

DEPARTMENT OF THE NAVY
ACCESS AGREEMENT

Storm Water Basin #305 (Section 46, Block 579, Lots 15A, 15B and 16D)

The undersigned, hereinafter called the County of Nassau, a municipal corporation of the State of New York having an address at 1550 Franklin Avenue, Mineola, NY 11501 (the "Grantor"), hereby grants to the United States of America, acting by and through the Naval Facilities Engineering Systems Command Mid-Atlantic, 9342 Virginia Avenue, Norfolk, VA 23511 its agents, employees, representatives, contractors, subcontractors, and assigns, hereinafter called the "Government," an Access Agreement for Grantor's real property known as Storm Water Basin #305 (Section 46, Block 579, Lots 15A, 15B and 16D) hereinafter called the "Property" and further depicted in Exhibit "A," subject to the following terms and conditions:

1. This Access Agreement is granted for the purposes of operating a groundwater extraction system within the eastern portion of the basin, including operation and maintenance of above and below ground pump, piping, electrical and communication systems, as well as sampling of groundwater.
2. Groundwater extraction from recovery well system RE137 located at the edge of Storm Water Basin #305 is part of the GM38 groundwater treatment plant being operated to evaluate and capture groundwater withing the RE108 Hot Spot plume. The discharge pipeline from GM38 to RE137, that discharges to the basin, will produce 100 to 500 gallons per minute. The Comprehensive Environmental, Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), section 42 U.S.C. 9621(e)(1), states "no federal, state, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section."
3. As necessary, this Access Agreement grants to the Government a non-exclusive right of access to the Property to conduct remediation activities relating to the remediation of soils, groundwater and structures; excavation and disposal of contaminated soil and water; backfilling with suitable soil certified in accordance with applicable regulatory standards and restoration of the Property to its previous condition and perform other such work as may be necessary and incident to implementation of remediation efforts for a period not to exceed twenty (20) years beginning on the date of execution of this document.
4. In the event that the Government shall cause any damage to the Property by reason of its use of the Property, the Government shall repair any such damage to the Property and restore the Property to its pre-existing condition and shall perform or cause to be performed any necessary restoration work so that the Property can be restored to the same condition as it was prior so that the Property can continue to operate as a storm water basin. In addition, the Government shall clean the Property and remove all refuse, waste, and any other accumulated debris or rubbish related to activities conducted by the Government on the Property.

5. The Government hereby acknowledges that it has inspected the Property, has knowledge of its condition and of any improvements or fixtures thereon. The Government assumes all risk, danger and injury incidental to any access to the Property by the Government, or its agents. The Government is conducting activities on the Property in its “AS IS” condition “**WITH ALL FAULTS**” as of the date of this Access Agreement, except to the extent that such injuries are caused by the fault or negligence of the Grantor.

6. All tools, equipment and other materials brought onto or placed upon the Property by the Government and owned by the Government shall remain the property of the Government and may be removed by the Government at any time prior to the expiration of this Access Agreement. Within a reasonable time period following the expiration or otherwise termination of this Access Agreement, the Government shall remove all equipment, materials, and other property that the Government has placed or caused to be placed on the Property. It is agreed that any such equipment, materials, and other property that are not removed within a reasonable time period following the expiration or otherwise termination of this Access Agreement shall become the property of the Grantor and may be disposed of by Grantor without notice or obligation to the Government. Nothing in this section shall be construed as relieving the Government from an obligation to clean up, remove, or dispose of debris, waste materials, and such, in accordance with the provisions of Paragraph 4 of this Access Agreement.

7. It is the Government's responsibility to safeguard its (including those of its contractors and subcontractors) tools, equipment and materials. Grantor shall not be responsible for any lost, stolen, damaged, or destroyed tools, equipment and/or materials of the Government or its contractors unless caused by the gross negligence the Grantor. The Government shall have the right to safeguard its tools, equipment or other materials that are brought onto and/or stored on the Property. The Grantor shall have the right to safeguard its own tools, equipment or other materials that are brought onto and/or stored on the Property.

8. The Government shall provide the Grantor with the names of all contractors and / or subcontractors that will be accessing the Property on the Government's behalf pursuant to this Agreement at least twenty-four (24) hours in advance of such access. Contractors shall abide by access and safety rules of the approved GM38 Area Groundwater Treatment Plant work plan(s). Moreover, contractors, agents, and subcontractors of the Government shall conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any person or property.

9. The Government shall, in accordance with applicable Federal law, provide Grantor with copies of field/analytical data generated by the Government as a result of its activities associated with the Property, promptly upon completion of any quality assurance verification of such data that may be required pursuant to the Government's quality assurance procedures.

10. The Government shall self-insure its own acts and omissions, and shall require any contractor or subcontractor utilizing the Property to maintain insurance naming the County of Nassau as an additional insured, and prior to the commencement of Government activities on the Property, furnish or cause to be furnished to the Grantor a certificate of commercial general

liability insurance issued to and covering the liability of the Grantor. Such insurance will be kept for the duration of the Government's response activities on the Property described above. The Government shall require its subcontractors to carry insurance with similar limits and provisions as required to be carried by the Government's contractor.

11. The Grantor shall not be responsible or liable for personal injuries or damage to property when such injuries or damages are caused by or result from the Government's use or its contractor's use of the Property under this agreement and are not due to the negligence of the Grantor. In any event, the determination of Government's liability for damage to persons or property arising from its exercise of its rights granted under this agreement shall be, in addition to any other potential remedies that may be available at law or equity, in accordance with the procedures and limitation of the Federal Torts Claims Act (28 U.S.C. 2671).

12. No hazardous materials, petroleum products, or substances shall be stored on the site at any time except those required to construct, operate, or maintain the treatment system. In addition, all soil cuttings, drilling fluids, evacuation water, and any other waste generated during operations will be contained and disposed of off the Property in conformance with all applicable federal and State regulations.

13. This is a no cost agreement. No action under this agreement shall be construed as an obligation or expenditure of funds as defined by the Anti-Deficiency Act (31 U.S.C. § 1341 et Seq.).

14. The lands affected by this Access Agreement are located at the Property as described in the previous paragraphs. The property is located in the Nassau County Tax Maps as: Storm Water Basin #305 (Section 46, Block 579, Lots 15A, 15B and 16D).

15. The Government shall give ten (10) days notice prior to the first instance of required Government access to the Property and provide reasonable notice of the date upon which the work shall commence and the day(s) it intends to utilize the rights granted herein. Personnel to be contacted:

Nassau County Department of Public Works
Attn: Commissioner Michael Kwaschyn
1194 Prospect Avenue, Westbury NY 11590
(516) 571-6840
mkwaschyn@nassaucountyny.gov

Kevin C. Walsh
Chief Real Estate Negotiator
1 West St
Second Floor Municipal Transaction Bureau
Mineola, NY 11501
kwalsh1@nassaucountyny.gov

WITNESS MY HAND this _____ day of _____ 2024.

Arthur T. Walsh
Chief Deputy County Executive

Accepted:

UNITED STATES OF AMERICA

By: _____ Date: _____
W. SETH WHITBY
Real Estate Contracting Officer
NAVFACSYSCOM Mid-Atlantic