

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2016-199

Council Meeting Date: 06-13-2016

Date Adopted: 06-13-2016

TITLE: RESOLUTION AUTHORIZING AGREEMENT BETWEEN THE BOROUGH OF NEW PROVIDENCE AND ALCATEL – LUCENT USA PERMITTING WASTEWATER FLOW FROM ALCATEL – LUCENT THROUGH THE NEW PROVIDENCE WASTEWATER COLLECTION SYSTEM.

Councilperson Galluccio submitted the following resolution, which was duly seconded by Councilperson Muñoz.

BE IT RESOLVED by the Mayor and Council of the Borough of New Providence, in the County of Union and State of New Jersey, that they do hereby approve and authorize an agreement between Alcatel – Lucent USA and the Borough of New Providence permitting the discharge of wastewater from Alcatel – Lucent through the New Providence Wastewater Collection System as described in the contract attached hereto.

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of New Providence in the County of Union and State of New Jersey, that they do further authorize and direct the Mayor and Borough Clerk to execute same on behalf of the Borough of New Providence.

APPROVED, this 13th day of June, 2016.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO				X
KAPNER	X			
MADDEN			X	
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 13th day of June, 2016.

Wendi B. Barry, Borough Clerk

ADDENDUM TO AGREEMENT

This Agreement (“Agreement”) is made and entered on this 1st day of January, 2016 (“Effective Date”) by and between the **BOROUGH OF NEW PROVIDENCE** a Body Politic of the State of New Jersey with an address of 360 Elkwood Avenue, New Providence, New Jersey 07974 (the “Borough”) and **ALCATEL – LUCENT USA, Inc.** (“**Alcatel-Lucent**”), located at 600 Mountain Avenue, Murray Hill, NJ 07974, and

WHEREAS, the Borough of New Providence and Alcatel-Lucent (formerly Lucent Technologies Inc.) have been operating under an agreement (Appended hereto) dated February 27, 2012 (“Operating Agreement”), and

WHEREAS, due to the planned opening of Lantern Hill Continuing Care Retirement facility in 2016, it is necessary to modify said Operating Agreement to assure water flow is controlled and adequate capacity of the sewer collection system in New Providence is maintained.

Therefore, as of the Effective Date:

1. The daily flow shall be limited to no more than 75,000 gallons per day. Flow may exceed that daily amount when specific authorization is requested and said request to exceed the daily flow is granted by the New Providence Wastewater Treatment Plant Operator.
2. It is agreed and understood that Alcatel-Lucent shall equalize flow so that a minimum of 75% of the daily flow is distributed during the overnight hours at a maximum flow rate of 180 gpm between 10 PM and 6 AM. The remaining flow shall be discharged at a maximum flow rate of 50 gpm over the remaining 16 hours. .
3. The flow shall consist of standard facility waste water from cooling towers, boiler blow down, de-ionized plant blow down and laboratories.
4. Alcatel-Lucent shall provide daily flow data on a weekly basis to the Licensed Plant Operator of New Providence.
5. The Borough shall retain the right to install a flow meter at any time upon written notice to Alcatel-Lucent to confirm reported flow. If at any time there is a discrepancy of more than 15% in the flow readings provided by Alcatel-Lucent’s magnetic meter reading against the New Providence flume meter readings, notification shall be made to Alcatel-Lucent by the Plant Operator . Alcatel-Lucent shall promptly undertake an investigation to determine the cause of the discrepancy. Specifically, Alcatel-Lucent will compare its flow meter measurements and those of the Borough against contemporaneous tank draw-down volumetric calculations. In addition, Alcatel-Lucent shall provide a copy of the Building 12 sanitary sewer overflow alarm log and the most recent flow meter calibration record. In the event the parties are unable to determine the cause of

the discrepancy, the parties shall mutually agree on a plan to continue to closely monitor the flow and in the event there is another discrepancy that is undeterminable, either party may terminate the Agreement upon 90 days written notice.

6. During significant rain events, high flow conditions or other emergencies, Alcatel-Lucent agrees to follow the directions of the New Providence Wastewater Licensed Operator concerning the suspension of the flow into the New Providence collection system.

OTHER ALCATEL-LUCENT CONDITIONS

1. **ALCATEL – LUCENT** will continue its relationship with the City of Summit where Summit bills Alcatel directly for Industrial Use.
2. **ALCATEL – LUCENT** acknowledges that this Agreement covers use of the New Providence Waste Water Collection System for the specific purposes as defined herein.
3. **ALCATEL – LUCENT** agrees to remain under a Significant Indirect User (SUI) permit with the Joint Meeting of Essex and Union County for as long as required under NJAC 7:14 et seq., and shall assume all costs and requirements thereof.
4. **ALCATEL – LUCENT** agrees to permit the New Providence Public Works staff to perform analysis as deemed necessary or appropriate in the sole discretion of the Licensed Plant Operator for the Borough of New Providence.
5. **ALCATEL – LUCENT** agrees to permit access by the Borough to the property on reasonable notice (not less than 24 hours) from New Providence officials to its sewer plant and related operations and agrees to cooperate with any reasonable inquiries related to its flow into the New Providence Waste Water Collection System.

OTHER GENERAL CONDITIONS

1. This Agreement shall not be modified except in a writing signed by authorized representatives of both parties.
2. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.
3. If any term or provision of this Agreement is invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not effect any other term or provision of this Agreement, or invalidate or render unenforceable such term or provision.
4. This Agreement is binding upon each party, and inures to the benefit of both parties and their respective successors and assigns, affiliates, representatives, principals, officers, directors, employees, and agents.

5. This Agreement may not be assigned without the written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the aforementioned, this Agreement may be assigned by Alcatel-Lucent to an affiliate or parent to whom the ownership of the property is transferred and upon written notice to the Borough. A name change from Alcatel-Lucent USA Inc. to any other name will not be deemed an assignment.
6. The undersigned representative of each party certifies that he or she is fully authorized to execute this Agreement on behalf of its respective party, and to legally bind such party to this document.
7. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
8. All other terms and conditions of the Agreement are hereby ratified and remain in full force and effect. If a conflict exists between the terms hereof and the terms of the Agreement, the terms of this Addendum shall prevail.

FEES:

1. The annual agreed upon cost to use the New Providence Waste Water Collection System and testing is described below:
 - a. **ALCATEL – LUCENT** agrees to pay an annual fee of \$49,000 for use of the collection system for up to 18,250,000 gallons per year.
 - i. Excess daily flow will be charged at \$0.025 cents per gallon. Flow in excess of 75,000 during any 24 hour period will be chargeable regardless of the total flow for any period. Excess flow will be billed quarterly.
 - b. **ALCATEL – LUCENT** agrees to pay \$11,000 annually for water quality testing of up to one test per day, excluding weekends and holidays.
 - i. If the daily test results indicate additional testing is required – based on the sole discretion of the New Providence Waste Water Treatment Plant Operator, additional tests will be billed at \$75.00 per test. Invoicing for additional tests shall be on a quarterly basis.
2. The annual fee – including use of Waste Water Collection System and water quality testing - shall be billed quarterly in advance and payable to the Borough.

TERM OF AGREEMENT

1. This Agreement will be for a one-year period with automatic annual renewal thereafter, absent 90 days written notification from the other party of the intent to terminate. However, any concerns that are raised by either party that may have led to the intent to terminate shall be discussed in an effort to resolve said concerns before notice of termination of the Agreement is issued.

2. Following the one-year initial period, an escalation of 3% per annum or the consumer pricing index (CPI), whichever is greater, shall be applied to the fee for use of the Waste Water Collection System. In addition, if the Borough Ordinance is amended increasing the fee for water testing beyond what is indicated in this Agreement, the higher testing rate shall apply upon the effective date of the amended Borough Ordinance.
3. Either party may terminate the agreement on 90 days written notice. However, any concerns that are raised by either party shall be discussed in an effort to resolve said concerns before notice of termination of the agreement is issued.

WHEREFORE, the Parties have signed this Agreement on the 13TH Day of June, 2016 to be effective as of January 1, 2016.

**BOROUGH OF NEW
PROVIDENCE:**

ATTEST:

Allen Morgan, Mayor

Wendi B. Barry, Borough Clerk

Dated:

ALCATEL – LUCENT USA INC.

ATTEST:

Dated:

Frank DelCore
Dated: