

RESOLUTION 20-062

RESOLUTION AMENDING RESOLUTION 19-091 AUTHORIZING THE EXECUTION OF AN AMENDED AGREEMENT WITH THE TOWN OF BOONTON RELATIVE TO TEMPORARY CONSTRUCTION IN POCKET PARK ON WASHINGTON STREET, BOONTON AND ALSO CANAL PARK ON MAIN STREET, BOONTON

WHEREAS, the Town of Boonton is the owner of certain real property located at Block 78, Lot 5 and Block 34, Lot 1, on the Town tax map known as Pocket Park and Canal Park respectively; and

WHEREAS, Pocket Park and Canal Park are 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, in Canal Park, the RVRSA proposes to install a temporary by-pass pumping system and new manhole to divert flow from the main interceptor and siphon during the period of work to replace the siphon outlet chamber and 140-feet of Trunkline across Washington Street in the Town of Boonton; and

WHEREAS, work done to the sewerage lines and ancillary facilities within the pre-existing 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 amended agreement with the Town of Boonton to allow the RVRSA to use Pocket Park and also Canal Park as the Temporary Construction Area for the construction of the Project in the Pocket Park; and

WHEREAS, by Resolution 19-091, adopted October 10, 2019, the RVRSA authorized the execution of the Temporary Construction Agreement for the Town of Boonton Pocket Park, which Agreement had 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, additional revisions are required to be made to include Canal Park, which revisions must be further reviewed by Adam Taylor, County Steward, Bureau of Legal Services and Stewardship, Green Acres Program, NJDEP, and revised accordingly, if necessary; and

WHEREAS, subject to the approval of the attached Amended Agreement by the Town of Boonton and the Green Acres Program, 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 Amended Agreement by the Town of Boonton and Green Acres Program, the Executive Director is hereby authorized and directed to execute an Amended Agreement for the temporary construction use of Pocket Park on Washington Street and Canal Park on Main 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 9th day of July, 2020.

On motion of: Commissioner Schorno
Second by: Commissioner Guadagno

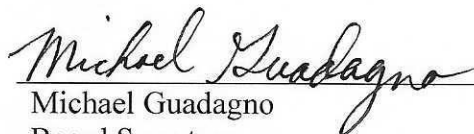
ROLL CALL VOTE:

YEAS: (9) Cegelka, Corbett, Guadagno, Isselin, Farrell, Recchia, Rossi, Schorno, Zuppa

NAYS: (0)

ABSTAIN: (0)

ABSENT (1) Andes


Michael Guadagno
Board Secretary

Schedule A

**AMENDED TEMPORARY CONSTRUCTION AGREEMENT FOR
THE TOWN OF BOONTON POCKET PARK**

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 and Block 34, Lot 1, on the Town tax map known as Pocket Park; and

WHEREAS, the Service Contract between the Town of Boonton and the Rockaway Valley Regional Sewerage Authority, dated July 1, 1976, attached hereto and made a part hereof, to which the Town of Boonton is a Participant, establishes at Section 204 that the Authority, within the territory of each Participant but doing no unnecessary damage to public property and restoring all street paving and subject to the municipal street opening regulations, may construct, maintain and operate the System, free of charge by the Participant, along, over, under and in any streets, alleys, highways and other public places of such Participant; and

WHEREAS, 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 area consisting of the entirety of the Pocket Park ("Temporary Construction Area"). A temporary bypass pumping system is proposed to be utilized in Canal Park, located along Main Street in the Town of Boonton, to divert flow around the Boonton Siphon inlet and outlet during the replacement of the Boonton Siphon outlet and 140-feet of pipe across Washington Street; and

WHEREAS, Pocket Park and Canal Park are 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, to bypass flow around the Boonton siphon and Washington Street section of pipe to be replaced, a temporary by-pass pumping system is to be placed in Canal Park. The bypass pumping system will include an additional manhole installation, at least three (3)- sound attenuated diesel generators, at least three (3) pumps, at least two (2) controls and a fuel tank; 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 accordance with Section 204 of the attached Service Contract dated July 1, 1976, the Town of Boonton hereby provides RVRSA with the right to use the Temporary Construction Area for the construction of the Project in the Pocket Park during the Term of this Agreement. 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.* and in accordance with the attached Service Contract dated July 1, 1976.

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), and the Town of Boonton. 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 RVRSA's sole cost and expense.

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. (TO BE INSERTED - HOW MUCH OF CANAL PARK WILL BE CLOSED AND FOR HOW LONG) Notwithstanding the term of this Agreement and anything set forth in this Agreement to the contrary, RVRSA shall make every reasonable effort to have its contractor complete the work for the Project in a timely manner and without delay in restoring the Pocket Park and reopening it, or any portion of it, as soon as practical.

1.4 Restoration of Temporary Construction Area. Prior to conclusion of the Term of this Agreement and any extended term(s), RVRSA shall be responsible for the Temporary Construction Area to be restored to the same condition that existed at the commencement of the Term of this Agreement at RVRSA's sole cost and expense. 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

NJDEP & TOWN OF BOONTON NAMED AS ADDITIONAL INSURED

2.1 RVRSA, Shall Name 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 shall include 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.

2.2 RVRSA Shall Comply with the 1976 Service Contract Regarding Insurance and Indemnification. The RVRSA shall comply with the terms of the attached Service Contract dated July 1, 1976, Section 205, entitled, Insurance. In addition, thereto, RVRSA agrees that all policies of insurance required from RVRSA's Contractor shall name the Town of Boonton and its officials and employees as additional insureds.

SECTION 3

SUCCESSORS AND ASSIGNS

3.1. 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 4

MISCELLANEOUS

4.1 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.

4.2 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.

4.3 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.

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

4.5 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.

4.6 Entire Agreement. This Agreement 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.

4.7 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.

THIS SPACE INTENTIONALLY LEFT BLANK

[SIGNATURES TO FOLLOW)

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: _____
Richard Corcoran, Mayor

ATTEST:

ROCKAWAY VALLEY REGIONAL
SEWERAGE AUTHORITY

Janice Fox, Asst. Board Secretary

By: _____
JoAnn Mondsini, Executive Director