

CRANBURY TOWNSHIP ORDINANCE #04-15-07

AN ORDINANCE OF THE TOWNSHIP OF CRANBURY, COUNTY OF MIDDLESEX, STATE OF NEW JERSEY AUTHORIZING THE TOWNSHIP OF CRANBURY TO ENTER A PRIVATE SEWER UTILITIES AGREEMENT WITH CRANBURY BRICK YARD LLC.

WHEREAS, Cranbury Brick Yard, LLC (CBY) is the owner and developer of a 394.5-acre tract located at 22 Hightstown-Cranbury Station Road and designated as Block 10, Lot 10 and Block 12, Lot 1 on the Tax Map of the Township of Cranbury; and

WHEREAS, by resolution dated March 12, 2015 the Cranbury Township Planning Board granted “Amended Preliminary Major Site Plan Approval and Final Major Site Plan Approval with ‘C’ Bulk Variances and Site Plan Exceptions (Waivers)” to CBY for the project known as “Cranbury Logistics Center”; and

WHEREAS, CBY must construct various sewer utilities and a pump station as part of that project; and

WHEREAS, CBY desires permission from the Township to utilize portions of Hightstown-Cranbury Station Road for the installation, operation, and maintenance of private sewer utilities and all necessary fittings and appurtenances therefore; and for continued access to, and in furtherance of, the installation, operation, and maintenance of those facilities within the Township’s Right-of-Way; and

WHEREAS, the Township wishes to grant such rights to CBY on and subject to the terms set forth in the attached “Private Sewer Utility Agreement”; and

WHEREAS, the Township may enter into this agreement pursuant to, *inter alia*, its general police power to legislate for the benefit of the public health, safety and welfare (N.J.S.A. 40:48-2); its authority to provide for the construction, reconstruction, enlargement or extension of a sewer or drain in, under or along a street, alley or public highway, or portion thereof (N.J.S.A. 40:56-1.i), and its authority to permit by ordinance the installation of a utility conduit under or along any public road, street or highway of the municipality (N.J.S.A. 48:17-10 to 12); and

WHEREAS the CBY facilities shall be so placed as not to interfere with the safety or convenience of persons or vehicles traveling on any such street, road or highway; and

WHEREAS, the Private Sewer Utilities Agreement has been reviewed and approved by the township engineer.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Cranbury that the Township of Cranbury is hereby authorized to enter a Private Sewer Utilities Agreement in a form substantially similar to the agreement attached hereto as Exhibit A; and

BE IT FURTHER ORDAINED that the final version of the Private Sewer Utilities Agreement shall be reviewed and approved by the township attorney, the township administrator and the township engineer prior to being executed by the mayor and clerk.

Effective Date. This Ordinance shall take effect immediately upon its passage and publication, as required by law.

ATTEST:

EXHIBIT “A”

PRIVATE SEWER UTILITIES AGREEMENT

THIS AGREEMENT (hereinafter referred to as the “Agreement”), made this _____ day of _____, 2015, between the TOWNSHIP OF CRANBURY, having its principal offices at 23-A North Main Street, Cranbury, New Jersey 08512 (hereinafter referred to as the “Township”) and CRANBURY BRICK YARD, LLC, having an address at 745 Shea Center Drive, Suite 190, Highland Ranch, Colorado 80129 (hereinafter referred to as “CBY”);

WITNESSETH

WHEREAS, CBY is the owner of property located on Block 10, Lot 10 and Block 12, Lot 1 on the Tax Map of the Township of Cranbury (hereinafter referred to as the “Cranbury Brick Yard Property”), upon and under which is to be located various sewer utilities and pump station.

WHEREAS, the Township is the owner of a certain Right-of-Way across CBY’s property in the Township of Cranbury, Township of Middlesex as is depicted in the attached exhibit “A” entitled “Off-site Sanitary Sewer Plan and Profile 1” and “Off-site Sanitary Sewer Plan and Profile 2” by Langan Engineers last revised 3/26/2015.

WHEREAS, CBY desires permission from the Township to utilize portions of Hightstown-Cranbury Station Road for the installation, operation, and maintenance of private sewer utilities and all necessary fittings and appurtenances (hereinafter referred to as the “Facilities”) within the portion of the Township’s Right-of-Way as is depicted in exhibit “A” and as is further described in the attached exhibit “B”, and for continued access to, and in furtherance of, the installation, operation, and maintenance of the Facilities within the Township’s Right-of-Way.

WHEREAS, the Township is empowered to enter into this agreement pursuant to, *inter alia*, its general police power to legislate for the benefit of the public health, safety and welfare (N.J.S.A. 40:48-2); its authority to provide for the construction, reconstruction, enlargement or extension of a sewer or drain in, under or along a street, alley or public highway, or portion thereof (N.J.S.A. 40:56-1.i), and its authority to permit by ordinance the installation of a utility conduit under or along any public road, street or highway of the municipality (N.J.S.A. 48:17-10 to 12); and wishes to grant such rights to CBY on and subject to the terms contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Township and CBY agree as follows:

1. **Grant of Franchise.** Subject, in each instance, to Engineering Approval (defined below) the Township hereby grants to CBY, its successors and assigns, its agents, employees and contractors the right, franchise and easement to enter upon Hightstown-Cranbury Station Road for the laying, construction, reconstructing, installing, operating, maintaining, commissioning, inspecting, repairing, removing, replacing and relaying the Facilities in the Right-of-Way.

2. **Engineering Approval.** Whenever CBY shall desire the right to install the Facilities in the Right-of-Way, it shall, or shall cause its contractors or subcontractors, as applicable, to prepare and submit to the Township Engineer an application for approval (hereinafter referred to as “Engineering Approval”). Each application to the Township Engineer shall include (a) a plat showing the proposed location of the Facilities, (b) a depiction indicating whether the proposed Facilities will be installed overhead or underground, (c) copies of all easements or right-of-ways, if any, proposed to be encroached upon on the Right-of-Way and whether they have been previously granted to public utilities, and (d) all consents for the use of any such easements by the applicable utilities. The Township Engineer shall review each application and provide any comments or required changes within forty-five (45) days following the submission of each application. CBY shall, or shall cause its contractors or subcontractors, as applicable, to revise its submission and resubmit its application to the Township Engineer until Engineering Approval is obtained.
3. **Facilities.** CBY agrees, at its sole cost and expense, or agrees to cause its contractors or subcontractors, at their sole cost and expense, as follows:
 - a. To identify all Facilities that are in use or not in use and are within or proximate to the project limits within the Right-of-Way, upon request by the Township or Township’s representative.
 - b. Acknowledges that it is or its successors and assigns will remain the sole owner of the Facilities which are taken out of service, but which remain in the Right-of-Way.
 - c. To identify any and all other owners of property along the Right-of-Way to which CBY will extend service from the Facilities.
 - d. To review plans and provide a response within two (2) weeks, upon request by the Township or Township’s representative.
 - e. To excavate test pits to accurately locate underground facilities, upon request by the Township or Township’s representative whenever CBY shall desire the right to install the Facilities in the Right-of-Way.
 - f. To provide a full-sized set of plans to be on file the Township Clerk prior to start of construction.
 - g. To provide upon completion of construction an as-built survey of the Facilities within the Right-of-Way to the Township Engineer.
4. **No Interference.** Whenever CBY, its assignee or successor in interest, shall install, modify, maintain or repair, relocate, remove or replace Facilities in the Right-of-Way, utilizing Hightstown-Cranbury Station Road, CBY, its assignee or successor in interest, shall not unreasonably interfere with any planned and/or future improvements by the Township in the Right-of-Way, provided the Township provides CBY with at least sixty (60) days prior written notice of the commencement of any work relating to such improvements. Prior to any installation, modification, maintenance, repair, removal or replacement and/or relocation of the Facilities, CBY shall provide a schedule reflecting the estimated duration of the work and obtain the necessary road opening permits and Engineering Approval from the Township.

5. **CBY's Responsibilities.** CBY, its assignees or successor in interest confirms and agrees that it shall be responsible for all costs of constructing, maintaining, supporting and/or adjusting the Facilities in the Right-of-Way and shall comply with all applicable laws, rules, and regulations in connection with the installation, servicing, adjustment and/or maintenance of the Facilities within the Right-of-Way, including compliance with the New Jersey One Call System. CBY also agrees to comply with any applicable Americans with Disabilities Act (ADA) regulations in connection with its installation, servicing, adjustment and/or maintenance of the Facilities within the Right-of-Way. In the event CBY creates a non-compliant condition under the terms of this provision, CBY agrees to cure such condition in accordance with all applicable laws, rules, and regulations at its sole cost and expense.
6. **Relocation.** In the event the Township reasonably determines that the Facilities must be relocated to enable Township to utilize for its own purposes that portion of the Right-of-Way, the Township shall have the right to require the relocation of the Facilities, at no expense to the Township, to a different location within the Right-of-Way provided that such relocation does not impede the use of the Facilities for the purposes for which they were intended to be used by CBY.
7. **Indemnification.** CBY, its assignee or successor in interest shall defend, indemnify, protect, and save harmless the Township and its officers, agents, servants and employees from and against any and all suits, claims, demands or damages of whatsoever kind or act, error or omission of its agents, servants, and employees in performance of the Agreement, including, but not limited to, expenditures for and costs of investigation, expert witnesses, court costs, counsel fees, judgments, or otherwise (hereinafter referred to as, collectively, "Losses"), other than any Losses caused by the negligence or willful misconduct of the Township, its officers, agents, servants or employees.

Similarly, the Township, its assignee or successor in interest shall defend, indemnify, protect, and save harmless CBY and its officers, agents, servants and employees from and against any and all suits, claims, demands or damages of whatsoever kind or act, error or omission of its agents, servants, and employees in performance of the Agreement, including, but not limited to, expenditures for and costs of investigation, expert witnesses, court costs, counsel fees, judgments, or otherwise (hereinafter referred to as, collectively, "Losses"), other than any Losses caused by the negligence or willful misconduct of CBY, its officers, agents, servants or employees.

8. **Insurance.** Prior to commencement of work, CBY shall submit a certificate of insurance which indicates that it or its contractors or subcontractors, as applicable, has in force and will maintain during the performance of its excavation work and the period of the excavation permit, comprehensive general liability insurance, including X, C & U coverage, which names the Township of Cranbury as an additional insured and has limits of not less than **[insurance terms to meet municipal requirements]** combined single limit duly issued by an insurance company authorized to do business in the State of New Jersey. The certificate holder shall be listed as the Township of Cranbury, 23-A Main

Street, Cranbury, New Jersey 08512 and CBY will use its best efforts to have the insurance certificates include a 30-day notice of cancellation.

9. **Assignment.** Except provided below, this Agreement may not be assigned by either party without the mutual written consent of each party, which consent shall not be unreasonably withheld or delayed; provided, however, that notwithstanding the foregoing, after completion of the initial installation of the Facilities, CBY, its successors and assigns, may assign this Agreement to a person or entity to whom it transfers ownership of the Facilities without the consent of the Township if the Township is provided with notice of the intention to assign the Agreement, the assignee assumes in writing CBY's future responsibilities under this Agreement and the Township is furnished with a copy of such assignment, an original of the assumption by the assignee, the address of the assignee and the name and contact information of the person to whom notices and other communications given by the Township to the assignee should be sent. CBY, its successors and assigns, may also assign this Agreement as security from time to time if required by a lender and with advance notice to the Township, in which case this Agreement shall be amended or supplemented to provide customary and reasonable assignee protection provisions acceptable to the assignee regarding notice, rights and time for cure of defaults, amendments, a replacement agreement, etc.

10. **Term; Termination.**

- a. **Terms.** The initial term of this Agreement shall be for five (5) years from the date of the issuance of the road opening permit for the initial installation of the Facilities with CBY, its successor and assigns, having the option to extend the term for up to 5 additional one (1) year periods by giving the Township notice of the exercise of such option prior to the expiration of the then current term, such option to extend shall not be extinguished unless the Township gives CBY written notice of its failure to exercise the option and CBY does not notify the Township of CBY's exercise of the option within (15) fifteen days of its receipt of the notice from the Township of CBY's failure. All the terms and conditions contained in this Agreement shall continue to apply during the renewal periods. The right of CBY to continue to access the property for purposes of maintaining and improving the facilities will last in perpetuity and run with the land.
- b. **Termination Rights.** CBY may terminate this Agreement, for any reason, by giving the Township at least one (1) year advance written notice with the effective date of termination to be specified in the notice (hereinafter referred to as a "Termination Notice"). Upon the termination date set forth in a Termination Notice, CBY shall have no further obligations under this Agreement with respect to matters occurring after the termination date except to remove the Facilities if requested by the Township within one hundred eighty (180) days after the termination date set forth in the Termination Notice to avoid interference with future roadway improvements or related projects.

11. **Notice.** CBY shall be given sixty (60) days prior written notice of any work by the Township in the Right-of-Way. CBY shall give the Township two (2) weeks prior notice of any work in the Right-of-Way.

Any notice, under this Agreement shall be in writing given or delivered by registered or certified mail, postage prepaid and return receipt requested, or by delivery by a national recognized courier service or by hand as follows: In the case of the Township, addressed to:

Township of Cranbury
23-A Main Street
Cranbury, New Jersey 08512

With a copy to:

And in the case if CBY, addressed to:

Steve Ganch
745 Shea Center Drive, Suite 190
Highland Ranch, Colorado 80129

Or as such other address which either party, from time to time, may give notice of the other as provided in this paragraph.

12. **Compliance with Township Resolutions.** The Township agrees that this Agreement is in compliance with the requirements contained in the Township Resolution PB 098-05 dated June 27, 2012 and adopted August 2, 2012, as amended.
13. **Compliance with Ordinance.** CBY shall comply with all applicable ordinances relating to the issuance of permits for the Facilities, if any, as may be amended from time to and with all such future ordinances, as may be enacted, to the extent such ordinances are consistent with state and federal law.
14. **Services of Township.** CBY shall pay or reimburse the Township for any reasonable costs incurred by the Township in providing services to CBY in connections with this Agreement, including, but not limited to, the Township's reasonable costs for reviewing applications, plans and drawings submitted by CBY for approval and the cost of annual inspections conducted by the Township. Such costs shall be based upon the actual hours spent by said personnel in connection with the application, multiplied by the hourly rate (including fringe benefits).
15. **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey.

16. **Incorporation of Prior Agreements.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.
17. **Modification of Agreement.** This Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modification or waiver shall be effective for any purpose, unless it is in writing and signed by the party against whom enforcement thereof is sought; provided however, CBY shall prepare a modified legal description to reflect the as-built location of the Facilities and a supplement to this Agreement substituting such legal description as the Right-of-Way for that which is generally depicted on Exhibit "A", which shall be prepared by CBY and executed and acknowledged by the Township and CBY and recorded by CBY.
18. **Counterparts.** This Agreement may be signed in one or more counterparts, each, when taken together shall constitute one and the same instrument.

[signatures on following page]

IN WITNESS WHEREOF, the said Township of Cranbury has caused this Agreement to be signed by the Mayor of the Township, attested by the Township Clerk and its corporate seal to be hereunto affixed, and CBY has executed this Agreement by a duly authorized officer, as of the date first set above.

ATTEST:

TOWNSHIP OF CRANBURY

By: _____
Clerk

By: _____
Mayor

STATE OF NEW JERSEY
Township OF MIDDLESEX

BE IT REMEMBERED, that on this _____ day of _____, 2015, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared _____, who, I am satisfied, is the Mayor of the Township of Cranbury which executed the foregoing instrument, and is the person who signed said instrument in such capacity for and on behalf of said entity, and acknowledged that said instrument was made by said entity as the voluntary act and deed of said entity.

Notary public
Commission Expires:

WITNESS:

CRANBURY BRICK YARD, LLC

Name: _____

By: _____
Name: _____
Title: _____

STATE OF NEW JERSEY
Township OF MIDDLESEX

BE IT REMEMBERED, that on this _____ day of _____, 2015, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared _____, who, I am satisfied, is the _____ of Cranbury Brick Yard, LLC, which executed the foregoing instrument, and is the person who signed said instrument in such capacity for and on behalf of said entity, and acknowledged that said instrument was made by said entity as the voluntary act and deed of said entity.

Notary public

Commission Expires:

EXHIBIT "A"

[see attached]

Exhibit "B"

The proposed sanitary sewer will be installed within the Right-of-Way of Hightstown-Cranbury Station Road. The proposed sewer will enter the County's Right-of-Way just South of the apparent intersection of Hightstown-Cranbury Station Road with the New Jersey Turnpike and travel north towards Station Road (CR-615). The proposed sewer will be located within the County's Right-of-Way prior to connecting to an existing public gravity sewer located on Block 7, Lot 13. The proposed sanitary sewer will receive sewage from a 6-inch diameter force main/pump station located on Block 10, Lot 10 owned and operated by Cranbury Brick Yard, LLC (CBY).

The proposed sanitary sewer will enter the Township's Right-of-Way as a 6-inch force main just south of the apparent intersection of Hightstown-Cranbury Station Road and the New Jersey Turnpike Right-of Way. The force main will travel north within the northbound travel lane for approximately 3,850 feet before reaching the County's Right-of-Way for Station Road (CR-615).

The excavation required for the majority of the installation in Hightstown-Cranbury Station Road proper will be 3 to 4 feet wide. All pavement will be sawcut prior to excavation to minimize disturbance to the surrounding area. All exaction work will be properly backfilled and temporarily and permanently restored in accordance with local Township Roadway specifications. Prior to the force main installation small test-hole excavations may be required to locate existing subsurface utilities in the vicinity of the proposed sewer.

Notwithstanding the narrative general description set forth above, the description installation and location of the sanitary sewer in the Right-of-Way is to be set forth in plans to be submitted to and approved by the Township Engineer and the description, installation and location of the sanitary sewer in properties other than the Right-of-Way is to be as set forth in CBY's plans for the sanitary sewer in such properties.