

BATAVIA CITY COUNCIL SPECIAL CONFERENCE MEETING

City Hall - Council Board Room One Batavia City Centre Monday, May 8th, 2023 7:00 PM

AGENDA

- I. Call To Order
- II. Invocation Councilmember Canale
- III. Pledge Of Allegiance
- IV. City/Town Wastewater Kings Plaza Pump Station ***
- V. License Agreement With The Batavia Development Corp. Creek Park ***
- VI. Adjournment

***Move to Tonight's Business Agenda





Memorandum

To:

Honorable City Council

From:

Rachael J. Tabelski, City Manager

Date:

April 28, 2023

Subject:

Authorization To Execute NYSDEC BSP-5 Form In Relationship to the Town of Batavia

Kings Plaza Pump Station Project

The Town of Batavia was awarded a grant from the New York State Community Development Block Grant to upgrade the Kings Plaza Pump Station and make improvements to an existing water main (Force Main Upgrade) that connects to the City's Sewer System.

The Town's total wastewater flows average 1.2 - 1.4 Million Gallons per Day (MGD) at four total pump stations, which exceeds the Town's current contractual limit. The current sewer capacity limit of the Town is 0.85 MGD as established in the Wastewater Facility Agreement dated Feb 23, 2015 between the City of Batavia and the Town.

The Kings Plaza Pump Station currently has a maximum capacity of 0.54 MGD. The Town would like to plan for future growth at this pump station and to install a pump that can handle 1.01 MGD in sewer capacity. I am concerned that with the current exceedance of the contractual sewer limits and the total capacity of the plant and believe that the City should not approve a 1.01 MGD capacity. The attached agreement will address these concerns and proposes modifications that ensures that the Town adheres to current capacity flows of 0.54 MGD. These modifications will include smaller impellers rated at only the same capacity as the existing pumps and the ability for the City to monitor flows from the pump station in real time.

The parties also mutually agree to:

- 1. The Town will install meters at their four pump stations to monitor flows and for billing purposes.
- 2. If the capacity limit of 0.54mgd, average daily flow, is exceeded at the Kings Plaza Pump Station, daily monetary penalties will be levied by the City.

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- 3. A new 12" force main will be installed from Kings Plaza Pump Station to River and South Main Streets and the City may inspect the project.
- 4. Continue to negotiate on future capacity purchase.
- 5. Prepare to engage engineering services to study the potential to expand the treatment capacity at the Waste Water Treatment Plant.

I recommend that the City Council of the City of Batavia pass this resolution and authorize the City Manager to execute the NYSDEC BSP-5 form so that the Town can complete the Kings Plaza Pump Station and Force Main Project.

#-2023

A RESOLUTION TO ACCEPT THE TOWN OF BATAVIA'S MODIFICATIONS OF THE KINGS PLAZA PUMP STATION PROJECT AND TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE NYSDEC BSP-5 FORM

Motion of Councilmember

WHEREAS, the Town of Batavia (Town) had originally planned on completing the Kings Plaza Pump Station and Force Main Upgrade Project (Project) in 2020, but due to COVID and increased pricing, the Project was put on hold until additional funding was obtained in December 2021; and

WHEREAS, during the same time, the Town's wastewater flows increased to approximately 1.2 - 1.4 million gallons per day (mgd), which exceeds the Town's current contractual limit of 0.85 mgd as established in the Wastewater Facility Agreement dated Feb 23, 2015 (Agreement) between the City of Batavia (City) and Town; and

WHEREAS, and the Town and City staff began discussions regarding the potential purchase of additional sewer capacity by the Town, in accordance with the Agreement; and

WHEREAS, the Master Sewer Meter upgrade improvements, as per the Wastewater Metering Agreement, dated Feb 23, 2015 (Metering Agreement), have not yet been completed by the City and whereas both City and Town staff agree that it is mutually beneficial for the Town to complete all of the Master Sewer Meter upgrade improvements as part of the Project; and

WHEREAS, the City initiated a Wastewater Headworks Study (Study) in the fall of 2021, and is currently collecting and analyzing various wastewater quality samples, and until the Study is completed and approved, the potential available additional capacity for the Town to purchase cannot be determined; and

WHEREAS, preliminary Study findings identified the need for an approximate 0.5mgd City future growth reserve and an approximate 0.5mgd allocation for permit and regulatory compliance, there is a limited amount of capacity that may be available for Town purchase, which is less than the current additional flows from the Town over and above the existing contractual flow limit; and

WHEREAS, based on the Town's projection of future growth it appears that the wastewater treatment capacity will need to be increased, at the Town's expense, to accommodate potential increased future wastewater flows; and

WHEREAS, City and Town staff have been meeting regularly to evaluate current flow conditions and develop potential alternatives to increase wastewater treatment capacity in accordance with the Agreement; and

WHEREAS, because the City and Town are mutually concerned about potential increased flows resulting from the proposed Project (design flows of 1.01mgd versus current flows of 0.54mgd) without a definitive plan to increase the wastewater treatment capacity and an agreed purchase of additional capacity by the Town, the City is unable to approve the plans as designed and unable to execute the New York State Department of Environmental Conservation BSP-5; and

WHEREAS, the Town has proposed modifications (Town proposal letter dated April 5, 2023, attached) to the Project design, which will alleviate the increased flow concerns until a definitive wastewater treatment capacity upgrade plan is agreed upon and the Town purchases additional capacity, such that the City can approve the Project so that the current Project funding from NYS Office of Community Development is not lost.

NOW THEREFORE, BE IT RESOLVED, the Batavia Town Board hereby agrees to limit the flow from the Kings Plaza Pump Station before and after any improvements agreed upon by both parties are constructed, and not to exceed the existing 0.54 mgd daily average flow, until such time that a mutually agreed plan for wastewater treatment capacity increase is in place and the Town purchases additional capacity, and

BE IT FURTHER RESOLVED, that the Town agrees to make the following design modifications to the Project to ensure the 0.54 mgd average daily flow is not exceeded, until such time that a wastewater treatment capacity increase and purchase agreement is in place:

- 1. The new pumps will be installed with smaller impellers rated at only the same capacity as the existing pumps.
- 2. A monitoring system be installed and fully integrated with the City's SCADA system to allow all data to be continuously monitored at the wastewater and water treatment plants.

BE IT FURTHER RESOLVED, that the Town also agrees to the following:

- 1. If the capacity limit of 0.54mgd, average daily flow, is exceeded at the Kings Plaza Pump Station, daily monetary penalties will be levied by the City.
- 2. A new 12" force main will be installed from Kings Plaza Pump Station to River and South Main Streets and the City may inspect the project.
- 3. The upgrades at the Kings Plaza Pump Station will include a new Master Sewer Meter (mag type).

Upon resolution by the Town and the City, the City will authorize the City Manager to execute the NYSDEC BSP-5 form.

BE IT FURTHER RESOLVED, that once the Master Sewer Meter is installed and integrated by the Town at the Kings Plaza Pump Station, the Town will be billed by the City based upon the new meter flows in accordance with the Agreement.

Seconded by Councilmember and on the roll call





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Memorandum

To:

Honorable City Council

From:

Rachael J. Tabelski, City Manager

Date:

April 28, 2023

Subject:

Access License Agreement with Creek Park LLC.

Creek Park LLC., a New York limited liability company created by the Batavia Development Corporation, has identified that the City of Batavia uses a small portion of their property as a driveway into the McCarthy Ice Arena.

Creek Park LLC. has requested that the City of Batavia enter into an Access License Agreement. The agreement shall be effective until December 31, 2030, unless terminated sooner. The agreement will continue to allow the City and City residents access to the southernmost driveway of the parking lot and ensure and indemnify Creek Park LLC. for this use.

I recommend that the City Council of the City of Batavia authorize the access license agreement with Creek Park LLC.

#-2023

A RESOLUTION TO APPROVE AN ACCESS LICENSE AGREEMENT WITH CREEK PARK BATAVIA, LLC.

Motion of Councilmember

WHEREAS, the City of Batavia requires use of property located on the Creek Park Brownfield Development site, and owned by the Creek Park Batavia, LLC. for access into the McCarthy Ice Arena; and

WHEREAS, the City of Batavia, its guests, and invitees shall use the Licensed Premises only for purposes of vehicular access to the City Parcel throughout the Term, as permitted by Licensor. Licensee shall not obstruct or impede access by Licensor or other authorized users of the CPB Parcel over and upon the Licensed Premises; and

WHEREAS, prior to accessing the Licensed Premises the City of Batavia shall provide Creek Park Batavia, LLC. proof of commercial general liability insurance coverage; and

WHEREAS, the Agreement between the City and Creek Park Batavia LLC. will be effective upon signature of the agreement and expire on December 31, 2030 unless sooner terminated.

NOW, THEREFORE, BE IT RESOLVED, that the City Council President for the City of Batavia is hereby authorized to sign a Access License Agreement.

Seconded by Councilmember and on roll call

ACCESS LICENSE AGREEMENT

This ACCESS LICENSE AGREEMENT ("License") made effective this [*] day of April, 2023 (the "Effective Date"), by and among CREEK PARK BATAVIA LLC, a New York limited liability company, with offices at One Batavia City Centre, Batavia, New York 14020 ("Licensor"), and CITY OF BATAVIA, with offices at One Batavia City Centre, Batavia, New York 14020 ("Licensee").

RECITALS:

WHEREAS, Licensor holds a fee simple interest in certain real property located in the City of Batavia, County of Genesee and State of New York and being identified as Tax Parcel No. 84.014-2-61, as more particularly described on **Exhibit A**, attached hereto and made part hereof, by virtue of a deed recorded immediately prior hereto as Instrument No. [*] (the "*CPB Parcel*"); and

WHEREAS, Licensee holds a fee simple interest in certain real property located adjacent to the CPB Parcel in the City of Batavia, County of Genesee and State of New York and being identified as Tax Parcel No. 84.014-2-14, as more particularly described on **Exhibit A**, by virtue of a deed recorded in Liber [*] of Deeds at page [*] (or Instrument No. [*]) (the "*City Parcel*"); and

WHEREAS, the Licensee requires the use of a certain portion of the CPB Parcel for ingress, egress and access to the City Parcel, as more particularly depicted on <u>Exhibit A</u>, (the "*Licensed Premises*"); and

WHEREAS, by resolution dated [*], Licensor is authorized to negotiate and deliver this Access License Agreement and to do all such further acts and things as may be necessary, or in the opinion of the Authorized Officer so acting, desirable and proper to affect the purposes of the contemplated transaction.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

- 1. All the recitals set forth above are hereby incorporated into the body of this License as though separately and specifically set forth herein above
- 2. <u>Grant of License</u>. Licensor hereby grants to Licensee a non-exclusive license to use and access the Licensed Premises in accordance with the terms set forth herein. A more precise location of the Licensed Premises is depicted on <u>Exhibit A</u>.
- 3. <u>Term.</u> This License shall be in effect from the Effective Date until December 31, 2030, unless sooner terminated by the merger of title between the CPB Parcel and City Parcel (the "*Term*"); <u>provided, however,</u> that the Licensor may terminate this License (which termination may be for any reason or no reason) at any time prior to the expiration of the Term hereof upon five (5) days prior written notice to Licensee, and upon Licensee's receipt of such notice

- this License shall be terminated and of no further force and effect. This License shall not be in effect for any other date or time other than those specified above.
- 4. <u>Access and Purpose</u>. Subject at all times to Section 4 below, Licensee and its guests and invitees shall use the Licensed Premises only for purposes of vehicular access to the City Parcel throughout the Term, as permitted by Licensor. Licensee shall not obstruct or impede access by Licensor or other authorized users of the CPB Parcel over and upon the Licensed Premises. Licensee and Licensor shall cooperate in good faith to coordinate their respective activities at or near the CPB Parcel.
- 5. Condition of Premises. Licensee acknowledges and agrees that the Licensor has made no representations or statements as to the condition of the Licensed Premises. Any claims based upon allegations that the Licensed Premises is dangerous or otherwise unsuitable for the Licensee's purposes shall be specifically subject to the indemnity provisions set forth below in Section 6, without in any way limiting the generality of said indemnification. Licensee further acknowledges and agrees that any activities conducted at or on the Licensed Premises by Licensee shall be conducted in accordance with all applicable local, state and federal regulations, permits and approvals, and in compliance with any applicable environmental law. Licensee shall not excavate or otherwise disturb the surface of the Licensed Premises unless specifically authorized in writing by the Licensor. Notwithstanding the foregoing, Licensee shall be responsible for maintaining the roadway surface and repairing damage caused by vehicular traffic.
- 6. <u>Insurance</u>. Prior to accessing the Licensed Premises pursuant to this License, Licensee shall provide Licensor proof, in such form as Licensor shall require, that Licensee, its agents, licensees, contractors and/or invitees have in effect or have caused to be provided commercial general liability insurance coverage, in accordance with the provisions listed on attached **Exhibit B**, which is attached hereto and made a part hereof.
- 7. <u>Indemnification</u>. Notwithstanding anything herein to the contrary, and in addition to any rights or remedies available at law or equity, the Licensee shall defend, indemnify and hold harmless the Licensor against and from all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims, and demands of every kind or nature, including reasonable counsel fees, by or on behalf of any person, entity or governmental authority whatsoever which Licensor may sustain arising out of (a) any failure by the Licensee to perform any of the agreements, terms, covenants or conditions of this License on the Licensee's part to be performed; (b) any accident, injury or damage that happens in, about or outside the Licensed Premises and arising from the acts of Licensee, its agents, servants, contractors or employees, invitees or permitees(c) the Licensee's failure to comply with any laws, ordinances, requirements, orders, directions, rules or regulations of any federal, state, county, or municipal governmental authority or agreement of record affecting the Licensed Premises.
- 8. <u>Amendment; Waiver</u>. No provision of this License may be amended, modified, superseded or waived except by a written instrument signed by each of the parties. Any waiver will be

applicable only in the specific instance for which it is given. The failure of any party to enforce any of the provisions of this License at any time, to exercise any right hereunder or to require any performance hereof shall not be construed to be a waiver of such provisions or to affect the validity of this License. No course of dealing shall operate as a waiver or modification of any provision of this License or otherwise prejudice such party's rights, powers and remedies.

- 9. Governing Law; Venue. This License shall be governed by the laws of the State of New York without reference to the principles of conflicts of laws. Each party hereby irrevocably consents to the exclusive jurisdiction of the courts of the County of Genesee and State of New York and of the federal courts located in the Western District of New York for all purposes in connection with any action, suit or legal proceeding which arises out of or relates to this License.
- 10. <u>Notices</u>. All notices, requests, consents, approvals, waivers, demands and other communications required or permitted to be given or made under this License shall be in writing and shall be deemed delivered to the parties: (a) on the date of personal delivery, (b) on the first business day following the date of delivery to a nationally recognized overnight courier service for next day delivery, or (c) on the third business day following the date of deposit in the United States Mail, postage prepaid, by certified mail, in each case addressed to each party's address set forth above, or to such other address, person or entity as any party may designate by notice to the other in accordance herewith.
- 11. <u>Counterparts</u>. This License may be executed in counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Counterpart signature pages to this License transmitted by facsimile transmission, by electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.
- 12. <u>Interest</u>. This License is not to be construed as in any way granting an interest in real property; it being intended that this License merely grants to Licensee a license to use the Licensed Premises during the term of and in accordance with the terms of this License. Accordingly, the parties hereto agree that it is their intention to create a license and not a temporary or permanent easement. Nothing contained in this License shall be deemed to be a gift or dedication of any portion of the Licensed to the general public purpose whatsoever, it being the intention of the parties hereto that this License shall be strictly limited to and for the purposes expressed herein.

[Signature Page – Licensor]

| | IN WITNESS | WHEREOF, | , the Parties | hereto ha | ave executed | this license | as of the | Effective |
|-------|------------|----------|---------------|-----------|--------------|--------------|-----------|-----------|
| Date. | | | | | | | | |

LICENSOR:

CREEK PARK BATAVIA LLC

| | By: | | |
|--|---|--|--|
| | Name: Wesley Bedford | | |
| | Title: Manager | | |
| STATE OF NEW YORK |) | | |
| |) :SS. | | |
| COUNTY OF GENESEE |) | | |
| proved to me on the basis of satisfa the within instrument and acknowle | ally appeared Wesley Bedford, personally, known to me or ctory evidence to be the individual whose name is subscribed to edged to me that (s)he executed the same in his/her capacity, and rument, the individual, or the person upon behalf of which the | | |
| | | | |
| | (Notary Public) | | |

[Signature Page – Licensee]

LICENSEE:

CITY OF BATAVIA

| | By: | |
|------------------------------------|--|--------------------------------|
| | Name: | |
| | Title: | |
| STATE OF NEW YORK |) | |
| |) :SS. | |
| COUNTY OF GENESEE |) | |
| On the day of | in the, year 2023 before me | e, the undersigned, a Notary |
| Public in and for said State, pers | sonally appeared | , personally, |
| known to me or proved to me or | n the basis of satisfactory evidence t | o be the individual whose name |
| is subscribed to the within instru | ament and acknowledged to me that | (s)he executed the same in |
| | her signature on the instrument, the | |
| behalf of which the individual a | | , 1 |
| | | |
| | (Notary Public) | |

EXHIBIT A

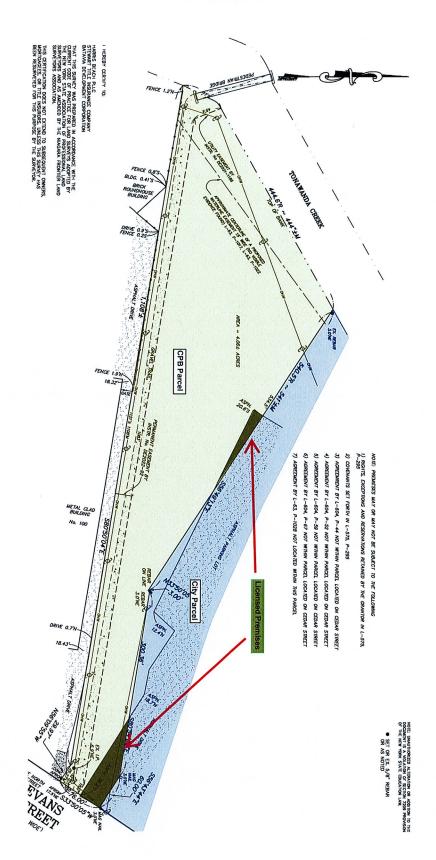


EXHIBIT B CREEK PARK BATAVIA LLC ("CPB") (Insurance Specifications)¹

Insurance Requirements

To protect Licensor against liability for damage, loss or expense arising from damage to property or injury to any person arising out of, in connection with or resulting from the work provided for hereunder. Licensee, at its own expense, shall carry the following minimum insurance coverages in a reliable insurance company acceptable to Licensor and authorized to do business in the state in which work is to be performed:

Comprehensive General Liability Insurance, with limits of \$1,000,000 per occurrence Bodily Injury and \$1,000,000 per occurrence Property Damage, \$2,000,000 general aggregate. Coverage must be provided on an "occurrence" form. Coverage must be written on ISO form CG0001-07-98, or a later version, or its equivalent. All policies:

- (i) Shall have an acceptable waiver of subrogation clause or endorsement and be primary and non-contributory.
 - (ii) Provide coverage for personal and advertising injury liability.
- (iii) Provide a blanket additional insured coverage insuring the Licensor and its officers, directors, partners, representatives, agents and employees as additional insureds on a primary and non-contributing basis, including completed operations.

Automobile Liability Insurance covering owned, hired and non-owned vehicles with combined bodily injury and property damage limit, including pollution transit coverage if applicable, of \$1,000,000. Waiver of subrogation and additional insured endorsements in favor or the Licensor must be included.

Worker's Compensation, Occupational Disease and Employer's Liability in accordance with statutory requirements; Employer's Liability Insurance with limits of not less than \$500,000, including for sole proprietorships and officers of business entities performing work on site. Sole proprietors that elect to exclude themselves may be considered it they file a waiver affidavit with the New York State Workers Compensation Board. A Waiver of Subrogation clause in favor of the Licensor must be included.

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¹ To be confirmed with Tammy Hathaway

