

Res. No. 20-0427-1

RESOLUTION GRANTING TEMPORARY ACCESS TO WYETH HOLDINGS, LLC FOR THE PURPOSE OF REPLACING A VALVE ON THEIR 24-INCH FORCEMAIN PIPE

WHEREAS, the 1998 Amendment to the 1983 Sale Agreement between American Cyanamid Chemical Company (ACCO) and the Somerset Raritan Valley Sewerage Authority (SRVSA), contains a number of terms, including the conveyance of flow from the ACCO site to discharge into the SRVSA sewerage facilities for treatment; and

WHEREAS, SRVSA staff and Wyeth Holdings, LLC representatives (an ACCO successor) have determined that a valve on Wyeth's existing 24-inch forcemain pipe located at the end of a pipeline easement held by Wyeth on SRVSA property is inoperable and is in need of replacement at the sole cost of Wyeth; and

WHEREAS, the SRVSA staff have determined that the removal and replacement of said valve is in the best interest of both parties, and therefore Wyeth has drafted and Authority counsel has approved a temporary access agreement (attached) in order to facilitate Wyeth to perform this valve replacement, and where this replacement shall be at the sole cost of Wyeth Holdings, LLC; and

WHEREAS, and where there is an existing valve owned by SRVSA at the former discharge location into our Junction Chamber No.2, and, depending on the price, this may be a good opportunity while the excavation is open to have the Wyeth contractor also replace this valve for SRVSA that is in close proximity to the Wyeth valve, and where this valve replacement would be at SRVSA's cost.

NOW, THEREFORE, BE IT RESOLVED by the Somerset Raritan Valley Sewerage Authority Board of Commissioners, that the Authority hereby grants temporary access to SRVSA property for the purposes of performing the removal and replacement of an existing valve on Wyeth's existing 24-inch forcemain, and

BE IT FURTHER RESOLVED that the Authority's Executive Director is hereby authorized to enter into and execute the temporary access agreement.

INTRODUCED BY: Edward Machala

SECONDED BY: Robert Albano

ROLL CALL VOTE:

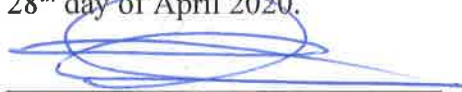
Robert Albano	Yes	Steven Mlenak	Yes
Louis Esposito, Jr	Yes	Philip Petrone	Yes
Michael Impellizeri	Yes	Spencer Pierini	<i>Absent</i>
Joseph Lifrieri	<i>Absent</i>	Gail Quabeck	Yes
Edward Machala	Yes	Randy Smith	Yes
Richard Mathews	Yes	Peter Stires	Yes
		Todd Hay	Yes

Res. No. 20-0427-1
April 27, 2020

CERTIFICATION

I, Ronald S. Anastasio, Executive Director and Certifying Agent of The Somerset Raritan Valley Sewerage Authority, **HEREBY CERTIFY** that the foregoing is a true copy of a Resolution adopted at a Regular Meeting of the Authority held on the 27th day of April 2020, as the same appears on record in the Minute Book of the Authority.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of the Authority this 28th day of April 2020.



Ronald S. Anastasio, P.E.
Executive Director



The
Somerset Raritan Valley
Sewerage Authority

TO: BOARD OF COMMISSIONERS

FROM: RONALD S. ANASTASIO, P.E.
EXECUTIVE DIRECTOR

DATE: APRIL 23, 2020

RE: TEMPORARY CONSTRUCTION ACCESS TO WYETH

Wyeth Holdings, LLC (owned by Pfizer) currently owns and is in the process of remediating the former American Cyanamid Chemical Company (ACCO) site under the oversight of the USEPA. A part of the facilities of that site is a 24-inch forcemain that was historically used to pump contaminated groundwater to the head of the SRVSA plant for treatment. While Wyeth has constructed an on-site groundwater treatment plant to now treat this contaminated groundwater, as this flow has ceased coming to SRVSA for treatment. The forcemain is still in use to convey stormwater and shallow groundwater that enters their on-site stormwater collection system from an interior area surrounded by a levee system (called the "mini-dike area"). There is a shut-off valve on the portion of this 24-inch forcemain that is located within an easement on the SRVSA property. Wyeth has requested temporary construction access to replace this valve. The Authority staff has reviewed their work plan and sees no issues with it, and plan to coordinate with Wyeth to facilitate this repair.

In addition, there is an existing valve owned by SRVSA at the former discharge location into our Junction Chamber No.2, and, depending on the price, this may be a good opportunity while the excavation is open to have the Wyeth contractor also replace this valve for SRVSA that is in close proximity to the Wyeth valve, and where this valve replacement would be at SRVSA's cost.

Wyeth has prepared a form of temporary access agreement (attached) that has been reviewed edited by Authority Counsel, and they have deemed it acceptable.

The Authority staff recommends approval of the attached temporary construction access agreement to Wyeth.

Should the Commissioners have any questions, please do not hesitate to contact me.



Ronald S. Anastasio, P.E.
Executive Director

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (“Agreement”) is made this ___ day of _____ 2020 by and between **Somerset Raritan Valley Sewerage Authority**, a body corporate and politic of the State of New Jersey, having its principal place of business at 50 Polhemus Lane Bridgewater, New Jersey 08807 in the County of Somerset, hereinafter referred to as (the “Owner”) and **Wyeth Holdings, LLC** having a place of business at 20 Polhemus Lane, Bridgewater, New Jersey 08807 (“Wyeth”) for the purpose of allowing Wyeth certain access to a portion of Owner’s property, as more specifically identified on the Site Plan attached hereto as **Exhibit A** (referred to herein as the “Property”), for ingress, egress and storage of certain materials, and to permit Wyeth to perform the Work, as defined below, during the time period Wyeth is undertaking the Work.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Access.** Owner shall permit Wyeth and its employees, consultants, contractors, representatives and agents, the identities of which are attached hereto as **Exhibit D** (collectively, “Wyeth Parties”) to enter upon the Property with advanced written notice of at least two (2) business days in order to undertake the Work or portions thereof. Notwithstanding the foregoing or any provision to the contrary, the Owner’s Executive Director has the right to restrict any person from entering upon the Property, provided there is a reasonable basis for such action.
2. **Release.** Wyeth agrees that the Wyeth Parties shall enter the Property in its “**As Is, Where Is, With All Faults**” condition at their own risk. Further, Wyeth expressly releases Owner from any claims, liabilities, losses, penalties, damages, liens and costs, foreseen and unforeseen (collectively, referred to herein as “Claims”), related to or arising out of the Property, the Wyeth Parties’ access to the Property and the performance of the Work.
3. **Term.** The term of this Agreement shall commence on the Effective Date, subject to the terms and conditions herein, and shall automatically expire ten (10) months thereafter (the “Term”) without the necessity for any additional action. The parties agree, however, that the Term may be reasonably extended, in writing, duly executed by both parties.
4. **Work.** The Wyeth Parties shall be permitted to undertake the work upon the Property only as same is described in **Exhibit B** (the “Work”).
5. **Effective Date.** The Effective Date shall be the latest of the date that evidence of insurance is provided to Owner as provided in Paragraph 13 below or the latest date of execution hereof by all parties.

6. **No Unreasonable Interference.** Wyeth shall minimize, to the extent reasonably practicable, any unreasonable interference with the Owner's use of the Property.
7. **Workmanlike Manner; Identification of Underground Utilities.** The Work shall be done in a professional and workmanlike manner and in compliance with all applicable local, state and federal laws, rules, regulations and ordinances. Wyeth shall be solely responsible for identifying any and all subsurface utilities, equipment or structures below the Property or otherwise potentially affecting the Work prior to undertaking the Work or any portion thereof. Notwithstanding the foregoing, Owner agrees in good faith to assist Wyeth in identifying any such utilities, equipment and structures; however, Wyeth acknowledges that Owner has made no representations of any kind to Wyeth regarding the Property, the fitness of the Property for the intended Work to be undertaken by Wyeth, or the environmental nature and condition of the Property. In the event of any damage to any subsurface utility, equipment or structure, Wyeth shall, to the extent such damage arises out of Wyeth's performance of the Work, promptly: (i) repair or otherwise address the damage to Owner's reasonable satisfaction and (ii) notify Owner in writing, which may be by e-mail.
8. **Storage and Disposal.** Wyeth and its agents shall not erect any permanent structures upon the Property nor store any waste or materials on the Property except as otherwise set forth herein. Wyeth may temporarily stage excavated soils generated by the Work on the Property or any portion thereof provided however, that the soils are adequately set atop polyethylene sheeting or equivalent material and adequately protected from the elements and the environment by covering with polyethylene sheeting, tarps, or other suitable cover to be determined by the contractor performing the Work or such other method as may be approved in writing by the Owner. To the extent possible, excavated soils will be returned to the excavation from which they were removed; however, in the event any soils excavated from the Property are disposed of by Wyeth at any time, Wyeth shall do so in accordance with all applicable federal, state and local environmental laws, rules and regulations and further, Wyeth shall be identified as the generator of same.
9. **Protection against Damage and Repair of Damage.** Wyeth shall take all reasonable precautions to prevent material damage, nuisance or waste at the Property. Wyeth shall promptly, but in no event later than fifteen (15) days following the substantial completion of the Work, restore the Property to substantially the condition that existed immediately prior to the commencement of the Work. Wyeth shall be directly responsible for any damage to the Property and any other property owned by Owner arising out of the performance of the Work; any such damage shall be promptly repaired to the Owner's reasonable satisfaction. Additionally, Wyeth shall be responsible for any reasonable costs and/or fees that the Owner may incur as a result of any such damage to the extent arising out of the Work. Neither party shall be liable for punitive or consequential damages.

10. **Construction Inspection; Observation.** Owner, or its agents or representatives may, at its sole cost and expense, perform construction inspection(s) and/or observation(s) of the Work or any portion thereof at any time during the undertaking of same. Such construction inspection(s) and/or observation(s) or the lack of construction inspection(s) and/or observation(s) shall not impose any liability of any kind on the Owner nor shall relieve the Wyeth Parties of any obligations required by this Agreement.
11. **No Liens.** Wyeth shall not permit any mechanics, environmental or other such liens to be filed against the Property for any reason including, but not limited to, labor or materials furnished for the Work by Wyeth or the Wyeth Parties. If any such lien is filed against the Property or any property owned by Owner, Wyeth shall promptly defend against the lien at Wyeth's sole cost and expense. Wyeth shall promptly take all actions necessary to discharge any such lien and Wyeth shall further provide written evidence of the discharge of any such lien to the Owner.
12. **Indemnification, Defense and Hold Harmless.** Wyeth agrees to indemnify, defend and hold harmless the Owner and its officers, directors, shareholders, employees, agents, and affiliates (collectively referred to herein as the "Indemnified Parties") from Claims and including reasonable attorney fees, professional fees and costs incurred by the Owner to the extent arising out of the Work or Wyeth's access to the Property granted hereunder and such Claims shall not be limited by insurance limits, insurance proceeds or insurance coverage. Wyeth's obligations under this Paragraph shall survive the expiration or earlier termination of this Agreement.
13. **Insurance.** Prior to commencement of the Work, Wyeth or its agents and subcontractors shall provide the Owner with evidence of the insurance listed below, together with a separate written endorsement or other proof confirming the Owner has been named as additional insured on such insurance policies, as follows:
 - a. Workmen's compensation insurance in statutory amounts;
 - b. Employer's liability with a limit of not less than One Million Dollars (\$1,000,000.00) per each person/disease, and an annual aggregate of Two Million Dollars (\$2,000,000.00);
 - c. Commercial general liability with a limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000.00) including a broad form contractual liability endorsement or such other endorsement available to Wyeth or its agent/subcontractor covering the indemnification obligations under this Agreement.

- d. Umbrella and excess liability with a limit of not less than Four Million Dollars (\$4,000,000.00) per occurrence; and
- e. Automobile liability with a combined single accident limit of not less than One Million Dollars (\$1,000,000.00).
- f. Pollution legal liability with a limit of not less than Five Million Dollars (\$5,000,000).

All insurance coverage obtained by Wyeth or its agents/subcontractors hereunder shall be subject to written notice to the Owner of cancellation or modification for the purposes of lesser coverage amounts, at least thirty (30) days prior to same. The access granted to Wyeth hereunder shall not be effective until Wyeth has provided evidence of the requisite insurance, to Owner's reasonable satisfaction. Wyeth shall have the right to self-insure. Any deductible for any policy obtained herein shall be payable by Wyeth.

- 14. **No Assignment.** Neither party shall assign this Agreement to any party without the prior written consent of the other party.
- 15. **Default.** An event of default shall occur under this Agreement if there is an unauthorized assignment of this Agreement or a party fails to perform any of its material obligations hereunder. The party asserting the default shall notify the other party in writing of said default and the defaulting party shall thereafter have a period of thirty (30) days to cure the default. Upon the occurrence of a default and in the event the defaulting party fails to cure the default, the party asserting the default shall have all rights and remedies provided hereunder, at law or in equity, against the defaulting party, including the right to terminate this Agreement which shall be in writing.
- 16. **Notices.** All material communications or notices given or to be provided hereunder shall be made or documented via email. Upon the written request of either party, any communication or notice may be demanded to be given or provided via: (a) personal delivery, or (b) registered or certified mail, return receipt requested, or (c) a nationally recognized overnight courier marked for delivery on the next business day, to the parties, with copies to their attorneys, at the following addresses:

Notice to Owner shall be sent to:
 Ronald S. Anastasio, P.E.
 Executive Director
 SRVSA
 50 Polhemus Lane
 Bridgewater, NJ 08807

With a copy to:
 Brad Carney, Esq.
 Maraziti Falcon, LLP
 150 JFK Parkway
 Short Hills, NJ 07078

Notice to Wyeth shall be sent to:
Mr. Russell Downey
Director – Environmental Engineering
and Remediation
Pfizer, Inc.
100 Route 206 North
Peapack, NJ 07977

With a copy to:
Merrill E. Fliederbaum, Esq.
Pfizer Inc.
235 East 42nd Street
New York, NY 10017

17. **Compliance with Laws.** Wyeth and its agents and subcontractors shall comply with all applicable laws, rules, regulations, orders, and guidance documents published by the United States Environmental Protection Agency and the New Jersey Department of Environmental Protection, as may be applicable, with respect to or related to the Work to be undertaken upon the Property by Wyeth hereunder.
18. **Governing Law.** The laws of the State of New Jersey shall govern this Agreement.
19. **Entire Agreement.** This Agreement contains the entire understanding and agreement among the parties regarding the access granted hereunder.
20. **Severability.** If any term or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining terms of the Agreement shall remain in full force and effect.
21. **Authorization.** The signatories below represent that they are authorized to enter into this Agreement and shall bind the respective parties hereto.
22. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have each executed this Agreement or caused this Agreement to be executed on their behalf by one of the respective officers duly authorized.

ATTEST:

By: _____
Name:

OWNER: SOMERSET RARITAN VALLEY
SEWERAGE AUTHORITY

By: _____ Date: _____
Name: Ronald S. Anastasio, P.E.
Title: Executive Director

ATTEST:

By: _____
Name:

GRANTEE: Wyeth Holdings, LLC

By: _____ Date: _____
Name: Christopher J. Clark
Title: Vice President

Exhibit A
Description of Property



Exhibit B
Narrative Description of the Scope of Work

The Scope of Work shall consist of the following:

Isolate the portion of the 24" force main located on Owner's Block 304, Lot 2 property. Wyeth contractors will employ mechanical excavation methods to expose the 24-inch outfall pipe at the junction box. Replacement of an existing 24-inch gate valve with an isolation valve on SRVSA property, with possibility of replacing a second valve at the junction box for SRVSA.

Wyeth contractors will install testpits to assess the condition(s) of the existing valve(s). This assessment will require necessary shoring and may require leaving the area open and secured until the isolation is procured and installed. Future access to the isolation valve will be via a valve box installed as part of the scope of work.

Wyeth contractors will restore the Property by filling in the excavation area with the excavated soil and supplemental certified clean fill as may be appropriate, and stone or asphalt pavement as final restoration. Wyeth shall provide the Owner with documentation pertaining to: (i) the source or origination of any such fill materials and (ii) the nature and condition of any such fill materials that are imported and said documentation shall be subject to Owner's approval, which shall not be unreasonably withheld, denied or delayed.

Exhibit D
Wyeth Parties

The following Wyeth representatives and all such other persons approved by the Owner's Executive Director will be representing Wyeth Holdings LLC:

Project Management - BSI Services and Solutions, Inc., Clifton NJ

Operations and Maintenance Contractor – Woodard and Curran, Portland, ME

Subcontractor – Kyle Conti Construction, Hillsborough, NJ

Res. No. 20-0427-2

RESOLUTION/PAYROLL

BE IT RESOLVED by The Somerset Raritan Valley Sewerage Authority that the Treasurer be and is hereby authorized to approve Checks No. 19002 through No. 19085 all numbers inclusive in the amount of \$353,375.45 and Checks No. 29629 through No. 29640 all numbers inclusive, and Checks No. 29642 through No. 29646, all numbers inclusive, in the amount of \$160,026.23, for a total of \$513,401.68, said checks having been reviewed and certified by the Executive Director for payment.

INTRODUCED BY: Edward Machala
SECONDED BY: Michael Impellizeri

ROLL CALL VOTE:

Robert Albano	Yes	Steven Mlenak	Yes
Louis Esposito, Jr	Yes	Philip Petrone	Yes
Michael Impellizeri	Yes	Spencer Pierini	<i>Absent</i>
Joseph Lifrieri	<i>Absent</i>	Gail Quabeck	Yes
Edward Machala	Yes	Randy Smith	Yes
Richard Mathews	Yes	Peter Stires	Yes
		Todd Hay	Yes

CERTIFICATION

I, Ronald S. Anastasio, Executive Director and Certifying Agent of The Somerset Raritan Valley Sewerage Authority, **HEREBY CERTIFY** that the foregoing is a true copy of a Resolution adopted at a Regular Meeting of the Authority held on the 27th of April, 2020, as the same appears on record in the Minute Book of the Authority.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of the Authority this 28th day of April 2020.



Ronald S. Anastasio, P.E.
Executive Director

RSA/lmh

RESOLUTION -- BILLS

BE IT RESOLVED that the Members of The Somerset Raritan Valley Sewerage Authority, including the Finance Committee, hereby certify that we have read the list of bills and have examined the original vouchers that have been reviewed and certified by the Executive Director and presented to the Board of Commissioners for payment and find the same to be in order and acceptable for payment by The Somerset Raritan Valley Sewerage Authority.

OPERATING FUND	\$	771,280.08
GENERAL FUND ACCOUNT	\$	0.00
CONSTRUCTION FUND ACCOUNT	\$	1,860,117.22
CONNECTION CAPITAL ACCOUNT	\$	1,280.00
	\$	<u>2,632,677.30</u>

INTRODUCED BY: Robert Albano
SECONDED BY: Peter Stires

ROLL CALL VOTE:

Robert Albano	Yes	Steven Mlenak	Yes
Louis Esposito, Jr	Yes	Philip Petrone	Yes
Michael Impellizeri	Yes	Spencer Pierini	<i>Absent</i>
Joseph Lifrieri	<i>Absent</i>	Gail Quabeck	Yes
Edward Machala	Yes	Randy Smith	Yes
Richard Mathews	Yes	Peter Stires	Yes
		Todd Hay	Yes

CERTIFICATION

I, RONALD S. ANASTASIO, Executive Director and Certifying Agent of The Somerset Raritan Valley Sewerage Authority, **HEREBY CERTIFY** that the foregoing is a true copy of a Resolution adopted at a Regular Meeting of the Authority held on the 27th day of April, 2020 as the same appears on record in the Minute Book of the Authority.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of the Authority this 28th day of April, 2020.



Ronald S. Anastasio, P.E.
Executive Director