

RESOLUTION 19-069

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE TOWN OF BOONTON RELATIVE TO TEMPORARY CONSTRUCTION IN POCKET PARK ON WASHINGTON STREET, BOONTON

WHEREAS, the Town of Boonton is the owner of certain real property located at Block 78, Lot 5 on the Town tax map known as Pocket Park; and

WHEREAS, Pocket Park is encumbered as unfunded parkland since 1983 by the New Jersey Department of Environmental Protection (“NJDEP”) Green Acres Program; and

WHEREAS, existing sewer lines, installed in 1976, running through Pocket Park pre-existed the Green Acres Program encumbrance; and

WHEREAS, pursuant to N.J.A.C. 7:36-25.2(d)6, said lines are within an assumed subsurface utility easement of ten (10) feet on either side of the centerline of the existing sewage line (which includes two (2) siphon outlet chambers); and

WHEREAS, in Pocket Park, the RVRSA proposes to demolish and remove its existing siphon outlet chamber, downstream of Manhole B-10, and remove approximately 141 LF of existing 48” diameter deteriorated RCP sewer. The work includes the replacement of these same facilities with a new precast concrete siphon outlet chamber, approximately 141 LF of new 48” diameter CCFRPM pipe and a custom CCFRPM pipe fitting with a new FRP manhole riser and appurtenances (the “Project”) which will require, inter alia, a temporary construction easement; and

WHEREAS, work done to the sewerage lines and ancillary facilities within the pre-existing assumed easement does not constitute a diversion of parkland according to N.J.A.C. 7:36-25.2(d)6, but any use of parkland for sewerage system improvements is subject to Green Acres regulations governing the non-recreation/conservation use of parkland under N.J.A.C. 7:36-25.14; and

WHEREAS, the RVRSA desires to enter into an agreement with the Town of Boonton to allow the RVRSA to use Pocket Park as the Temporary Construction Area for the construction of the Project in the Pocket Park; and

WHEREAS, the RVRSA prepared the Temporary Construction Agreement for the Town of Boonton Pocket Park, attached at Schedule A, which Agreement has been reviewed by Maude Snyder, County Steward, Bureau of Legal Services and Stewardship, Green Acres Program, NJDEP, and has been revised in accordance with the revisions contained in Ms. Snyder’s email dated June 24, 2019; and

WHEREAS, subject to the approval of the attached Agreement by the Town of Boonton, the RVRSA desires to enter into the attached Temporary Construction Use Agreement in order to perform necessary sewerage infrastructure construction.

NOW, THEREFORE, BE IT RESOLVED by the Rockaway Valley Regional Sewerage Authority as follows:

1. Subject to the approval of the attached Agreement by the Town of Boonton, the Executive Director is hereby authorized and directed to execute an Agreement for the temporary construction use of Pocket Park on Washington Street in the Town of Boonton in substantially the same form and content as set forth on Schedule A.

2. This Resolution shall take effect as provided by law.

CERTIFICATION

I hereby certify that this Resolution was adopted at a meeting of the Rockaway Valley Regional Sewerage Authority held on this 11th day of July, 2019.

On motion of: Hector Schrono

Second by: John Cegelka

ROLL CALL VOTE:

YEAS: (8) Andes, Cegelka, Corbett, Guadagno, Isselin, Lowell, Rossi, Schorno

NAYS: (0) None

ABSTAIN: (0) None

ABSENT: (2) Recchia, Zuppa



Michael Guadagno
Board Secretary



Schedule A

**TEMPORARY CONSTRUCTION AGREEMENT FOR
THE TOWN OF BOONTON POCKET PARK – version 3**

This Temporary Construction Agreement (“Agreement”) is made as of this _____ day of _____, 2019 by and between **THE TOWN OF BOONTON**, having its offices at 100 Washington Street, New Jersey 07005 (the “Town of Boonton”); and **THE ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY**, having its offices at RD#1, 99 Greenbank Road, Parsippany-Troy Hills, New Jersey (“RVRSA”). The Town of Boonton and RVRSA are collectively referred to herein as the “Parties.”

WITNESSETH

WHEREAS, the Town of Boonton is the owner of certain real property located at Block 78, Lot 5 on the Town tax map known as Pocket Park; and

WHEREAS, Pocket Park is encumbered as unfunded parkland since 1983 by the New Jersey Department of Environmental Protection (“NJDEP”) Green Acres Program; and

WHEREAS, existing sewer lines, installed in 1976, running through Pocket Park pre-existed the Green Acres Program encumbrance; and

WHEREAS, pursuant to *N.J.A.C. 7:36-25.2(d)6*, said lines are within an assumed subsurface utility easement of ten (10) feet on either side of the centerline of the existing sewage line (which includes two (2) siphon outlet chambers); and

WHEREAS, in Pocket Park, the RVRSA proposes to demolish and remove its existing siphon outlet chamber, downstream of Manhole B-10, and remove approximately 141 LF of existing 48” diameter deteriorated RCP sewer. The work includes the replacement of these same facilities with a new precast concrete siphon outlet chamber, approximately 141 LF of new 48” diameter CCFRPM pipe and a custom CCFRPM pipe fitting with a new FRP manhole riser and appurtenances (the “Project”) which will require, *inter alia*, a temporary construction easement as depicted on the Site Plan, attached hereto as Exhibit A (“Temporary Construction Easement”); and

WHEREAS, work done to the sewerage lines and ancillary facilities within the pre-existing assumed easement does not constitute a diversion of parkland according to *N.J.A.C. 7:36-25.2(d)6*, but any use of parkland for sewerage system improvements is subject to Green Acres regulations governing the non-recreation/conservation use of parkland under *N.J.A.C. 7:36-25.14*.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree each with the other as follows:

SECTION 1

BASIC PROVISIONS

1.1 Agreement. In consideration of One Dollar (\$1.00), the Town of Boonton provides RVRSA with the right to use the Temporary Construction Area set forth in Exhibit A for the construction of the Project in the Pocket Park during the Term of this Agreement. Upon and subject to the terms and conditions set forth herein, and subject to such terms and conditions as may apply, each party hereby expressly covenants and agrees to observe and perform all of the obligations herein contained on its part to be observed and performed. Notwithstanding anything to the contrary contained herein, the rights of the Parties are subject to and shall be exercised in accordance with the New Jersey Green Acres Land Acquisition and Recreation Opportunities Act, N.J.S.A. 13:8A-35 et seq. and the Green Acres regulations promulgated thereunder, N.J.A.C. 7:36-26.1 et seq.

1.2 Public Benefit. This Agreement provides for the temporary construction use necessary for the construction of sewerage infrastructure by RVRSA, organized pursuant to the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et seq. The Project provides a sufficient public benefit in accordance with N.J.A.C. 7:36-25.14(f)(1) in that the Legislature “declared to be in the public interest and to be the policy of the State to foster and promote by all reasonable means the relief of water in or bordering the State from pollution and thus to reduce and ultimately abate the menace to the public health resulting from such pollution” and thereby authorizing sewerage authorities such as RVRSA “to acquire, construct, maintain, operate or improve works for the collection, treatment, purification or disposal of sewage or other wastes . . .” N.J.S.A. 40A:14-2.

1.3 Term. The temporary construction use shall commence upon the staging and storage of construction materials for the Project and/or commencement of construction in the Pocket Park, whichever shall occur first, by the general construction contractor procured by RVRSA to perform the work necessary for the Project as the lowest responsible bidder pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. and shall remain in effect for a period of two (2) years from that date. The term of the Agreement may be extended for an additional six (6) months upon a showing of good cause and approval from NJDEP pursuant to N.J.A.C. 7:36-25.14(b)(2)(i). In the event that the temporary construction use is still needed at the conclusion of the aforementioned Term for the construction of the Project, the Town of Boonton shall apply for approval from NJDEP and the State House Commission for a Green Acres diversion of the Temporary Construction Area as the applicant in accordance with N.J.A.C. 7:36-26.1 et seq.; said application, consisting of the pre-application and final application, to be prepared by RVRSA at its own cost.

Due to the limited size of the Pocket Park, and the scope of the temporary construction use needed, the entire Pocket Park will be closed for the duration of the construction within the temporary construction area.

1.4 Restoration of Temporary Construction Area. RVRSA shall be responsible for the Temporary Construction Area to be restored at its cost to the same condition that existed at the commencement of the Term of this Agreement. In accordance with N.J.A.C. 7:36-25.14(b)(8) NJDEP may require, if applicable, a restoration plan to be approved by NJDEP for the restoration of the Temporary Construction Area to the condition that existed at the commencement of the

Term of this Agreement. RVRSA shall coordinate with NJDEP, Green Acres Program Bureau of Legal Services and Stewardship for a determination of whether a restoration plan is required, and if so, approval of such restoration plan from NJDEP for the Temporary Construction Area shall be obtained by RVRSA.

SECTION 2

INDEMNIFICATION

2.1 Indemnification.

- (a) RVRSA agrees to indemnify and hold harmless the Town of Boonton and NJDEP against, and RVRSA shall pay any and all liability, loss, cost, damage, claims, judgments or expenses of any and all kinds or nature and however arising, imposed by law, which the Town of Boonton or NJDEP may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, relating to the Project activities in the Temporary Construction Area during the Term of this Agreement, including but not limited to any and all claims by workmen, employees and agents of the RVRSA, its contractors and subcontractors and unrelated third parties, which claims arise from any activities of RVRSA within the Temporary Construction Area during the Term of this Agreement.

SECTION 3

INSURANCE

3.1 Requirements. RVRSA shall require its general construction contractor procured by RVRSA to perform the work necessary for the Project (the "Contractor") to maintain at all times during the Term of this Agreement, insurance for the mutual benefit of RVRSA, the Town of Boonton and the NJDEP, as their interests may appear:

- (a) Loss or damage by fire, and such other risks as may be included in the standard form of extended coverage insurance from time to time available in amounts not less than 100% of the then full assessed value of the Pocket Park;
- (b) All claims for bodily injury and property damage, under a policy of comprehensive general public liability insurance, with such limits as may reasonably be required by the Town of Boonton from time to time, but not less than \$1 million per occurrence in respect of injury or death and \$2 million per occurrence for property damage, plus excess "umbrella" liability policies with coverage of not less than \$5 million; and

- (c) Workers' compensation insurance in an amount not less than \$1,000,000.00 or as statutorily may be required.

3.2. Evidence of Insurance. RVRSA shall furnish the Town of Boonton and NJDEP with satisfactory proof that its Contractor has obtained all applicable insurance as described in this section and shall furnish to the Town of Boonton and NJDEP certificates of the preceding types of insurance showing the type, amount, and class of operations insured and the effective and expiration dates of the policies. The certificates shall be submitted prior to the date the Contractor enters onto the Pocket Park and the Contractor shall not be entitled to enter onto the Pocket Park or to exercise any other rights hereunder until the certificate has been received and verified. The Town of Boonton and NJDEP reserve the right to review the Contractor's insurance periodically to determine the adequacy of its coverage. Upon request, RVRSA will provide copies of all relevant policies of the Contractor to the Town of Boonton and/or NJDEP.

3.3 Restrictions. All insurance provided for under this Agreement will be reasonably affected under valid enforceable policies reasonably acceptable to the Town of Boonton. Upon the execution of this Agreement, certificates evidencing the existence of insurance policies procured by the Contractor will be delivered to the Town of Boonton. At least 30 days prior to the expiration date of any policy, the certificates evidencing the renewal of the policy for such insurance will be delivered by the Contractor to the Town of Boonton as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to herein will, to the extent then generally obtainable, contain agreements that such policies may not be canceled except upon thirty (30) days prior written notice to each named insured and loss payee.

3.4 RVRSA, the Town of Boonton and NJDEP as Additional Insured. RVRSA agrees that all policies of insurance required from RVRSA's Contractor herein shall name the Contractor as the insured and the RVRSA, the Town of Boonton and the NJDEP as additional insureds. The proceeds of any loss payable due to damage or destruction of the Pocket Park facilities or Project improvements (regardless of to whom paid) shall be applied to the reconstruction, replacement and repair of the damaged park facilities and Project improvements.

3.5 Subrogation. All insurance policies obtained pursuant to this section must include waivers of subrogation.

SECTION 4

SUCCESSORS AND ASSIGNS

4.1. Successors and Assigns. The Parties agree that it shall not assign or transfer any of its rights or obligations under this Agreement without the written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 5

MISCELLANEOUS

5.1 Partial Invalidity. If any Agreement provision is invalid or unenforceable to any extent, then that provision and the remainder of this Agreement shall continue in effect and be enforceable to the fullest extent permitted by law.

5.2 Waiver. The failure of either party to exercise any of its rights is not a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

5.3 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles.

5.4 Exhibits. Any and all Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto.

5.5 Authority of Parties. Each party warrants that it is authorized to enter into the Agreement, that the person signing on its behalf is duly authorized to execute the Agreement, and that no other signatures are necessary.

5.6 Entire Agreement. This Agreement and the all exhibits thereto, contain the entire agreement between the Parties about the Pocket Park. The Parties have reviewed the entirety of the Agreement contained herein and by execution approves the same. This Agreement shall be modified only by in writing, signed and duly authorized by both Parties and approved by the NJDEP.

5.7 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument. Execution and delivery of this Agreement by exchange of PDF or facsimile copies bearing the signature of a party hereto shall constitute a valid and binding execution and delivery of this Agreement by such party. Such PDF or facsimile copies shall constitute enforceable original documents. The execution and delivery of this Agreement may be conducted by electronic means in accordance with the Uniform Electronic Transmissions Act, N.J.S.A. 12A:12-1.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

ATTEST:

TOWN OF BOONTON

Cynthia Oravits, RMC, Clerk

By: _____
Matthew DiLauri, Mayor

ATTEST:

ROCKAWAY VALLEY REGIONAL
SEWERAGE AUTHORITY

Mickie Roman, Asst. Secretary

By: _____
JoAnn Mondsini, Executive Director