8401
Fax: (732) 388-3501

(f) With copies to:

Township Engineer
430 Westfield Avenue
Township of Clark
New Jersey 07066

Township LSRP
c/o T. Slack Environmental Services Inc.
430 Westfield Avenue
Township of Clark
New Jersey 07066

or to such other address as the respective party may direct by notice to the other party. Any such notice, request, consent or other communication shall be deemed delivered at such time as it is personally delivered on a business day, on the third business day after it is so mailed, or on the first business day following its delivery to a private overnight express delivery service, prepaid for next business day delivery, as the case may be. While notices may be (and are encouraged to be) faxed as set forth above, any faxed notice shall not be deemed delivered until the copy of the faxed notice is delivered by another means set forth in this paragraph.

2.22 This Agreement, including the Exhibits, represents the entire agreement among the Parties concerning the temporary access to the Property, and supersedes all prior negotiations, representations, or agreements, either written or oral, unless otherwise expressly stated. The doctrine that a document is to be construed against its preparer does not apply to this Agreement

and cannot be utilized with reference to any claim or dispute arising out of or related to this Agreement.

2.23 This Agreement shall not be modified, amended, supplemented, changed, or altered except by written agreement of the Parties.

2.24 The Parties executing this Agreement acknowledge that they do so with full authority to act for and to bind their organization or entity to the terms of this Agreement.

2.25 This agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

In Witness Whereof, the Parties, duly authorized, have executed the Temporary Access Agreement on the _____ day of the month of _____ in the year of _____, which is the date that this Agreement has been executed and approved by the Township of Clark.

ATTEST:

[NAME OF GRANTEE]

(Sign & Print Name)

By: _____
(Sign & Print Name)

ATTEST:

[NAME OF CONSULTANT]

(Sign & Print Name)

By: _____
(Sign & Print Name)

ATTEST:

[NAME OF CONTRACTOR]

(Sign & Print Name)

By: _____
(Sign & Print Name)

ATTEST:

[NAME OF UTILITY SUBCONTRACTOR]

(Sign & Print Name)

By: _____
(Sign & Print Name)

Attest/Witness/Affix Seal:

Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

(notary signature)

SEAL

My Commission Expires: _____

Notary Name Printed

Witness Name Printed

By: _____
Witness Signature

DATED: _____

Approved as to form only:

TOWNSHIP OF CLARK

By: _____