

CITY OF BATAVIA
100 N. Island Avenue, Batavia, IL 60510
(630) 454-2000 <http://cityofbatavia.net>

Committee of the Whole Agenda
Tuesday, May 31, 2016
7:30 PM Council Chambers 1st Floor

1. Roll Call
2. Batavia Park District Board Meeting Called To Order
3. Approve COW Minutes For April 26, 2016

Documents: [COW 16-04-26M.PDF](#)

4. Items Removed/Added/Changed
5. Matters From The Public (For Items NOT On Agenda)
6. Consent Agenda:

(The consent agenda is made up of items recommended by city staff that require recommendation to the full City Council by the COW. This agenda is placed as a separate item on the COW agenda. The items on the consent agenda are usually minor items, already budgeted, standard non-policy activities or outgrowths of earlier meetings and are voted on as a "package" in the interest of saving time on non-controversial issues. However, any council member may, by simple request, have an item removed and placed on the "regular" agenda.)

- a. 2016 Post Issuance Compliance Report (Peggy Colby 5/20/16) GS

Documents: [2016 POST ISSUANCE COMPLIANCE REPORT.PDF](#)

7. Discussion: Park District Updates And City/Park District Joint Interests
8. Discussion (Continued): Wayfinding Signage For Downtown (Scott Buening 5/12/16) CD

Documents: [SIGNAGE DISCUSSION WAYFINDING 2016-05 COMBINED REP.PDF](#)

9. Resolution 16-51-R: Authorizing Execution Of Task Order #6 With Rempe Sharpe For Area 2 & 3 Storm Separation For An Amount Not To Exceed \$25,975.00 (Andrea Podraza 5/26/16) CS

Documents: [RES 16-51-R AREA 2-3 TASK 6.PDF](#)

10. Resolution 16-52-R: Authorizing Agreement With The Conservation Foundation Relating To Maintenance Of Windmill Lakes Detention Basin (Andrea Podraza 5/25/16) CS

Documents: [RES 16-52-R AGRMT W CONSERVATION FOUNDATION RE WINDMILL LAKES.PDF](#)

11. Ordinance 16-20: Water Pollution Control Loan Program Authorizing Loan Agreement City Of Batavia A Home Rule Entity (Peggy Colby 5/12/16) GS

Documents: [ORD 16-20 AUTHORIZING IEPA LOAN AGRMT.PDF](#)

12. Project Status

13. Other

14. Closed Session:

a. Appointment of City Officer

b. Personnel

15. Adjournment

MINUTES
April 26, 2016
Committee of the Whole
City of Batavia

Please **NOTE:** These minutes are not a word-for-word transcription of the statements made at the meeting, nor intended to be a comprehensive review of all discussions. They are intended to make an official record of the actions taken by the Committee/City Council, and to include some description of discussion points as understood by the minute-taker. They may not reference some of the individual attendee's comments, nor the complete comments if referenced.

Chair Brown called the meeting to order at 7:30pm.

1. Roll Call

Members Present: Chair Brown; Ald. Russotto, Atac, Stark, Chanzit, Wolff, Fischer, O'Brien, Callahan, Hohmann, Mueller, Botterman, Cerone (entered at 8:10pm), and McFadden

Members Absent:

Also Present: Mayor Schielke (entered at 7:38pm); Chief Schira, Batavia Police Department; Scott Buening, Director of Community Development; Wendy Bednarek, Director of Human Resources; Gary Holm, Director of Public Works; Chris Aiston, Economic Development Consultant; John Dillon, Water/Sewer Superintendent; and Jennifer Austin-Smith, Recording Secretary

2. Approve Minutes for April 5, 2016

Motion: To approve the minutes for April 5, 2016

Maker: Hohmann

Second: Fischer

Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

3. Items to be Removed/Added/Changed

There were no items to be removed, added or changed.

4. Matters From The Public (For Items NOT on Agenda)

There were no matters from the public for items not on the agenda at this time.

5. Consent Agenda

(The Consent Agenda is made up of items recommended by city staff that requires recommendation to the full City Council by the COW. This agenda is placed as a separate item on the COW agenda. The items on the Consent Agenda are usually minor items, already budgeted, standard non-policy activities or outgrowths of earlier meetings and are voted on as a "package" in the interest of saving time on non-controversial issues. However, any council member may, by simple request, have an item removed and placed on the "regular" agenda.)

- a. **Ordinance 16-21: Declaring Surplus Property (Scott Haines 4/6/16) CS**
- b. **Resolution 16-40-R: Requesting Permit from IDOT for Road Closures for 2016 Farmer's Market (Gary Holm 4/6/16) CS**
- c. **Resolution 16-43-R: Requesting Permit from IDOT for Road Closures for 2016 Triathlon (Gary Holm 4/12/16) CS**

Motion: To recommend approval of the consent agenda as presented
Maker: Atac
Second: Russotto
Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

6. Resolution 16-44-R: Authorizing Execution of a Contract with Geneva Construction Company of Aurora, Illinois for the Wilson Street Sidewalk Construction Project in the not-to-exceed amount of \$43,050.00 (Tim Grimm 4/20/16) CS

Holm noted that Geneva Construction is the low bidder on the Wilson Street Resurfacing Project. Staff will try to coordinate with Geneva Construction to do both projects at the same time but staff will keep the accounting separate`.

Motion: To approve Resolution 16-44-R: Authorizing Execution of a Contract with Geneva Construction Company of Aurora, Illinois for the Wilson Street Sidewalk Construction Project in the not-to-exceed amount of \$43,050.00
Maker: Wolff
Second: Hohmann
Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

7. Ordinance 16-22: Amendments to Peddlers Ordinance (Scott Buening 4/8/16) CD

Buening reported that this is for anything that is sold on a door-to-door basis. Ice cream trucks also fall under this ordinance. The permitted hours would be nine in the morning to eight at night. Brown asked if there could be a sunset clause added to the ordinance. Chief Schira stated that the courts have permitted hours of operation but not allowed limiting days or by hours of sunlight. The consensus of the Committee was to change the ordinance to allow for seven days a week.

Motion: To approve Resolution 16-22-R: Amendments to Peddlers Ordinance as amended
Maker: Hohmann
Second: Mueller
Voice Vote: 12 Ayes, 1 Nays, 1 Absent
Motion carried.

O'Brien was the nay vote. Stark suggested that the food truck and peddlers licenses be discussed together for better clarification. O'Brien agreed. Buening stated that staff is still discussing the food ordinance internally. He continued that we are getting into the season of solicitation, which is why staff brought this forward to the Committee for consideration. Atac asked if this

ordinance would cover the food ordinance until the food ordinance comes into place. Buening stated that essentially it would.

8. Resolution 16-35-R: A Resolution Approving IGA for Animal Control Services with Kane County (Gary Schira 4/12/16) GS

Atac reported that this is a renewal of an ongoing contract the City entered into in 2008. Chief Schira stated that the cost for after hour pick-up has increased. He stated that this is an ongoing contract and he is in support of renewing it.

Motion: To approve Resolution 16-35-R: A Resolution Approving IGA for Animal Control Services with Kane County

Maker: Stark

Second: Callahan

Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

CONSENT AGENDA

9. Resolution 16-45-R: Authorizing the Execution of a Contract with Ehlers, Inc. for Economic Development Consulting Services: Reviewing Developer's Proposal and Request for Financial Assistance, in the amount of \$12,500.00 (Chris Aiston 4/21/16) GS

Aiston stated that they went out for proposals on this and all four firms did submit proposals. This is for the redevelopment of the plaza center and for backfilling the Walgreen's space as well as some redevelopment to the building. Aiston discussed how Ehlers was the preferred choice by the staff's task force. The firm has a lot of experience in this area and the cost was the second lowest.

Jennifer Tammon, Principle Advisor of Ehlers, Inc., addressed the Committee. She gave the background of the company and explained how they are a full service municipal advisory firm. She gave the background of her work history as a consultant and her expertise on a municipal and developer perspective. She stated that she and Aiston were available to answer any questions.

Botterman asked how much of the information needed has been received. Aiston estimated that about fifty percent of the information was received. Aiston stated that Batavia Enterprises (BEI) consultant has done this before and knows the information that is needed. The consultant also knows the Tax Increment Financing (TIF) eligible costs. Staff needs to verify the TIF eligible costs and need to verify bidding information. We do have significant information and all information on the Ehler's list could be obtained in a short period of time.

*Cerone entered at 8:10pm

Tammon stated that they would not start their work until they have all the information. She shared that on the proposal there is a list of items requested for a project review. They will not start the process until they have all the information. Unless there is a significant change in the

proposal, you would not have to bring them back for a repetitive analysis. She explained that they need to work efficiently to stay within the budget.

Austin Dempsey, Batavia Enterprises, addressed the Committee. He stated that it is their goal to move forward as quickly as possible. They have a window of time in which they have to deliver a store to and they have an amazing opportunity to bring an incredible anchor to the City of Batavia. They will be working as quickly and as diligently as possible with staff to get whatever information is needed.

Mayor Schielke stated that to put a business like Blue Goose in the downtown is a key component to the success of the downtown. O'Brien concurred. Callahan stated that he supports this. Callahan stated the consultant is good investment money and he appreciates the in-depth analysis the consultant would provide. He continued that we want to spend money wisely. Tammon stated that their fiduciary duty is to the City and would always be to your interest and part of that is understanding all the sides of the project.

Motion: Resolution 16-45-R: Authorizing the Execution of a Contract with Ehlers, Inc. for Economic Development Consulting Services: Reviewing Developer's Proposal and Request for Financial Assistance, in the amount of \$12,500.00

Maker: McFadden

Second: Fischer

Voice Vote: 14 Ayes, 0 Nays, 0 Absent
Motion carried.

10. Project Status

Buening reported on the following:

- The Block Grant Program is funding a portion of the sidewalk in front of Batavia Apartments
- Siemens is giving regular updates to staff. They are drilling on the property to define the limits of the foundry sands and the depth. They have submitted their report to the IEPA and are awaiting a response. They also are monitoring the ground water with the pipes they installed. Buening will give another report in the next couple of weeks

Botterman asked about the former Marathon station on Wilson Street. Buening answered that they are working on the site and the plan is to remove all the site improvements to the property and demolish the building. They are working on clearing the site and staff is discussing the parking lot surface with the property owner.

*Chanzit exited the meeting at 8:27pm.

O'Brien asked about the underground gas tanks. Buening stated that we believe that there has been some remediated contamination but the tanks would have to be removed. The State Fire Marshall regulates that. Buening stated that this would be removed as part of the whole demolition process.

11. Other

There were no others at this time.

12. Closed Session

- a. Settling the Price of Land for Sale (SB)**
- b. Update: City Administrator's Position – Bill Balling**

Motion: To enter into closed session for the purpose of settling the price of land for sale and update on the City Administrator's position

Maker: O'Brien

Second: Callahan

Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

Closed Session began at 8:39pm.

13. Adjournment

There being no other business to discuss, Brown asked for a motion to adjourn the meeting at 10:15pm; Made by O'Brien; Seconded by Hohmann. Motion carried.

Minutes respectfully submitted by Jennifer Austin-Smith

CITY OF BATAVIA

DATE: 05/20/16
TO: Mayor and City Council
FROM: Peggy Colby, Finance Director
RE: Post Issuance Compliance Reporting

As part of my duties as the Bond Recordkeeping Compliance Officer, I am to report annually to the City Council to attest that the City is in compliance with the tax laws and regulations in regards to the City's outstanding debt issues.

Attached is the report stating we are in compliance. This will be on the consent agenda for the COW meeting of May 31, 2016. Thank you

c. Mayor and City Council
William McGrath
File

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

POST-ISSUANCE TAX COMPLIANCE REPORT

To: City Council of the City of Batavia, Kane and DuPage Counties, Illinois

Pursuant to my responsibilities as the Compliance Officer as set forth in a Bond Record-Keeping Policy (the “*Policy*”) adopted by the City Council (the “*Corporate Authorities*”) of the City of Batavia, Kane and DuPage Counties, Illinois (the “*City*”), on the 20th day of May, 2016, I have completed review of the City’s contracts and records to determine whether the Tax Advantaged Obligations (as defined in the Policy), comply with the applicable federal tax requirements. In accordance with the proceedings and agreements under which the Tax Advantaged Obligations were issued, the City has covenanted generally to take all action necessary to comply with the applicable federal tax rules and regulations relating to the Tax Advantaged Obligations, including covenants necessary to preserve the excludability of interest on the Tax Advantaged Obligations from gross income for federal income taxation purposes. The following sets forth a summary demonstrating the City’s compliance with such covenants and expectations.

(a) *Records.* I have in my possession all of the records required under the Policy.

(b) *Arbitrage Rebate Liability.* I have reviewed the agreements of the City with respect to each issue of the Tax Advantaged Obligations. At this time, the City does not have any rebate liability to the U.S. Treasury.

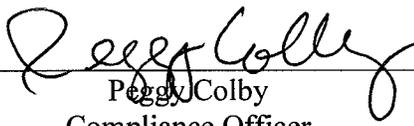
(c) *Contract Review.* I have reviewed copies of all contracts and agreements of the City, including any leases, with respect to the use of any property owned by the City and acquired, constructed or otherwise financed or refinanced with the proceeds of the Tax Advantaged Obligations and other records. At this time, each issue of the Tax Advantaged Obligations complies with the federal tax requirements applicable to such issue, including restrictions on private business use, private payments and private loans.

(d) *IRS Examinations or Inquiries.* The Internal Revenue Service (the "IRS") has not commenced an examination of any issue of the Tax Advantaged Obligations. The IRS has not requested a response to a compliance check, questionnaire or other inquiry.

Based upon the foregoing, I believe that the City is currently in compliance with the applicable tax law requirements and no further action is necessary at this time

This report will be entered into the records of the City and made available to all members of the Corporate Authorities at the next regular meeting thereof.

Respectfully submitted this 20th day of May, 2016

By 
Peggy Colby
Compliance Officer

CITY OF BATAVIA

DATE: May 6, 2016
TO: Committee of the Whole-CD
FROM: Scott Buening, Community Development Director
SUBJECT: Discussion: Wayfinding Signage for Downtown

Summary: Reopening a discussion regarding wayfinding signage in the Downtown area.

Background: Back in March 2014, the City submitted an application for a Riverboat Grant through Kane County to pay for a signage study. The study was to encompass various City signage including entry monuments, downtown wayfinding and general directional signage. The City did not receive any funds from that program, and instead decided to pursue the entry monument signage as a separate project.

Batavia MainStreet has now approached the City staff asking for this project to be revived as their Board would like to pursue the downtown wayfinding aspects of the signage program. The City does not have any specific funding for this project this fiscal year, however funding from the Speedway site sale and other land sales could be made available to fund this study. As was noted in a previous report, a full study for this type of signage would range from \$20,000 to over \$100,000 with an average of \$50-60,000. These costs were for the study only and not for any manufacturing or installation of signage.

MainStreet representatives will be at the meeting to discuss the project and their desire to pursue this initiative. We anticipate they would be an active participant in the study and would assist in working with the consultant in the analysis.

Alternatives:

- a. **Pros-** This would restart a project that has been looked at in the past but has not been funded. Improved signage would help create a unified identity for the downtown area.
- b. **Cons-** The City does not have money specifically budgeted to this project right now. However, land sales funds could be used towards this effort, and MainStreet has indicated they could provide some funding for the study as well. After completion of the study the City would need to budget additional funds for signage manufacturing and installation. City staff has limited time and resources to dedicate to the study at this time, so MainStreet would need to be an active participant with the hired consultant.
- c. **Budget Impact-** The cost of a study would be somewhere in the range of \$20,000-\$100,000; which funds have not been budgeted at this time. MainStreet has agreed to participate with an undetermined amount of funds to assist in moving the study forward.

d. Staffing Impact- City staff would be required to provide data and input as the study progresses. No additional staff would be hired as part of this project.

Timeline for actions: There is no specific timeline for action on this matter.

Staff recommendation: Staff recommends the Committee discuss the proposed initiative and give staff direction on how to proceed.

Attachments:

1. Staff memo of March 25, 2014.

Cc: Mayor & City Council
File

CITY OF BATAVIA

DATE: March 25, 2014
TO: Joint Committee of the Whole-CD
FROM: Scott Buening, Community Development Director
SUBJECT: Resolution 14-46-R Authorizing Application for a Kane County 2014 Riverboat Fund Grant

Background

Kane County each year receives funds from the Riverboat Fund Program which is funded by revenues from the Grand Victoria Casino in Elgin. The County uses these funds to give grants for projects which further the goals of Education, Environment or Economic Development. These grants go to various governments and other non-governmental agencies for a variety of projects.

Analysis

Staff has investigated possible projects that could be funded by this program and has determined that the best option is for us to apply for funds for the signage study we will be undertaking. This study is to analyze and make recommendations for improving the entry monument, downtown wayfinding and directional signage within the City. The City has already budgeted \$20,000 for this study in line 10-13-6355. This budgeted amount was based on a Saint Charles study back in 2002 that cost \$15,000, but current day estimates put that closer to \$20,000. Staff recently found another community in Illinois that did a similar study, and the costs for the study alone from the Request for Proposals received ranged from \$20,000 to \$112,000. Most of the proposals were right around \$50,000 to \$60,000. Thus we feel to get a high quality study, we should apply for a Riverboat grant to supplement the funds budgeted thus far. Note that these costs do not include any finding for implementation such as fabrication, construction or installation of the signs.

The attached Resolution would authorize the City to make such an application with Kane County. We would be applying for a total of \$40,000 in grant funds which would allow us to fund this project to the amount of \$60,000. The Resolution would authorize the City Administrator to sign the application and any other documents to apply for this grant. The deadline for this grant is April 7, 2014 at 4:30 PM. As we have in the past due to typical meeting time/grant deadline conflicts, we would submit the application before the deadline, and the signed Resolution would go to the County a few days later.

Recommendation

Staff recommends approval of Resolution 14-46-R Authorizing Application for a Kane County 2014 Riverboat Fund Grant.

Attachments:

1. Resolution 14-46-R Authorizing Application for a Kane County 2014 Riverboat Fund Grant.
2. Riverboat Fund Grant Application.

Cc: Mayor & City Council
City Administrator
City Attorney
Press
File

CITY OF BATAVIA

Date: May 26, 2016
To: Committee of the Whole (CS) – May 31, 2016
From: Andrea M. Podraza, P.E., CFM – Senior Civil Engineer
Re: **Resolution 16-51-R - Authorizing execution of Task Order #6
for Area 2&3 Storm Separation with Rempe-Sharpe &
Associates, Inc. for an amount not-to-exceed
\$25,975.00**

As part of the City of Batavia's efforts to alleviate repeated drainage concerns and sewer back-ups in area 2 & 3 of the combined sewer (see attached map) on City's west side the City Council allocated funds this fiscal year to conduct a drainage study and perform construction to improve this area. The Engineering Division sent out a request for proposals to the same consultants that submitted proposals for the Ward 1 drainage study. Since this request for proposal is being sent out relatively close to the Ward 1 Statement of Qualifications the City requested consultants to update the qualifications only if the proposed team was to change. Updated qualifications and a cost proposal were sought from the consultants to prepare final engineering plans and specifications separating a portion of combined sewer in Area 2 and a study to analyze the existing downstream storm sewer capacity and preliminary costs to construct a separate storm sewer in Area 3. The report will include a study of the hydrology and complete a hydraulic analysis for the project limits within this area. A final report for Area 3 will be prepared with the consultant's findings and proposed improvements with associated preliminary cost estimates with a presentation made to the Committee in mid-September. Staff is planning to construct the separate storm sewer in Area 2 in late fall 2016.

Four firms submitted updated statements of qualifications and sealed cost proposal. The submittals were due on Friday, May 13, 2016. Staff reviewed and discussed the revised statement of qualifications, individually updated scores and ranked the submittals, combined scores for an average score, and then opened the sealed cost proposals. The consultant's average scores based on qualifications were then converted to a decimal (89% becomes .89) and proposed cost was divided by the consultant's score to arrive at an "adjusted cost." The consultant with the lowest "adjusted cost" is recommended for award. The consultant with the lowest adjusted cost and being recommended for this project is Rempe-Sharpe & Associates, Inc. from Geneva.



Below is a summary of the consultant rankings that were solicited for qualifications and the cost proposal:

Consultant	Rank Based on Qualifications *	Rank Based on Cost Proposal **	Rank Based on Both Qualifications & Cost ***
<i>Rempe-Sharpe</i>	4	1	1
Christopher B. Burke Engineering, Ltd.	2	4	4
CEMCON, Ltd.	3	2	2
WBK Engineering, Ltd	1	3	3

- * 1 indicates best qualified and 4 indicates least qualified
- ** 1 indicates lowest proposal cost and 4 indicates highest proposal cost
- *** 1 indicates best desirable consultant based on both qualifications and cost and 4 indicates least desirable consultant based on both qualifications and cost

City staff has a good working relationship with Rempe-Sharpe. The City has worked with Rempe-Sharpe on an IDOT drainage project on Rt. 31 as well as numerous projects for the Water Division. Those projects include the Batavia Avenue Water Service Replacement & McKee Street Substation Watermain Replacement, Maple Lane Watermain Replacement and watermain replacement on W. Wilson Street. The City has found Rempe-Sharpe to be responsive, responsible and timely in finishing submittals.

This is the second project out of the \$400,000 allocated in the 2016 budget to investigate/study, prepare design drawings and/or construct solutions on a city-wide basis to help alleviate the drainage and sewer back-ups problems encountered most recently with the June 2015 rain event. Staff is in the process of evaluating what project will be next and then start preparing a request for qualifications.

Recommended Action:

Staff recommends that Committee of the Whole approve the following:

1. Resolution 16-51-R Authorizing execution of Task 6 for the Area 2&3 Investigation with Rempe-Sharpe & Associates, Inc. in the amount not-to-exceed \$25,975.00.

CITY OF BATAVIA, ILLINOIS

RESOLUTION 16-51-R

**AUTHORIZING EXECUTION OF TASK ORDER #6 FOR
REMPE-SHARPE & ASSOCIATES, INC.**

WHEREAS, the City of Batavia has identified the need for a drainage study in sewer separation in area 2&3; and

WHEREAS, the City of Batavia requested qualifications and sealed cost proposal on the project and reviewed and scored the submitted qualifications then opened the sealed proposal; and

WHEREAS, Rempe-Sharpe & Associates, Inc. has submitted a proposal and is the most qualified based on both qualifications and costs for the project; and

WHEREAS, the engineering company of Rempe-Sharpe & Associates, Inc. has the appropriate expertise and experience necessary to provide hydraulic modeling, design services and construction documents; and

WHEREAS, the total cost of said hydraulic modeling, design services and construction documents is in the amount not to exceed \$25,975.00 and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BATAVIA AS FOLLOWS:

SECTION 1. That the Mayor and City Clerk are hereby authorized to execute Task Order #6 with Rempe-Sharpe & Associates, Inc of Geneva, Illinois, for construction services in the amount not to exceed \$25,975.00. The Contract is attached hereto as Exhibit "1".

CITY OF BATAVIA, ILLINOIS RESOLUTION 16-51-R

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 6th day of June, 2016.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 6th day of June, 2016.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Fischer				
2	Callahan					Wolff				
3	Hohmann					Chanzit				
4	Mueller					Stark				
5	Botterman					Theelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office: Mayor and 14 aldermen										

ATTEST:

Heidi L. Wetzel, City Clerk

EXHIBIT "B"

TASK ORDER NO. 6

REGARDING GENERAL AGREEMENT BETWEEN CITY OF BATAVIA

AND

REMPE-SHARPE & ASSOCIATES, INC.

Project Description: Area 2 (Item A) Sewer Separation
Area 3 (Item B) Hydraulic Analysis & Preliminary Engineering for
Sewer Separation

Scope of Services:

Engineering Services for the following Areas:

- Area 2 (Elm Street) Storm Sewer Separation
 - Data Collection
 - Prepare Final Design Plans
 - Cost Estimate
- Area 3 (Walnut, Morton & Blaine) Storm Sewer Study & Preliminary Sewer Separation
 - Data Collection
 - Storm Sewer Capacity Study
 - Preliminary Engineering Plans
 - Preliminary cost estimates and Capital Improvement Projects for the future

Additional information and scoping items can be found in the attached proposal.

Not-to-Exceed Fee for Services:

\$25,975.00

Proposed: _____

Date

Approved: _____

City of Batavia
City Approver

Date



REMPE-SHARPE & Associates, Inc.

Principals

J. Bibby
D. A. Watson

P.E. S.E.
P.E.

324 West State Street
Geneva, Illinois 60134
Phone: 630/232-0827 – Fax: 630/232-1629

B. Bennett
G. Ulreich
L. Vo
J. Whitt

P.E. CFM
P.E.
P.E.
P.E.

CONSULTING ENGINEERS

May 13, 2016

City of Batavia
Engineering Department
Andrea M. Podraza, P.E., CFM
Senior Civil Engineer
200 North Raddant Road

Re: Area 2 & 3 Storm Separation – Statement of Qualifications

Dear Ms. Podraza,

Rempe-Sharpe & Associates, Inc. employs a knowledgeable and experienced staff that can provide cost-effective professional engineering services for the City of Batavia.

Our contact for this project will be Daniel A. Watson, P.E., Principal for **Rempe-Sharpe & Associates, Inc.**, who resides in Ward 1 and personally witnessed the effects of the 2015 storm event. Dan can be reached at our office, 324 West State Street, Geneva, Illinois, by phone at 630-232-0827 x217, via fax at 630-232-1629, or via e-mail at dwatson@rsaengr.com. **Rempe-Sharpe & Associates, Inc.** is registered in the State of Illinois as a Professional Design Firm licensed to practice Professional Engineering and Structural Engineering. In addition to Illinois, our professional engineers are also licensed in Iowa, Indiana, Ohio, Wisconsin, and Michigan.

Our key staff who would be assigned to this project include:

- Daniel A. Watson, P.E. – Principal (31+ years experience) in charge of overall project.
- John M. Whitt, P.E. – Senior Project Manager (37+ years experience) in charge of overall scope, budget, quality assurance, and project administration.
- Greg R. Ulreich, P.E. – Senior Project Engineer (12+ years experience) in charge of project administration on a daily basis, H&H modeling oversight, quality control, and report preparation.
- Brian J. Bennett, P.E., CFM – Project Engineer (15+ years experience) in charge of H&H technical application.

Beyond the experience highlighted in the following resumes and similar project examples, **Rempe-Sharpe & Associates, Inc.** has also demonstrated extensive municipal experience in the capacity of Village Engineer for the Village of North Aurora since 1987 and for the Village of Winfield since 1964. The development of quality plans, specifications, and estimates for various local infrastructure projects are municipal engineering tasks that we take great pride in.

Rempe-Sharpe & Associates, Inc. has also demonstrated coordination experience with the City of Batavia through the completion of various "as requested" professional engineering tasks through a Master Services Agreement with the village since 2013, as well as other projects for the City as far back as 1961.

Finally, beyond the skills that **Rempe-Sharpe & Associates, Inc.** possess to produce a superior product for the Area 2 & 3 Storm Separation Project, we also have significant experience in other aspects of water resources-related projects as follows:

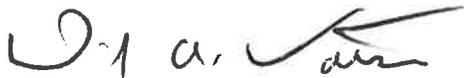
- IDOT Hydraulics Section – Program Management Consultant
 - As a Program Management consultant for the Hydraulics Section, RSA has first-hand experience reviewing Highway Permits for work similar to the proposed improvements. Obtaining a Highway Permit is the critical path item for letting Area #2 this winter and our knowledge of the process will be highly beneficial in achieving this goal. In addition, any preliminary engineering solution for Area #3 will ultimately require concurrence and a Highway Permit from IDOT during the final design. Coordination with, and understanding of, the requirements of the IDOT Hydraulics Section during the preliminary phase is essential to achieving a practical solution.
- Residential Street and infrastructure reconstruction, including storm sewer separation.
 - Prepared Final Construction Drawings/Documents (PS&E) and provided resident engineering and inspection services. (Village of Hinsdale / Village of North Aurora)
Two additional project experience sheets are included with this submittal.
- Various private projects in Kane County with preliminary engineering, final engineering construction drawings and specifications:
 - Prepared drainage reports/design required for securing Kane County stormwater permits; including stormwater detention, compensatory floodplain issues, and streambank stabilization. (Kane County / KDSWCD / IEPA / USACOE)
- Residential homeowner drainage complaint assistance while serving as Village Engineer for North Aurora and Winfield.
- Drainage-related damage claim investigations / Expert witness testimony.

Rempe-Sharpe and Associates is very interested in providing the services requested by the City of Batavia for this project and we would like to thank you for your consideration. Please contact the undersigned at 630-232-0827x217 with any questions regarding the above.

Sincerely,

REMPE-SHARPE AND ASSOCIATES, INC.

BY:

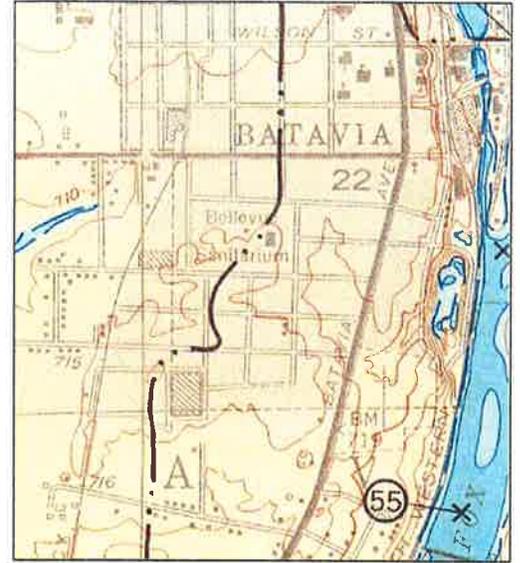


Daniel A. Watson, P.E.
Vice-President

PROJECT UNDERSTANDING

On 15 June 2016 the USGS atmospheric unit at Fermilab recorded 3.54 inches of rainfall over a 3-hour time period, which equates to a 25-year recurrence interval storm event according to ISWS Bulletin 70. As reported by Batavia's Public Works Department (PWD), this storm event resulted in flooding throughout the City, with sewer back-ups in the neighborhoods of combined sewer Areas 2 and 3.

The USGS Hydrologic Atlas (HA-70) shows that the historic drainage divide between the Fox River and the Mill Creek watersheds is consistent with the area shown on the "Combined Sewer Area 3" exhibit. This will be important to note when submitting any proposed improvements for an IDOT Highway Permit. The topography of Area #2 (i.e. Elm Street) is relatively flat and is more characteristic of the areas to the north. Area #3 is defined more by relatively steep slopes and only occasional flat areas. Most important is the well-defined "valley" between Walnut and Blaine Streets starting at Walnut Park, which turns southward just west of IL 31. It also is evident that most inlets occur only at intersections and sag locations, often leaving entire blocks without an inlet, which may be problematic for some of those occasional flat areas. It also appears that additional inlets have been added over the years to increase inlet capacity since there is a variety of grate and curb boxes even within the same intersection.



Item A: As is characteristic of the neighborhood, the only drainage grates for a long stretch is in the sag location at 403 Elm Street. Proper grate selection will address both inlet capacity and potential clogging due to the mature and significant vegetation in the area. The separation of the inlets at Elm Street and IL 31 will require an IDOT Highway Permit. As a Program Management consultant for the Hydraulics Section, RSA has first-hand experience reviewing Highway Permits for work similar to the proposed improvements. It is RSA's opinion that Hydraulics will require the applicant to demonstrate that the hydraulic grade line for the *existing* system within the State ROW will not surcharge above any rims in the proposed condition. It is recommended that a preliminary meeting with the Traffic Permit section occur to discuss the scope of work.

Item B: As noted above, the "valley" creates sag locations on Jackson, Jefferson, Walnut, and Blaine Streets that have significant tributary areas. The sag locations at Walnut and Blaine Streets appear to be drained by a separate storm sewer system and therefore would not contribute to combined sewer back-ups, but they would figure into the analysis of the 27" outfall sewer capacity. The sag locations at Jackson and Jefferson Streets are only connected to the combined sewer according to the City's utility map. The number and size of the inlets at the intersections of Jackson/Blaine and Jefferson/Blaine appears to indicate an attempt at capturing as much surface runoff as possible upstream of these sag locations. Any preliminary drainage analysis should be explicit in its assumption of by-pass flows and accounted for when designing the conveyance from the sag locations. Morton Street naturally drains towards IL 31, but IDOT may also be concerned that the lack of both inlets and gutter (i.e. due to resurfacing) causes a significant amount of by-pass flow towards the sag location in the State ROW. Therefore, the preliminary drainage analysis may need to look at the possibility of adding inlets in the upstream areas to reduce the sewer size required to drain these sag locations.



PROJECT APPROACH

DELIVERABLES

RSA will provide construction drawings, calculations, opinion of cost, and IDOT permit application for ITEM 'A' (Area 2), as described below. RSA will provide exhibits, calculations, preliminary opinion of cost, and report for ITEM 'B' (Area 3), as described below.

PROJECT TASKS

The following task descriptions illustrate how RSA proposes to deliver a top quality project on time and within budget as well as give additional detail into the philosophy and methods that will be employed.

ITEM 'A' (Area 2)

1. Data Collection Services:

- a. **Review Plans, As-builts, GIS:** Using Batavia's PWD utility atlas map and engineering plans, conduct a field visit to confirm the upstream limits of the storm sewer network(s) tributary to the Jefferson/Elm and IL Rte.31/Elm intersection.
- b. **Topographic Survey Along ROW:** Conduct topographic surveys along Elm Street: 1) from just east of 403 Elm Street to just west of the intersection of Jefferson/Elm (approx. 500' long and to 10' beyond the apparent ROW); and 2) at the intersection of IL Rte.31/Elm (approx. 75' each-way from the centerline-centerline, and to 10' beyond the apparent ROW). Pertinent surface features will be located per State Plane East coordinates and City of Batavia Geodetic Control obtained using Topcon GRS-1 equipment (0.1' H:V accuracy). Invert elevations and pipe sizes will also be collected concurrently. [Property line and ROW line surveys are not included and will only be referenced as apparent, per City GIS information provided.] Base sheets, suitable for use in preparation of construction document preparation, will be included in this phase.

2. Prepare Final Design Plans:

- a. **Plan Preparation:** The base sheets noted above will be utilized for the contract drawing plan/profile sheets illustrating the proposed storm sewer improvements. In addition to the plan/profile drawings of the subject improvements, the contract plan set will also include: title sheet, general notes, traffic control (as appropriate), typical sections, and details.
- b. **Storm Sewer Design/Calculations:** Based on the plan/GIS review, and field confirmation noted above, as well as the topographic survey data collected, storm sewer sizing calculations (10-year design utilizing the Rational Method/StormCAD, or alternately SCS/XPSWMM) will be performed. The drainage area to each inlet cluster (as appropriate) will be determined, as well as times of concentration (Tc) and runoff coefficients (C or CN) in accordance with IDOT Drainage Manual methods. Calculations shall be summarized and compiled into a booklet form for supporting documentation and review purposes.



- c. **Quantities/Opinion of Cost/Bid Specifications:** Based on the plans described above, construction quantities will be tabulated and an Engineer's Opinion of the Probable Cost of Construction will be prepared. In coordination with City staff, bidding documents (bid book) will also be prepared. Bidding will be conducted by the City, however, a review of bids (limited to no more than 1-manhour) will be provided.
- d. **IDOT Permit Application:** The above-described storm sewer calculations prepared for the ILRte.31/Elm intersection will be supplemented as appropriate for inclusion with the submittal of a Drainage Connection Checklist package. No design of a relief sewer (or oversizing design) of the existing 18" is included. Connection of new inlets to the existing 18" storm sewer will be limited to the available capacity of the line. (It assumed that the existing 18" storm sewer is under IDOT control.)
- e. **Meetings with Staff-Review Findings/City Presentation:** Submit the storm sewer calculations and pre-final plans to Batavia PWD for review and concurrence before proceeding with completion of the construction documents. With staff approval, the final documents will be completed and submitted for IDOT permitting, and to the City for final review. Upon receipt of approval from IDOT, a presentation to the City Council will be made and documents made ready for bidding by the City.

ITEM 'B' (Area 3)

1. Data Collection Services:

- a. **Review Plans, As-builts, GIS:** Using Batavia's PWD utility atlas map and engineering plans, as well as coordination with RJN's data collection for the sanitary sewer, conduct a field visit to confirm the upstream limits of the storm sewer network(s) tributary to the Morton/IL Rte.31 intersection.
- b. **Topographic Survey:** Conduct a topographic survey along the route of the existing 27" storm sewer. Pertinent surface features will be located per State Plane East coordinates and City of Batavia Geodetic Control obtained using Topcon GRS-1 equipment (0.1' H:V accuracy). Invert elevations and pipe sizes will also be collected concurrently. [Property line and ROW line surveys are not included and will only be referenced as apparent, per City GIS information provided.] Throughout the 41-acres of Area 3, survey will be limited to the collection of data to reflect the approximate roadway centerline elevation of inlet clusters, to confirm reasonableness with the contour elevations of the City/County digital mapping.

2. Storm Sewer Capacity Study:

- a. **Develop Tributary Area / C (or CN) / Tc:** Based on IDOT Drainage Manual methods and using the Kane County 2' contours, aerial images, and topographic survey, the drainage area to each inlet cluster (as appropriate) will be determined, as well as times of concentration (Tc) and runoff coefficients (C or CN). Prepare 1"=100' planview aerial exhibit illustrating drainage areas and inlet cluster (i.e. 2 or more inlets) locations.
- b. **Storm Sewer Design/Calculations:** Based on the plan/GIS review, and field confirmation noted above, as well as the topographic survey data collected, storm sewer sizing calculations (10-year design utilizing the Rational Method/StormCAD, or alternately SCS/XPSWMM) will be performed. Calculations shall be summarized and compiled into a booklet form for supporting documentation and review purposes. Exhibits will include schematic planview and schematic profile drawings along roads within Area 3, and along the 27" outfall sewer.



- c. **Coordinate with RJN:** Discuss proposed storm sewer design with RJN, and provide information as to amount of flow/water potentially being collected by construction of storm sewer-only runs.
- d. **Report Preparation:** A narrative report of the findings will be prepared. Calculations shall be summarized and compiled into a booklet form for supporting documentation and review purposes.
- e. **Quantities/Preliminary Opinion of Cost:** Based on the findings described above, construction quantities will be tabulated and a Preliminary Engineer's Opinion of the Probable Cost of Construction will be prepared. [If it is determined that an off-site relief sewer to the existing 27" storm sewer is required, quantities/costs relating to potential extraordinary items (due to subsurface soils, groundwater, and/or bedrock conditions) will be included subject to receipt from the City of soils boring information along the route.]
- f. **Meetings with Staff-Review findings/City Presentation:** Submit the storm sewer calculations and pre-final concept drawings described above to Batavia PWD for review and concurrence before proceeding with completion of the documents. With staff approval, the final documents will be completed and submitted to the City for final review. A presentation of the final documents will be made to the City Council.





**REMPE-SHARPE
& Associates, Inc.**

Principals

J. Bibby P.E. S.E.
D. A. Watson P.E.

324 West State Street
Geneva, Illinois 60134
Phone: 630/232-0827 – Fax: 630/232-1629

B. Bennett P.E. CFM
G. Ulreich P.E.
L. Vo P.E.
J. Whitt P.E.

CONSULTING ENGINEERS

May 13, 2016

City of Batavia
Engineering Department
Andrea M. Podraza, P.E., CFM
Senior Civil Engineer
200 North Raddant Road

Re: Area 2 & 3 Storm Separation – Cost Proposal

Dear Ms. Podraza,

Rempe-Sharpe & Associates, Inc. proposes to provide engineering services in accordance with the City's Standard Consultant agreement and as submitted (bound separately) for the "Area 2 & 3 Storm Separation – Statement of Qualifications" for a lump sum amount of:

Lump Sum Amount \$25,975.00

with subtotals:

ITEM 'A' (Area 2)	\$12,985.00
ITEM 'B' (Area 3)	\$12,990.00

We would like to thank the City of Batavia for your consideration. Please contact the undersigned at 630-232-0827x217 with any questions regarding the above.

Sincerely,

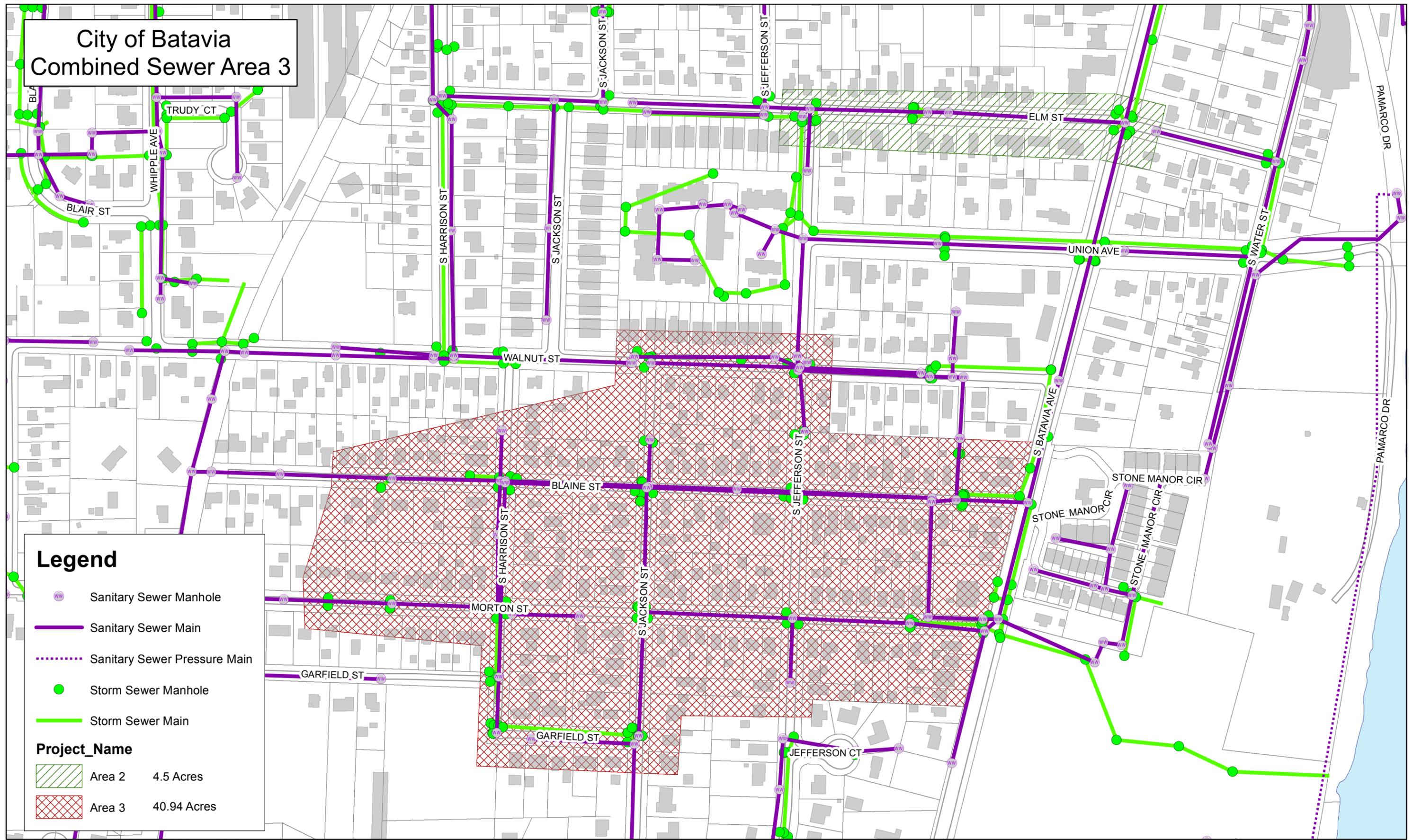
REMPE-SHARPE & ASSOCIATES, INC.
BY:

Daniel A. Watson, P.E.
Vice President

City of Batavia Combined Sewer Area 3

Legend

- Sanitary Sewer Manhole
 - Sanitary Sewer Main
 - Sanitary Sewer Pressure Main
 - Storm Sewer Manhole
 - Storm Sewer Main
- Project_Name**
- Area 2 4.5 Acres
 - Area 3 40.94 Acres



Maps and data provided by the City of Batavia are not intended to have, nor do they have, the accuracy of surveys or legal descriptions of land areas. GIS data obtained from the City of Batavia is intended for representational use only. Reliance on such maps and data is at the risk of the recipient. This information, in either electronic or map form, is provided "as is". No warranty expressed or implied is made regarding the accuracy, timeliness, or completeness of the data, nor shall the act of distribution constitute any such warranty. This disclaimer applies both to individual use of the data and aggregate use with other data.

CITY OF BATAVIA

DATE: May 25, 2016
TO: Committee of the Whole – May 31, 2016
FROM: Andrea M. Podraza, P.E. – Senior Civil Engineer
SUBJECT: **-Resolution 16-52-R - Authorizing execution of the agreement with Conservation Foundation relating to Maintenance of Windmill Lakes Detention Area**

The Conservation Foundation (TCF) and City of Batavia (COB) have an existing maintenance agreement for Windmill Lakes Detention Basin. The agreement gives TCF authority to manage the basin on COB's behalf. The initial agreement (Res 10-71-R) between the two parties only went from June 2011 until June 2014; not the full 5 years as the maintenance agreement language suggested. In November 2014 we brought this back to Committee to extend the original agreement to June 2016 (Res 14-131-R) and modified the agreement language to reflect the process that was in place. The original 5 year timeframe since implementation and rehabilitation of this basin occurred is approaching at the end of June. Staff is reviewing this agreement again to reestablish terms for the next 5-years. The ending date of the agreement was the only thing that has been revised to the agreement since the last one. Both the City and TCF have agreed to the end date of December 31st each year to coincide better with a growing season instead to having it renew right in the middle. The new agreement will be in effect until December 31, 2016.

History:

Back in July 2010, the City met with Holy Cross Church (HCC), Main South Limited (MSL), and TCF, to discuss the annual fees for maintenance of the basin by the City. We discussed options on how to move forward with the maintenance. The main concern for both parties, Holy Cross and Main South Ltd., is for signing onto the maintenance responsibilities into perpetuity at a set amount from today's date with an annual increase without knowing what will happen after the facility is constructed. We collectively agreed back in 2010 that a 5-year agreement with each party, MSL and HCC, paying their respective amounts based on percentage as previously discussed would be established. The original agreement stated that it began September 1, 2010 but construction did not start until spring of 2011 with the plantings of the basin being completed in June 2011. After the initial 5-year period, which is set to expire in the summer of 2016, we would revisit maintenance costs and work out a continuation of the previous agreement. That agreement got the project started, utilizing the available funds, establishing the facility and helped resolve the environmental issues in their previous state. According to TCF at that time most basin maintenance fees are reduced after a facility has been stabilized and all plantings have taken root, which typically occurs within 2-3 growing seasons.

Currently the administrative owner of the Windmill Lakes Center is tied to the Golden Corral property, therefore no one has been paying into the fund for maintenance for over 19 months. The church paid a lump sum payment for 5 years at the beginning and it was in the original agreement that they would just pay for that initial time period. Currently the City is talking with the owners in the Windmill Lakes Center and have been unsuccessful in having them form an Owners Association. If an Owners Association is not formed the only recourse the City has to receive payment for the basin maintenance is implementing an SSA, besides liening the property



for current overdue fees, but in the meantime the Council should be prepared for the City to have to pay to maintain the site. The Conservation Foundation has solicited for bids for the upcoming season and prorated rates for the next 5 seasons (2016 to 2020) and have estimated \$19,400 for management and \$5800 for burning and erosion control measures/issues. The City should be ready to fund this if no headway is made with the current owners.

At this time Staff is looking to extend another agreement for 5 years for management and maintenance and make the agreement follow a calendar year schedule.

Please find attached:

- Resolution 16-52-R - Authorizing execution of the Agreement with the Conservation Foundation relating to the Maintenance of Windmill Lakes Detention Area**
- **Agreement between The City of Batavia and The Conservation Foundation, Exh 1**
- **Windmill Lakes 2016 Management Plan, Long-Term Management Plan, and Cost Estimates (prepared by ENCAP, Inc.), Exh A**
- **Windmill Lakes Extended 2 year contract with The Conservation Foundation, Exh B**
- **Windmill Lakes Original 3 year contract with The Conservation Foundation, Exh C**

Recommended Action:

Staff recommends the Committee of the Whole approve:

1. Resolution 16-52-R the agreement with Conservation Foundation relating to Maintenance of Windmill Lakes Detention Area

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 16-52-R**

**APPROVING AGREEMENT WITH CONSERVATION FOUNDATION
RELATING TO MAINTENANCE OF WINDMILL LAKES DETENTION AREA**

WHEREAS, the City of Batavia is the owner of several parcels of property which include a detention pond servicing the Windmill Lakes development and other areas in the City's drainage system; and

WHEREAS, the drainage from this detention pond and this area in general, had caused degradation of the natural area downstream for it, also threatening Mill Creek to the extent that regrading and replanting of the area was necessary, and;

WHEREAS, by means of cooperation with adjacent landowners and the Conservation Foundation, and the Army Corps of Engineers, funding for design and construction of the needed improvements was been obtained, along with a revenue source for future maintenance; and

WHEREAS, the Conservation Foundation has the expertise to manage such construction, under the terms of an agreement (Agreement) with the City, such Agreement attached hereto as Exhibit 1 and incorporated by reference.

WHEREAS, the original agreement, referenced in Resolution 10-71-R, and the subsequent agreement timeframes referenced in Resolution 14-131-R have both since expired and the Conservation Foundation and City have agreed to extend management of the Windmill Lakes detention basins.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute the Ecological Management Plan and Agreement with the Conservation Foundation attached hereto as Exhibit 1.

CITY OF BATAVIA, ILLINOIS RESOLUTION 16-52-R

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 6th day of June, 2016

APPROVED by me as Mayor of said City of Batavia, Illinois, this 6th day of June, 2016.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Fischer				
2	Callahan					Wolff				
3	Hohmann					Chanzit				
4	Mueller					Stark				
5	Botterman					Theelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office: Mayor and 14 aldermen										

ATTEST:

Heidi Wetzel, City Clerk

EXHIBIT 1

**AN AGREEMENT BETWEEN THE CITY OF BATAVIA AND
THE CONSERVATION FOUNDATION**

THIS AGREEMENT is entered into by and between the CITY OF BATAVIA (CITY), and THE CONSERVATION FOUNDATION (TCF), an Illinois not-for-profit corporation, concerning the provision of ecological management services by TCF to the CITY as described herein.

WHEREAS, the CITY and TCF share mutual goals of maintaining and improving water quality and natural habitat in the Mill Creek watershed; and

WHEREAS, the CITY owns a detention basin (BASIN) (Exhibit A) tributary to Mill Creek that was retrofitted in June 2011 to reduce erosion and protect the water quality and habitat of an adjacent sedge meadow protected by a conservation easement held by TCF; and

WHEREAS, TCF retains professional staff necessary to perform various tasks associated with managing and restoring natural areas and managing contracts with ecological management firms; and

WHEREAS, the CITY and TCF both desire to utilize TCF personnel to provide services for the CITY to provide ecological management for the basin.

NOW, THEREFORE, in consideration of the above stated preambles and the mutual covenants and promises hereinafter contained, the CITY and TCF formally covenant, agree, and bind themselves as follows to wit:

1. Terms. The term of this agreement shall commence on July 1, 2016 and end on December 31, 2021. The parties acknowledge that this agreement, subject to any amendment thereto, may be continued in future years, however, such continuation is subject to written approval by both parties as part of the 5-year cycle.

2. Ecological Management. TCF is authorized, to manage the Basin in accordance with the provisions of the Ecological Management Plan attached hereto as Exhibit A and made a part hereof. TCF, in its sole discretion, is further authorized to designate and contract with an ecological management firm or other qualified entity to implement management activities. Each contractor shall add the City as an Additional Insured to its professional liability insurance. As specified in the Ecological Management Plan, management objectives will be evaluated on a five year basis with approval from the City and TCF. This agreement adds six months to the five-year cycle to keep this agreement in line with a typical growing / maintenance cycle. The next five-year evaluation will occur in 2021.

Notwithstanding anything to the contrary contained herein, TCF shall have no responsibility to maintain the Stormwater Management System (except for the vegetation in the Stormwater Management System, which shall be maintained by TCF), which

responsibility shall continue to reside with the CITY, but the CITY agrees to notify TCF in advance of any management of the Stormwater Management System that may impact the Basin and further agrees to promptly restore any portion of the Basin that may be damaged by any act of the CITY with respect to the Stormwater Management System which it reasonable believes could cause damage to the Basin.

3. Management Practices. TCF may use any and all methods and practices necessary or appropriate for the sound conservation management of the Basin in accordance with the Ecological Management Plan. These methods and practices shall include but not be limited to: (i) controlled burns in such frequency, scope, and duration as TCF deems appropriate, (ii) removal of undesirable and invasive species of plants and animals, and (iii) selective uses of herbicides.

4. Duties of TCF. TCF shall be responsible for planning and implementing the restoration and maintenance of the Basin in accordance with the Ecological Management Plan.

4(a) TCF shall evaluate the ecological health of the Basin on a five- year cycle, make management recommendations and provide the City with a revised 5-year Budget for Assessments to be based on for the subsequent 5-year period. Budget shall take into consideration funds held in the Basin account and any investment income earned thereon. The Budget shall compensate TCF for time spent managing contracts, monitoring the site and compiling reports for the City. This compensation will not exceed \$1,000/year.

4(b) TCF shall furnish annually the City a list of management activities to be carried out in the Basin so the City, at its discretion, may notify residents in the Basin area.

4(c) TCF shall furnish the City at most quarterly an invoice with backing documentation of expenses in connection with TCF's ecological management of the Basin.

5. Duties of the CITY It shall be the responsibility of the CITY to collect the Annual Basin Assessments, and to compensate TCF when invoiced for their services.

6. Purpose and Use of Assessments. The Assessments shall be paid to COB and shall be used and distributed to TCF exclusively for administration and the care and ecological management of the Basin in accordance with the Ecological Management Plan. All Assessments paid to COB shall be maintained in an account under the sole control of COB. Funds may be withdrawn from the Basin Account by COB and expended for the purposes herein provided. The Basin Account shall remain at all times the sole property of COB and under COB's exclusive control. While such funds are held by COB, they shall be paid to TCF promptly as services are rendered and invoiced.

7. Indemnity. TCF hereby agrees to indemnify and hold the City harmless from any and all liability, claims, attorney's fees or costs of any kind or type whatsoever, including but not limited to, attorney's fees, damages and interest, arising out of or claimed to arise out of this Agreement. The recipient and any of their subcontractors shall, at their own expense, obtain and maintain Workers' Compensation insurance to cover persons

employed in connection with services under this agreement. The limits for the Workers' Compensation coverage shall be no less than the statutory limits required by the State of Illinois.

City of Batavia
An Illinois Municipal Corporation

The Conservation Foundation
An Illinois not-for-profit corporation

By: _____

By: _____

Its _____

Its: _____

Attest: _____

Attest _____

Windmill Lakes 2015/2016 Management Recap

In June 2015, ENCAP, Inc. applied herbicide to non-native, invasive species focusing on Thistle (*Cirsium* spp.), Reed Canary Grass (*Phalaris arundinacea*), Common Reed (*Phragmites australis*) and Crown Vetch (*Coronilla varia*). The following non-native, annual species were also weed whacked to prevent seed set: Dame's Rocket (*Hesperis matronalis*), Wild Carrot (*Daucus carota*) and Ragweed (*Ambrosia* spp.).

In August 2015, ENCAP, Inc. applied herbicide to non-native, invasive species focusing on Reed Canary Grass, Common Reed, Thistle, Parsnip (*Pastinaca sativa*) and Crown Vetch. The following non-native, annual species were also weed-whacked to prevent seed set: Ragweed, Wild Carrot and Foxtail (*Setaria* spp.).

In April 2016, ENCAP, Inc. performed a prescribed burn within the naturalized basin. The burn achieved 60-75% burn coverage.

Windmill Lakes 2016 Management Plan and Cost Estimates

The naturalized detention area at Windmill Lakes was designed to contain native plant communities in order to provide erosion control and stabilization, stormwater filtration and infiltration, and wildlife habitat benefits. Quality plant communities, especially within the buffer areas, are continuing to be established at this location. Continued vegetative maintenance is necessary in order to maintain and/or improve the vegetative quality of the established areas, and should continue in perpetuity.

This document outlines the typical maintenance program required to maintain the plant communities within the naturalized area. However, it is important to note that the maintenance plan must be flexible to react to conditions as observed in the field. For example, if there was a lack of annual weeds in the prairie community, a spring mowing may not be required. Congruently, if invasive species become prevalent in an area, herbicide application and reseeding may be required, as necessary.

The long term manager in charge of the maintenance should assess the site annually. The assessment should briefly outline problem areas each year, document the maintenance that has occurred, and project future maintenance activities.

2016 Management Plan

Typical maintenance activities and approximate timing are outlined in the table below and may change from year to year based on site conditions. Typical costs associated with each item are also listed below in Table 1.

Table 1. Long-Term Management Activities						
Activity	As Needed	Spring	Summer	Fall	Comments	Costs
Debris / Litter Removal	X				Removal of wind-blown refuse	\$200 each
Herbicide Application	X	X	X	X	Treat small communities of perennial invasive plants, as necessary	\$750 each

					throughout the growing season	
Mowing / Cutting	X	X		X	Typically once in spring and once in late summer or fall, or as needed	\$350 each
Supplemental re-seeding	X				Overseed areas that are bare due to herbicide application as necessary	\$2,000 per acre

MAINTENANCE ACTIVITY STANDARDS

Debris / Litter Removal: The removal of wind-blown refuse from natural areas to improve the aesthetics of the area and facilitate vegetative maintenance.

Herbicide Application: Application of herbicide to control invasive species may be necessary if perennial weeds become established. A certified and licensed pesticide applicator and/or operator shall select herbicide, which is non-toxic to animal and aquatic life, and shall apply the herbicide by the appropriate method, to prevent killing of desirable native species.

Mowing / Cutting: When mowing is utilized as a maintenance technique during the growing season, it shall take place prior to or when non-native and weedy species are flowering so as to prevent seed set. This technique is best used for annual and biennial species, though it is useful in the prevention of seed set in perennial species. A weed whip may be used for smaller patches, terrain unsuitable for a mower, areas without mower access, or when desirable species need to be avoided.

Supplemental Reseeding: Native seed mixes shall be hand broadcasted over the soil surface and raked within areas that are bare, or sparsely vegetated, due to herbicide application. Additional restoration to turf or prairie areas may be required if equipment needs to be utilized for seedbed preparation.



2585 Wagner Ct.
DeKalb, IL 60115
Phone: 815.748.4500
Fax: 815.748.4255
www.encapinc.net

PROPOSAL NO. 16-0419E

April 19, 2016

Ms. Jennifer Hammer
The Conservation Foundation
10S404 Knoch Knolls Road
Naperville, Illinois 60565
jhammer@theconservationfoundation.org

Costs in line items 1 & 2 to be multiplied by 2 for a total of \$4400 for 2016 per Jennifer Hammer at TCF.

**RE: Windmill Lakes 2016 Management (Approximately 4.3 acres)
(SW Corner of Randall Road and Main Street, Batavia, IL)**

#	DESCRIPTION OF WORK	UNIT	# OF UNITS	UNIT COST	COST
1	Herbicide Treatments 2016	EACH	2	\$750.00	\$1,500.00
2	Selective Cutting 2016	EACH	2	\$350.00	\$700.00
Sub-Total 2016					\$2,200.00
1	Debris/Litter Removal- As Necessary	EACH	TBD	\$200.00	TBD
2	Supplemental Re-Seeding	ACRE	TBD	\$2,000.00	TBD
TOTAL 2015-2016					\$2,200.00

* See attached management plan for further information.

Payment Agreement

The Conservation Foundation, (hereinafter "Client") shall be solely liable for the timely payment of all amounts invoiced under this proposal. Invoices will be tendered by ENCAP, Inc. ("ENCAP") from time to time, but no more frequently than every two weeks, and shall be due and payable upon receipt. If Client objects to all or any portion of an invoice, Client shall nevertheless timely pay the undisputed amount of such invoice and promptly advise ENCAP in writing of the reasons for disputing any amount.

Client shall pay an additional charge of two (2) percent (or the maximum percentage allowed by law, whichever is lower) of the invoiced amount per month for any payment received by ENCAP more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute and resolved in favor of Client. Payments shall first be applied to accrued interest and then to the unpaid principal amount.

If Client fails to pay invoiced amounts within thirty (30) calendar days of the date of the invoice, ENCAP may at any time, without waiving any other claim against Client and without incurring any liability to Client, suspend or terminate performance under this Agreement as long as any hazardous conditions created by ENCAP's previously performed services are rendered non-hazardous to Clients employee's, agents and subcontractors, the general public, and the environment. Termination shall not relieve Client of its obligation to pay amounts incurred up to termination. ENCAP shall be entitled to recover any and all costs of collection associated with recovery of amounts due under this Payment Agreement, including but not limited to reasonable attorney's fees.

Client will indemnify and hold harmless ENCAP and its representatives, agents, employees, and successors and assigns from and against any and all claims, suits, actions, losses, penalties, fines, and damages of any nature whatsoever, and shall pay any reasonable attorney's fees, expert witnesses fees, and ENCAP fees, and court costs arising or resulting from (1) Client's breach of this Agreement; or (2) Client's negligence or intentional misconduct.

Client shall accept full responsibility for payment notwithstanding any other agreement with owner or other party, and in no event will any provision in a contract, agreement, or understanding which conditions Client's payment to ENCAP upon receipt of the payment from any other party relieve Client from responsibility for payment to ENCAP.

By: ENCAP, Inc.

By: The Conservation Foundation

Samantha Melton

Date

Jennifer Hammer

Date

CITY OF BATAVIA

Date: November 14, 2014
To: Committee of the Whole – November 25, 2014
From: Andrea M. Podraza, P.E. – Civil Engineer
Re: **Approving agreement with Conservation Foundation relating to Maintenance of Windmill Lakes Detention Area**

-Resolution 14-131-R - Authorizing execution of the agreement with Conservation Foundation relating to Maintenance of Windmill Lakes Detention Area

The Conservation Foundation (TCF) and City of Batavia (COB) had a maintenance agreement for Windmill Lakes Detention Basin. The initial agreement between the two parties only went until June 2014 and not the full 5 years as the maintenance agreement language suggested. At this time COB and TCF would like to extend the original agreement to June 2016 and modify the agreement language to reflect the current process that is in place. Staff will revisit this agreement again at the end of the original 5-year period and reestablish terms for the following 5-years.

Back in July 2010, the City met with Holy Cross Church (HCC), Main South Limited (MSL), and TCF, to discuss the annual of fees for maintenance of the basin by the City. We discussed options on how to move forward with the maintenance. The main concern for both parties, Holy Cross and Main South Ltd., is for signing onto the maintenance responsibilities into perpetuity at a set amount from today's date with an annual increase without knowing what will happen after the facility is constructed. We collectively agreed back in 2010 that a 5-year agreement with each party, MSL and HCC, paying their respective amounts based on percentage as previously discussed would be established. The original agreement stated that it began September 1, 2010 but construction did not start until spring of 2011 with the plantings of the basin being completed in June 2011. After the initial 5-year period, which is set to expire in the summer of 2016, we would revisit maintenance costs and work out a continuation of the previous agreement. That agreement got the project started, utilizing the available funds, establishing the facility and helped resolve the environmental issues in their previous state. According to TCF most basin maintenance fees are reduced after a facility has been stabilized and all plantings have taken root, which typically occurs within 2-3 growing seasons.

At this time Staff is looking to make all agreements based on the same time cycle.

Please find attached:

- Resolution 14-131-R - Authorizing execution of the Agreement with the Conservation Foundation relating to the Maintenance of Windmill Lakes Detention Area**
- Agreement between The City of Batavia and The Conservation Foundation, Exh 1**
- Windmill Lakes 2014 Management Plan, Long-Term Management Plan, and Cost Estimates (prepared by ENCAP, Inc.), Exh A**
- Windmill Lakes Original 3 year contract with The Conservation Foundation, Exh B**



Page 2 of 2

November 14, 2014

Re: Agreement with the Conservation Foundation for Windmill Lakes Detention Area
COW Meeting – November 25, 2014

Recommended Action:

Staff recommends for the Committee of the Whole approve the following:

1. The agreement with Conservation Foundation relating to Maintenance of Windmill Lakes Detention Area
2. Resolution 14-131-R.

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 14-131-R**

**APPROVING AGREEMENT WITH CONSERVATION FOUNDATION
RELATING TO MAINTENANCE OF WINDMILL LAKES DETENTION AREA**

WHEREAS, the City of Batavia is the owner of several parcels of property which include a detention pond servicing the Windmill Lakes development and other areas in the City's drainage system; and

WHEREAS, the drainage from this detention pond and this area in general, had caused degradation of the natural area downstream for it, also threatening Mill Creek to the extent that regrading and replanting of the area was necessary, and;

WHEREAS, by means of cooperation with adjacent landowners and the Conservation Foundation, and the Army Corps of Engineers, funding for design and construction of the needed improvements was been obtained, along with a revenue source for future maintenance; and

WHEREAS, the Conservation Foundation has the expertise to manage such construction, under the terms of an agreement (Agreement) with the City, such Agreement attached hereto as Exhibit 1 and incorporated by reference.

WHEREAS, the original agreement, referenced in Resolution 10-71-R, had a termination date that ended prior to the termination date of the revenue source, the Conservation Foundation and City have agreed to extend management of the Windmill Lakes detention basins.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute the Ecological Management Plan with the Conservation Foundation attached hereto as Exhibit 1.

CITY OF BATAVIA, ILLINOIS RESOLUTION 14-131-R

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 1st day of December, 2014

APPROVED by me as Mayor of said City of Batavia, Illinois, this 1st day of December, 2014.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Fischer				
2	Callahan					Wolff				
3	Hohmann					Chanzit				
4	Saam					Stark				
5	Vasilion					Theelin Atac				
6	Cerone					Clark				
7	McFadden					Brown				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office: Mayor and 14 aldermen										

ATTEST:

Heidi Wetzel, City Clerk

**AN AGREEMENT BETWEEN THE CITY OF BATAVIA AND
THE CONSERVATION FOUNDATION**

THIS AGREEMENT is entered into by and between the CITY OF BATAVIA (CITY), and THE CONSERVATION FOUNDATION (TCF), an Illinois not-for-profit corporation, concerning the provision of ecological management services by TCF to the CITY as described herein.

WHEREAS, the CITY and TCF share mutual goals of maintaining and improving water quality and natural habitat in the Mill Creek watershed;
And

WHEREAS, the CITY owns a detention basin (BASIN) (Exhibit A) tributary to Mill Creek that was retrofitted in June 2011 to reduce erosion and protect the water quality and habitat of an adjacent sedge meadow protected by a conservation easement held by TCF; and

WHEREAS, TCF retains professional staff necessary to perform various tasks associated with managing and restoring natural areas and managing contracts with ecological management firms; and

WHEREAS, the CITY and TCF both desire to utilize TCF personnel to provide services for the CITY to provide ecological management for the basin.

NOW, THEREFORE, in consideration of the above stated preambles and the mutual covenants and promises hereinafter contained, the CITY and TCF formally covenant, agree, and bind themselves as follows to wit:

1. Terms. The term of this agreement shall commence on July 1, 2014 and end on June 30, 2016. The parties acknowledge that this agreement, subject to any amendment thereto, may be continued in future years, however, such continuation is subject to written approval by both parties as part of the 5-year cycle.

2. Ecological Management. TCF is authorized, to manage the Basin in accordance with the provisions of the Ecological Management Plan attached hereto as Exhibit A and made a part hereof. TCF, in its sole discretion, is further authorized to designate and contract with an ecological management firm or other qualified entity to implement management activities. Each contractor shall add the City as an Additional Insured to its professional liability insurance. As specified in the Ecological Management Plan, management objectives will be evaluated on a five year basis with approval from the City and TCF. This agreement adds two years to the original agreement to make a five-year maintenance plan, therefore the next five-year evaluation will occur in 2016.

Notwithstanding anything to the contrary contained herein, TCF shall have no responsibility to maintain the Stormwater Management System (except for the vegetation in the Stormwater Management System, which shall be maintained by TCF), which

responsibility shall continue to reside with the CITY, but the CITY agrees to notify TCF in advance of any management of the Stormwater Management System that may impact the Basin and further agrees to promptly restore any portion of the Basin that may be damaged by any act of the CITY with respect to the Stormwater Management System which it reasonable believes could cause damage to the Basin.

3. Management Practices. TCF may use any and all methods and practices necessary or appropriate for the sound conservation management of the Basin in accordance with the Ecological Management Plan. These methods and practices shall include but not be limited to: (i) controlled burns in such frequency, scope, and duration as TCF deems appropriate, (ii) removal of undesirable and invasive species of plants and animals, and (iii) selective uses of herbicides.

4. Duties of TCF. TCF shall be responsible for planning and implementing the restoration and maintenance of the Basin in accordance with the Ecological Management Plan.

4(a) TCF shall evaluate the ecological health of the Basin on a five- year cycle, make management recommendations and provide the City with a revised 5-year Budget for Assessments to be based on for the subsequent 5-year period. Budget shall take into consideration funds held in the Basin account and any investment income earned thereon. The Budget shall compensate TCF for time spent managing contracts, monitoring the site and compiling reports for the City. This compensation will not exceed \$1,000.

4(b) TCF shall furnish annually the City a list of management activities to be carried out in the Basin so the City, at its discretion, may notify residents in the Basin area.

4(c) TCF shall furnish the City at most quarterly an invoice with backing documentation of expenses in connection with TCF's ecological management of the Basin.

5. Duties of the CITY It shall be the responsibility of the CITY to collect the Annual Basin Assessments, and to compensate TCF when invoiced for their services.

6. Purpose and Use of Assessments. The Assessments shall be paid to COB and shall be used and distributed to TCF exclusively for administration and the care and ecological management of the Basin in accordance with the Ecological Management Plan. All Assessments paid to COB shall be maintained in an account under the sole control of COB. Funds may be withdrawn from the Basin Account by COB and expended for the purposes herein provided. The Basin Account shall remain at all times the sole property of COB and under COB's exclusive control. While such funds are held by COB, they shall be paid to TCF promptly as services are rendered and invoiced.

7. Indemnity. TCF hereby agrees to indemnify and hold the City harmless from any and all liability, claims, attorney's fees or costs of any kind or type whatsoever, including but not limited to, attorney's fees, damages and interest, arising out of or claimed to arise out of this Agreement. The recipient and any of their subcontractors shall, at their own expense, obtain and maintain Workers' Compensation insurance to cover persons

employed in connection with services under this agreement. The limits for the Workers' Compensation coverage shall be no less than the statutory limits required by the State of Illinois.

City of Batavia
An Illinois Municipal Corporation

The Conservation Foundation
An Illinois not-for-profit corporation

By: _____

By: _____

Its _____

Its: _____

Attest: _____

Attest _____

Windmill Lakes 2014 Management Plan, Long-Term Management Plan, and Cost Estimates

The naturalized detention area at Windmill Lakes was designed to contain native plant communities in order to provide erosion control and stabilization, stormwater filtration and infiltration, and wildlife habitat benefits. Quality plant communities are continuing to be established at this location. Continued vegetative maintenance is necessary in order to maintain and/or improve the vegetative quality of the established areas, and should continue in perpetuity.

This document outlines the typical maintenance program required to maintain the plant communities within the naturalized area. However, it is important to note that the maintenance plan must be flexible to react to conditions as observed in the field. For example, if there was a lack of annual weeds in the prairie community, a spring mowing may not be required. Congruently, if invasive species become prevalent in an area, herbicide application and reseedling may be required, as necessary.

The long term manager in charge of the maintenance should assess the site annually. The assessment should briefly outline problem areas each year, document the maintenance that has occurred, and project future maintenance activities. A 2014 Maintenance Plan is outlined in Table 1 below, and will be completed by ENCAP, Inc.

Table 1. 2014 Proposed Management Activities					
Activity	As Needed	Spring	Summer	Fall	Comments
Site Assessment			X		Site inspection to evaluate the condition of the natural area and direct future maintenance activities (may be conducted in conjunction with maintenance activities)
Debris / Litter Removal	X				Removal of wind-blown refuse (to be completed when on-site for other activities)
Herbicide Application		X	X	X	Treat small communities of perennial invasive plants at least 3 times throughout the growing season (Spring = May/June; Summer = July/August; Fall = September/October)
Mowing / Cutting or Weed-Whacking		X		X	Selectively cut non-native annual species as necessary, at least twice during the growing season
Supplemental re-seeding	X				If large bare areas result from herbicide application, overseeding may be required
Prescribed Burning				X	A prescribed burn should be conducted in Fall of 2014 if available fuel and weather conditions are sufficient. If burning is not an option, mowing with thatch removal in late fall (November) should be conducted and will mimic the conditions of a burn

Long Term Management Plan

Typical maintenance activities and approximate timing are outlined in the table below and may change from year to year based on site conditions. Typical costs associated with each item are also listed below in Table 2.

Table 2. Anticipated Long-Term Management Activities						
Activity	As Needed	Spring	Summer	Fall	Comments	Costs
Site Assessment			X		Site inspection to evaluate the condition of the natural area and direct future maintenance activities (annually)	\$400 each
Debris / Litter Removal	X				Removal of wind-blown refuse	\$200 each
Herbicide Application	X	X	X	X	Treat small communities of perennial invasive plants, as necessary throughout the growing season	\$750 each
Mowing / Cutting	X	X		X	Typically once in spring and once in late summer or fall, or as needed	\$350 each
Supplemental re-seeding	X				Overseed areas that are bare due to herbicide application as necessary	\$2,000 per acre
Prescribed Burning		X		X	Prescribed burning should be used every 2-4 years, in either the Spring or Fall season depending on weather conditions and plant community composition	\$1,500 each

MAINTENANCE ACTIVITY STANDARDS

Site Assessment: A site assessment consists of an on-site inspection to evaluate the condition of the natural area. Needed maintenance activities are identified in a brief report and directed toward the Owner and the maintenance contractor for the site.

Debris / Litter Removal: The removal of wind blown refuse from natural areas to improve the aesthetics of the area and facilitate vegetative maintenance.

Herbicide Application: Application of herbicide to control invasive species may be necessary if perennial weeds become established. A certified and licensed pesticide applicator and/or operator shall select herbicide, which is non-toxic to animal and aquatic life, and shall apply the herbicide by the appropriate method, to prevent killing of desirable native species.

Mowing / Cutting: When mowing is utilized as a maintenance technique during the growing season, it shall take place prior to or when non-native and weedy species are flowering so as to prevent seed set. This technique is best used for annual and biennial species, though it is useful in the prevention of seed set in perennial species. A weed whip may be used for smaller patches, terrain unsuitable for a mower, areas without mower access, or when desirable species need to be avoided.

Supplemental Reseeding: Native seed mixes shall be hand broadcasted over the soil surface and raked within areas that are bare, or sparsely vegetated, due to herbicide application. Additional restoration to turf or prairie areas may be required if equipment needs to be utilized for seedbed preparation.

Prescribed Burn: By reintroducing fire, non-native and fire-intolerant plant species are controlled, native seeds in the seed bank are stimulated to germinate, and nutrients are returned to the soil causing more plants to flower, produce seed, and generally grow more robust than the previous year. Prescribed burning is recommended to be conducted every 2-4 years where appropriate to keep fuel levels low and effectively reduce coverage of specific invasive species. Prescribed burns shall be dependent on fuel availability that is directly related to the quantity and quality of graminoid species (i.e. grasses and sedges) present within the naturalized area. The burn season generally runs from as early as October 1st through April 30th. Prescribed burning should be performed by trained professionals.



Environmental Consultants • Native Landscape Specialists • Erosion and Sediment Control Professionals

1709 Afton Road
Sycamore, IL 60178
Phone: (815) 899-1621
Fax: (815) 899-6821
www.encapinc.net

April 13, 2012

Ms. Jennifer Hammer
Land Conservation & Restoration Specialist
The Conservation Foundation
10S404 Knoch Knolls Road
Naperville, IL 60565

Re: Three Year Maintenance Program: Windmill Lakes Naturalized Stormwater Area.

This letter has been prepared to outline the maintenance activities associated with the June 21, 2011 proposal that we have been working under. Please forward this information to the City of Batavia as needed.

Typical maintenance activities included in the proposal and approximate timing are outlined in the table below.

Table 1. Anticipated Maintenance Activities						
Activity	As Needed	Spring	Summer	Fall	Annually	Comments
Debris / Litter Removal		X	X	X		Includes three pick ups per year.
Herbicide Application		X	X			Treat small communities of perennial invasive plants
Mowing / Cutting		X		X		Typically once in spring and once in late summer or fall
Supplemental re-seeding	X					Overseed areas that are bare due to herbicide application
Cattail Control*	X					Herbicide application to Cattails when present in small quantities
Algae Raking*	X					Raking and removal of algae
Inlet and outlet cleaning		X	X	X		Removal of accumulated debris at inlets and outlets (Coincides with trash pick up.

We will begin the 2012 maintenance after the expected rains this weekend.

Please feel free to contact me with any questions.

Carl Peterson (815)-739-4169.

Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive
Chicago, Illinois 60606-1229
312-201-2000
312-201-2555 fax
www.wildman.com



Wildman Harrold
Attorneys and Counselors

Marcia Owens
312-201-2541
312-416-4588 (fax)
mowens@wildman.com

September 14, 2010

VIA FEDERAL EXPRESS

Mr. William McGrath
City of Batavia
100 North Island Avenue
Batavia, Illinois 60510

Re: Windmill Lakes Detention Retrofit

Dear Bill:

At the request of Tom Zumm, enclosed is an original copy of the letter agreement for the above matter. Tom will sign this letter at the hearing.

Very truly yours,

A handwritten signature in black ink that reads 'Marcia Owens'. The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Marcia Owens

MO/lod

Enclosure

MAIN SOUTH LIMITED PARTNERSHIP
2720 S. RIVER ROAD
SUITE 100
DES PLAINES, ILLINOIS 60018

ORIGINAL

September 3, 2010

Mr. Bud Jacobson
Holy Cross Catholic Church of Batavia
2300 Main Street
Batavia, Illinois 60510

Re: Windmill Lakes Detention Retrofit

Dear Bud:

This letter sets forth the basic business points that we have agreed upon for the above-referenced Project.

1. Basic Terms.

Main South:	Main South Limited Partnership
Church:	Holy Cross Catholic Church of Batavia
City:	City of Batavia
Conservation Foundation:	Conservation Foundation
Army Corps:	U.S. Army Corps of Engineers
Project:	Windmill Lakes Detention Retrofit.

2. Dedication by Church to City of Batavia.

Church will dedicate that certain real property depicted on the Site Plan attached hereto as Exhibit A as "Church Dedicated Parcel" to the City, free and clear of any monetary liens, pursuant to the deed attached hereto as Exhibit B. The City will then grant a conservation easement to the Conservation Foundation to retrofit the Church Dedicated Parcel using funds from the Army Corps. Such conveyance shall take place at the time and place required by the City, but in all events in sufficient time to allow the restoration work to be completed by December 31, 2010. Aside from the terms set forth in this letter, Main South will not look to the Church for any further obligations as they relate to the Church Dedicated Parcel.

3. Dedication by Main South to City of Batavia.

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Letter to Bud Jacobson
September 1, 2010
Page 2

Main South will dedicate that certain real property depicted on the Site Plan as "Main South Dedicated Parcel" to the City, free and clear of any monetary lien, pursuant to the deed attached hereto as Exhibit D. The City will then grant a conservation easement to the Conservation Foundation to retrofit the basin using funds from the Army Corps. Such conveyance shall take place at the time and place required by the City, but in all events in sufficient time to allow the restoration work to be completed by December 31, 2010. Aside from the terms set forth in this letter, Church will not look to Main South for any further obligations as they relate to the Main South Dedicated Parcel.

4. Access Easement to Church.

Concurrently with Church's dedication of the Church Dedicated Parcel to the City, Main South will grant Church a perpetual, non-exclusive easement for ingress and egress over and across that certain area cross-hatched on the Site Plan attached hereto as Exhibit A and labeled as "Cross Access Area," pursuant to the terms of an Easement Agreement between Church and Main South in the form attached hereto as Exhibit C. Church shall pay Main South (or such successor administrative owner of the Windmill Lakes Shopping Center as may be hereinafter designated) the annual sum of \$900 for use and maintenance of the Cross Access Area. Such annual sum shall be increased every 5 years by the lesser of (i) 10% or (ii) the CPI increase. Church shall not be obligated to pay such annual sum if Church ceases use of the Cross Access Area. If Church fails to convey the Church Dedicated Parcel to the City and agree to the maintenance terms set forth below for any reason, Main South will not grant the easement to Church and will close the access point that currently exists.

5. Maintenance Obligations

The City has agreed to oversee the Project, which will utilize funds allocated by the Army Corps to address maintenance and operational problems in the Project that result in polluted and sediment laden stormwater being discharged downstream into an area already maintained by the Conservation Foundation. However, as a condition of the City accepting title, each of Church and Main South (on behalf of the Windmill Lakes Shopping Center) shall agree to the following maintenance terms:

- a. Church will pay City the annual sum of \$900 on each January 15 for each of the next 5 years (2011-2015) to cover the costs of the City in maintaining the Church Dedicated Parcel, as its sole contribution.
- b. Main South (and/or the other owners in the Shopping Center) will reimburse City for the reasonable cost of maintenance of the Main South Dedicated Parcel for a minimum of 5 years, such amount being estimated at a minimum of \$3,900.00 per year.
- c. Except as contained above, in consideration for such fee paid by Church for maintenance together with the dedication, Main South and City agree that Church shall have no further responsibility as it relates to the Church Dedicated Parcel or the

ORIGINAL

- Main South Dedicated Parcel, the Project or any costs or expenses related thereto and City shall indemnify Church from any such cost, expense or obligation in the future.
- d. Except as contained above and in such other documents as may be executed between Main South and City, City agrees that Main South shall have no further responsibility as it relates to the Main South Dedicated Parcel or the Church Dedicated Parcel, the Project or any costs or expenses related thereto and City shall indemnify Church from any such cost, expense or obligation in the future.

6. Time of the Essence.

The parties have been advised by the City that the Army Corps will withdraw the funds for the Project if the Project (and all retrofit and restoration work associated therewith) is not completed by December 31, 2010. The City has called a special meeting on September 7, 2010 to accelerate the approval schedule in order to meet the deadline of the Army Corps. The parties agree that time is of the essence and will cooperate with the City to finalize all documentation and approvals for the Project to proceed.

The parties agree that this letter is designed to confirm that each party is in agreement with the terms set forth above before proceeding with the hearing on September 7. Neither Main South nor Church is under a binding obligation to the other unless and until the definitive dedication documents and easements reflected herein are prepared, fully executed and delivered by both parties.

Please sign a copy of this letter where indicated below acknowledging your agreement to the above terms and return a copy to me as soon as possible, but in all events prior to September 7, 2010. Upon receipt of a signed copy of this letter and approval from the City at the upcoming hearing, I will then instruct my attorney to prepare a formal Cross Access Easement and to commence coordination of the dedication documents on behalf of Main South. Otherwise, please call me to discuss.

Very truly yours,

Main South Limited Partnership, an Illinois limited partnership

By: Main-South Corp., an Illinois corporation,
its general partner

By: _____
Thomas L. Zumm, Treasurer

AGREED AND ACCEPTED:
HOLY CROSS CATHOLIC CHURCH OF BATAVIA

Letter to Bud Jacobson
September 1, 2010
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ORIGINAL

AGREED AND ACCEPTED:
HOLY CROSS CATHOLIC CHURCH OF BATAVIA

By: Msgr. Dan Potos
Its: Potos

*Bud Jacobson
Busn. Mgr.*

Date: September 7, 2010

ACKNOWLEDGED AND AGREED:
CITY OF BATAVIA

By: _____
Its: _____

FINAL PLAT

93K79562

PLAT 12 P.M.S. 15

POOR COPY

Resubdivision of Part of

Cross Access Unit No. 2 Windmill Lakes Batavia Kane County Illinois

POOR COPY

State of Illinois) In testimony whereof, I, a Notary Public in and for the County of Kane) do hereby certify that the foregoing is a true and correct copy of the original plat and accompanying instrument in this free and voluntary act and as the free and voluntary act of said A&T Inc.

Notary Public, this 27th day of September, 1972

Notary Public

State of Illinois) This is to certify that Main South Limited Partnership, an Illinois limited partnership, is the owner of part of the land described in the foregoing survey's certificate and has caused the same to be surveyed, subdivided and platted as shown by the attached plat for the use and purpose therein set forth, as shown and provided by statute, the said Main South Limited Partnership, and it hereby acknowledges and adopts the same under the style and title aforesaid.

Dated at Batavia, Illinois, this 12th day of July, 1972

State of Illinois) In testimony whereof, I, a Notary Public in and for the County of Kane) do hereby certify that the foregoing is a true and correct copy of the original plat and accompanying instrument in this free and voluntary act and as the free and voluntary act of said Main South Limited Partnership.

Notary Public, this 27th day of August, 1972

State of Illinois) Accepted and approved by LaSalle National Bank (The Exchange National Bank), as Mortgagee.

Dated at Chicago, Illinois, this 27th day of September, 1972

State of Illinois) Accepted and approved by the City Council of the City of Batavia, Illinois, this 27th day of September, 1972

State of Illinois) Accepted and approved by the City of Batavia Planning Commission, this 27th day of August, 1972

State of Illinois) This is to certify that I, Lorraine P. Geve, County Clerk in and for the County and State aforesaid, find no redeemable tax sale, unpaid delinquent taxes or unpaid current taxes against any of the real estate described in the foregoing survey's certificate.

Dated at Geneva, Illinois, this 12th day of October, 1972

State of Illinois) This instrument No. 93K79562 was filed for record in the Recorder's Office of Kane County, Illinois, on the 12th day of October, 1972, at 2:25 p.m., and was recorded in Plat Envelope No. 708-11.

UTILITY BASEMENT PROVISIONS

Provisions for utility easements over the Lots herein platted shall be contained in a certain Second Amended and Restated Declaration, Restated Easements, Covenants and Restrictions, (the "Second Amended and Restated Declaration"), into which this covers of all of the Lots herein platted shall come. Said utility easements, as set forth in the Second Amended and Restated Declaration, shall replace and supersede any utility easement provisions set forth in any prior plat of subdivision of any or all of the property affected by this Plat of Subdivision. As a result, from and after the date of the recording of said Second Amended and Restated Declaration, the easements referred to herein shall be the only recorded utility easements with respect to the property affected by this Plat of Subdivision. All other utility easements shall be deemed void.

BIKE TRAIL EASEMENT PROVISIONS

A 10 foot-wide non-exclusive easement over that portion of Lots 11, 12 and 13 platted herein, lying within 10 feet of the Lot line that is common to all of said Lots 11, 12 and 13 and Lots 1 and 2 in Unit No. 1, Windmill Lakes subdivision, pertaining and abutting a public pathway for pedestrian and non-motorized vehicular use. Said bike trail easement is restricted to the placement of said pathway and may include trees, shrubs, bushes, lawn, and other forms of vegetation. No permanent buildings or structures shall be constructed or maintained on, across, over, or through said bike trail easement. Nothing contained in this paragraph shall preclude the exercise of rights hereunder granted for utility easements. No such bike trail easement may be obtained or referred to in any location unless written approval of such location has been duly recorded in the Kane County Recorder's Office.

MAIN SOUTH DEDICATED PARCEL

Note: There shall be no permanent structures erected or located upon Lot 19 as herein platted. This restriction shall not prohibit the installation of utilities upon or across said Lot 19 as may be necessary to benefit other property.

State of Illinois) This is to certify that I, John A. Thornhill, Jr., an Illinois Professional Land Surveyor of Decatur County of Kane) have surveyed, subdivided and platted part of Lot 10 and Lots 11, 12, and 13, Unit No. 2, Windmill Lakes, Batavia, Kane County, Illinois and that part of Lot 1, Unit No. 1, Windmill Lakes, Batavia, Kane County, Illinois as shown by the attached plat for the use and purpose therein set forth, as shown and provided by statute, the subdivision to be known as "RESUBDIVISION OF UNIT NO. 2, WINDMILL LAKES, BATAVIA, KANE COUNTY, ILLINOIS" and it hereby acknowledges and adopts the same under the style and title aforesaid.

Dated at Geneva, Illinois, October 15, 1971



State of Illinois) This is to certify that A&T Inc., an Illinois corporation, is the owner of part of the land described in the foregoing survey's certificate and by the duly elected officers has caused the same to be surveyed, subdivided and platted, as shown by the attached plat, for the use and purpose therein set forth, as shown and provided by statute, the subdivision to be known as "RESUBDIVISION OF UNIT NO. 2, WINDMILL LAKES, BATAVIA, KANE COUNTY, ILLINOIS" and it hereby acknowledges and adopts the same under the style and title aforesaid.

Dated at Batavia, Illinois, this 12th day of July, 1972

DONAHUE AND THORNHILL, INC. 7 RICHARDS STREET GENEVA, ILLINOIS 60134 (708) 232-7818

Notary Public

Exhibit B

WARRANTY DEED

THIS INDENTURE WITNESSETH, THAT THE GRANTOR(S), Holy Cross Catholic Church of Batavia, a religious corporation for and in consideration of the sum of One Dollar (\$1.00), in hand paid, and other good and valuable consideration, receipt of which is hereby duly acknowledged, CONVEYS AND WARRANTS unto the City of Batavia, an Illinois municipal corporation, GRANTEE, all interest in the following described real estate, commonly known as:

Holy Cross Wetland Parcel
2300 Main Street
Batavia, IL 60510

and legally described as:

That part of Lot 2, Unit No. 1, Windmill Lakes, Batavia, Kane County, Illinois described as follows: Commencing at the most northerly northeast corner of said lot; thence southerly along an easterly line of said lot 100.0 feet to an angle point therein for a point of beginning; thence westerly along a westerly extension of a northerly line of said lot forming an angle of 89°50'48" from the prolongation of the last described course (measured clockwise therefrom) 22.52 feet; thence southerly along a line forming an angle of 103°07'38" from the last described course (measured clockwise therefrom) 68.68 feet; thence southerly, southwesterly and westerly along a curve to the right having a radius of 51.91 feet tangent to the last described course 53.60 feet; thence westerly along a line tangent to the last described curve at the last described point 88.46 feet; thence westerly, southwesterly and southerly along a curve to the left having a radius of 22.67 feet tangent to the last described course 27.58 feet; thence southerly along a line tangent to the last described curve at the last described point 57.90 feet; thence southerly along a line forming an angle of 174°29'24" from the last described course (measured clockwise therefrom) 53.31 feet; thence southerly and southwesterly along a curve to the right having a radius of 73.0 feet tangent to the last described course 62.54 feet to a southerly line of said lot; thence easterly

along said southerly line forming an angle of 34°54'51" from a line tangent to the last described curve at the last described point (measured clockwise therefrom) 318.20 feet to the southeast corner of said lot; thence northerly along an easterly line of said lot forming an angle of 99°06'19" from the last described course (measured clockwise therefrom) 270.0 feet to an angle point therein; thence westerly along a northerly line of said lot forming an angle of 89°50'48" from the last described course (measured clockwise therefrom) 120.0 feet to the point of beginning in the City of Batavia, Kane County, Illinois.

subject to real estate taxes for the year 2009 and all subsequent years and all outstanding assessments, and subject to any and all easements, restrictions, covenants and encumbrances of record.

The said Grantors hereby expressly waive and release any and all right and benefit under and by virtue of the Homestead Exemption Laws of the State of Illinois.

Dated this ____ day of _____, 2010.

HOLY CROSS CATHOLIC CHURCH OF
BATAVIA, a religious corporation

By: _____
Most Rev. Thomas G. Doran, President

By: _____
Rev. Monsignor Glenn L. Nelson, Secretary

STATE OF ILLINOIS)
) SS
WINNEBAGO COUNTY)

I, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that THOMAS G. DORAN, personally known to me to be the President of Holy Cross Catholic Church of Batavia, a religious corporation, and GLENN L. NELSON, personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument as President and Secretary of said corporation, pursuant to authority given under the bylaws of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ____ day of _____, 2010.

Notary Public

PROPERTY CODE: Part of 12-20-401-002-0000

Future Taxes and Return to:

City of Batavia

Attn: _____

Batavia, IL 60510

EXEMPT UNDER PROVISION OF PARAGRAPH E
SECTION 4, REAL ESTATE TRANSFER TAX ACT.

DATE BUYER, SELLER OR REPRESENTATIVE

Prepared By:

Sherry L. Harlan
Hinshaw & Culbertson LLP
P.O. Box 1389
100 Park Avenue
Rockford, IL 61105-1389
(815) 490-4934

This Document Prepared by and after
Recording to be Returned to:

Marcia Owens
Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive
Suite 2800
Chicago, Illinois 60606

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made as of this ____ day of _____, 2010, by and between Main South Limited Partnership, an Illinois limited partnership ("Main South"), and Holy Cross Catholic Church of Batavia, a religious corporation ("Church").

The following recitals of fact are a material part of this Agreement:

- A. Main South is the owner of the property described in **Exhibit A** attached hereto and made a part hereof by this reference (the "Main South Property").
- B. Church is the owner of the property described in **Exhibit B** attached hereto and made a part hereof by this reference (the "Church Property").
- C. Church hereby desires and Main South agrees to grant and establish an easement for ingress and egress over, upon and across a portion of the Main South Property, which easement will (i) be for the benefit of current and future owners of the Church Property, and (ii) run with the land and be appurtenant to the Church Property, all as more fully set forth below.
- D. The Parties hereto wish to make certain agreements regarding such easements.

AGREEMENTS

- 1. **Recitals.** The foregoing recitals are hereby incorporated herein by reference.
- 2. **Grant of Access Easement to Church Property.** Subject to any express conditions, limitations or reservations contained herein, Main South hereby grants to Church, and its respective employees, agents, contractors, customers, invitees, mortgagees and licensees, a non-exclusive, perpetual easement for reasonable access, ingress and egress over the Main South Property, including, without limitation, the curb cut off of Main Street at the Main South Property, for the passage of motor vehicles and pedestrians to and from Main Street to the Church Property (the "Access Easement"). Main South shall have the right to modify the drives

located on the Main South Property, in its sole and absolute discretion, from time to time, so long as it does not materially interfere with access by the Church to the Church Property. Main South shall not close the access/curb cut to Main Street. **The Access Easement specifically does not grant any rights of parking whatsoever.**

3. **Maintenance Fee.** In consideration for Main South's grant of the Access Easement to Church, Church shall pay Main South an annual lump sum fee equal to \$900.00 per year (the "Maintenance Fee") commencing on the date of this Agreement and continuing annually thereafter, provided, however, such Maintenance Fee shall be increased on every fifth (5th) anniversary hereof by the lesser of (i) 10% or (ii) the amount determined by multiplying the then current Maintenance Fee by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the month of the date of this Agreement; the "Current Index Number" shall be the level of the Index for the month of September of the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84 = 100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Main South shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

The Maintenance Fee for the first year shall be paid to Main South with Church's execution and delivery of this Agreement, and each succeeding payment shall be made on the anniversary of this Agreement thereafter. Notwithstanding anything contained in this Paragraph 3 to the contrary, to the extent Church no longer needs or desires access off of Main Street at the curb cut located on the Main South Property and Church so notifies Main South in writing, the Access Easement shall be deemed terminated and Church shall have no further rights to use the Access Easement.

In return for the annual Maintenance Fee, Main South shall, at no further expense to Church, plow the Access Easement and keep the area reasonably free of accumulated snow and ice and shall repair potholes, if any, and maintain the Access Easement in good condition and repair including regular sealing of asphalt. In the event Main South does not cause the Access Easement Area to be repaired within a reasonable period of time after the request of Church, Church may, at its option, perform such maintenance and pay any and all costs and charges associated therewith, and require Main South to reimburse Church for such costs together with interest at 8% per annum if not paid within thirty (30) days.

5. **Indemnification.** Church hereby agrees to indemnify, defend and hold Main South harmless from and against all claims, damages, liabilities, and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or such property arising from or in any manner relating to the breach of this Agreement or the use by Church or its aforesaid permittees of the Access Easement.

6. **No Rights in Public.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Main South Property.

7. **Insurance.** Each of Main South and Church shall obtain and keep in full force and effect, at its cost and expense, or at the cost and expense of its tenant or permittee, a policy of comprehensive public liability insurance with respect to the easement areas, written on an "occurrence basis" not a "claims basis," under which policy the other party shall be named as an additional insured, and with not less than \$1,000,000 single coverage limits for each occurrence of injury or property damage and shall provide a copy of such insurance certificate and any renewals or notices thereof to the other party promptly upon receipt of the same.

8. **Term.** The easements contained herein shall continue in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record owners of the Main South Property and the Church Property.

9. **Miscellaneous.**

9.1. **Attorneys' Fees.** In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

9.2. **Amendment.** The parties hereto agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record owners of the Main South Property and the Church Property, evidenced by a document that has been fully executed and acknowledged by all such record owners and recorded in the official records of Kane County, Illinois.

9.3. **Covenants to Run with Land.** It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

9.4 **Authority.** Each party represents and warrants to the other that it has all necessary right, title and authorization to enter into this Agreement.

9.5 **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed, one (1) business day after deposit with a reputable overnight courier (such as Fed Ex or UPS) or three (3) days after deposit in the U.S. mail if sent postage prepaid by U.S. registered or certified mail, return receipt requested, addressed as follows:

If to Main South:

Main South Limited Partnership
2720 S. River Road, Suite 100
Des Plaines, Illinois 60018
Attn: Thomas L. Zumm

With a copy to: Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive
Suite 2800
Chicago, Illinois 60606
Attention: Marcia Owens

If to Church: Holy Cross Catholic Church of Batavia
Attn: William Jacobson, Business Manager
2300 Main Street
Batavia, Illinois 60510

With a copy to: Catholic Diocese of Rockford
Attn: Ellen Lynch, General Counsel
555 Colman Center Drive
P.O. Box 7044
Rockford, Illinois 61125

Any party may change the name of the person or address to which notices and other communications are to be given by so notifying the other parties in the manner provided herein.

9.6 **Counterparts.** Each of Main South and Church acknowledge and agree that this Agreement may be executed in any number of counterpart original instruments, all of which taken together shall constitute but one fully executed Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

**HOLY CROSS CATHOLIC CHURCH
OF BATAVIA**, a religious corporation

By: _____
Most Rev. Thomas G. Doran, President

By: _____
Rev. Monsignor Glenn L. Nelson, Secretary

STATE OF ILLINOIS)
) **SS.**
COUNTY OF WINNEBAGO)

A Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that THOMAS G. DORAN, personally known to me to be the President of Catholic Diocese of Rockford, an Illinois religious corporation, and GLENN L. NELSON, personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument as President and Secretary of said corporation, pursuant to authority given under the bylaws of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2010.

Notary Public

Commission Expires:

EXHIBIT A

MAIN SOUTH PROPERTY

LOT 11 (EXCEPT THE NORTH 5 FEET OF THE EAST 144.99 FEET), AND LOT 17 OF RESUBDIVISION OF PART OF UNIT NO. 2, WINDMILL LAKES, BATAVIA, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 13, 1993 AS DOCUMENT 93K79562, IN KANE COUNTY, ILLINOIS.

Common Address: SWC of Main Street and Randall Road, Batavia, Illinois
PIN: 12-20-401-019

EXHIBIT B

CHURCH PROPERTY

LOT 2 IN UNIT NO. 1, WINDMILL LAKES, BATAVIA, KANE COUNTY, ILLINOIS, IN
THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

Common Address: 2300 Main Street, Batavia, Illinois
PIN: 12-20-401-002-0000

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 10-63-R**

**APPROVING DOCUMENTS FOR WINDMILL LAKES/CONSERVATION AREA
PROJECT**

WHEREAS, the City of Batavia has experienced serious difficulties with drainage conditions in and around the Windmill Lakes shopping center; and

WHEREAS, the if the issues are not resolved, conditions will worsen and significant fines may be levied against the City by the Army Corps of Engineers; and

WHEREAS, the Corps of Engineers has offered a \$200,000 grant to the City to assist in the implementation of a long term solution to the problem; and

WHEREAS, the implementation of the plan requires the cooperation of the owners of the shopping center, the property owners association of the shopping center, Holy Cross Church, the Conservation Foundation and the City; and

WHEREAS, the situation is extremely complex and agreement by all the involved parties was only recently obtained; and

WHEREAS, in order to receive the grant funds, the work must be completed by Dec. 31st of this year which means starting work almost immediately; and

WHEREAS, the documentation and agreements that must be executed are not yet prepared and it is not possible to wait for scheduled City Council meetings to approve them due to time constraints; and

WHEREAS, it is necessary to obtain approval to execute agreements in advance based on documents and information being given now to the City Services Committee and the City Council

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

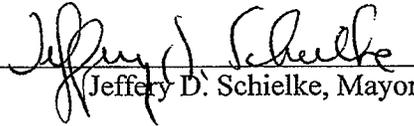
SECTION 1: The "Letter of Understanding re Windmill Lakes Retrofit" attached hereto as Exhibit "A" is hereby approved.

SECTION 2: Subject to prior review and approval by the staff and the City Attorney, the Mayor and City Clerk are hereby authorized to execute such other and additional documents and agreements as are necessary to implement the plans as described in the "Letter of Understanding".

CITY OF BATAVIA, ILLINOIS RESOLUTION 10-63-R

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, on the 7th day of September, 2010.

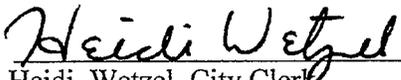
APPROVED by me as Mayor of said City of Batavia, Illinois, on the 7th day of September, 2010.



 Jeffrey D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien	X				Sparks	X			
2	Dietz	X				Wolff	X			
3	Chanzit	X				Jungels	X			
4	Volk	X				Schmitz	X			
5	Frydendall	X				Thelin Atac	X			
6	Liva			X		Clark	X			
7	Tenuta	X				Brown	X			
Mayor Schielke										
VOTE:		13 Ayes	0 Nays	1 Absent	0 Abstention(s) counted as _____					
Total holding office:		Mayor and 14 aldermen								

ATTEST:



 Heidi Wetzal, City Clerk

EXHIBIT A

**MAIN SOUTH LIMITED PARTNERSHIP
2720 S. RIVER ROAD
SUITE 100
DES PLAINES, ILLINOIS 60018**

September 3, 2010

Mr. Bud Jacobson
Holy Cross Catholic Church of Batavia
2300 Main Street
Batavia, Illinois 60510

Re: Windmill Lakes Detention Retrofit

Dear Bud:

This letter sets forth the basic business points that we have agreed upon for the above-referenced Project.

1. Basic Terms.

Main South:	Main South Limited Partnership
Church:	Holy Cross Catholic Church of Batavia
City:	City of Batavia
Conservation Foundation:	Conservation Foundation
Army Corps:	U.S. Army Corps of Engineers
Project:	Windmill Lakes Detention Retrofit.

2. Dedication by Church to City of Batavia.

Church will dedicate that certain real property depicted on the Site Plan attached hereto as Exhibit A as "Church Dedicated Parcel" to the City, free and clear of any monetary liens, pursuant to the deed attached hereto as Exhibit B. The City will then grant a conservation easement to the Conservation Foundation to retrofit the Church Dedicated Parcel using funds from the Army Corps. Such conveyance shall take place at the time and place required by the City, but in all events in sufficient time to allow the restoration work to be completed by December 31, 2010.

3. Dedication by Main South to City of Batavia.

Letter to Bud Jacobson
September 1, 2010
Page 2

Main South will dedicate that certain real property depicted on the Site Plan as "Main South Dedicated Parcel" to the City, free and clear of any monetary liens or encumbrances. The City will then grant a conservation easement to the Conservation Foundation to retrofit the basin using funds from the Army Corps. Such conveyance shall take place at the time and place required by the City, but in all events in sufficient time to allow the restoration work to be completed by December 31, 2010.

4. Access Easement to Church.

Concurrently with Church's dedication of the Church Dedicated Parcel to the City, Main South will grant Church a perpetual, non-exclusive easement for ingress and egress over and across that certain area cross-hatched on the Site Plan attached hereto as Exhibit A and labeled as "Cross Access Area," pursuant to the terms of an Easement Agreement between Church and Main South in the form attached hereto as Exhibit C. Church shall pay Main South (or such successor administrative owner of the Windmill Lakes Shopping Center as may be hereinafter designated) the annual sum of \$900 for use and maintenance of the Cross Access Area. Such annual sum shall be increased every 5 years by the lesser of (i) 10% or (ii) the CPI increase. Church shall not be obligated to pay such annual sum if Church ceases use of the Cross Access Area. If Church fails to convey the Church Dedicated Parcel to the City and agree to the maintenance terms set forth below for any reason, Main South will not grant the easement to Church and will close the access point that currently exists.

5. Maintenance Obligations

The City has agreed to oversee the Project, which will utilize funds allocated by the Army Corps to address maintenance and operational problems in the Project that result in polluted and sediment laden stormwater being discharged downstream into an area already maintained by the Conservation Foundation. However, as a condition of the City accepting title, each of Church and Main South (on behalf of the Windmill Lakes Shopping Center) shall agree to the following maintenance terms:

- a. Church will pay City the annual sum of \$900 on each January 15 for each of the next 5 years (2011-2015) to cover the costs of the City in maintaining the Church Dedicated Parcel, as its sole contribution.
- b. Main South (and/or the other owners in the Shopping Center) will reimburse City for the reasonable cost of maintenance of the Main South Dedicated Parcel for a minimum of 5 years, such amount being estimated at a minimum of \$3,900.00 per year.
- c. Except as contained above, in consideration for such fee paid by Church for maintenance together with the dedication, Main South and City agree that Church shall have no further responsibility as it relates to the Church Dedicated Parcel or the Main South Dedicated Parcel, the Project or any costs or expenses related thereto and City shall indemnify Church from any such cost, expense or obligation in the future.

Letter to Bud Jacobson
September 1, 2010
Page 3

- d. Except as contained above and in such other documents as may be executed between Main South and City, City agrees that Main South shall have no further responsibility as it relates to the Main South Dedicated Parcel or the Church Dedicated Parcel, the Project or any costs or expenses related thereto and City shall indemnify Church from any such cost, expense or obligation in the future.

6. Time of the Essence.

The parties have been advised by the City that the Army Corps will withdraw the funds for the Project if the Project (and all retrofit and restoration work associated therewith) is not completed by December 31, 2010. The City has called a special meeting on September 7, 2010 to accelerate the approval schedule in order to meet the deadline of the Army Corps. The parties agree that time is of the essence and will cooperate with the City to finalize all documentation and approvals for the Project to proceed.

The parties agree that this letter is designed to confirm that each party is in agreement with the terms set forth above before proceeding with the hearing on September 7. Neither Main South nor Church is under a binding obligation to the other unless and until the definitive dedication documents and easements reflected herein are prepared, fully executed and delivered by both parties.

Please sign a copy of this letter where indicated below acknowledging your agreement to the above terms and return a copy to me as soon as possible, but in all events prior to September 7, 2010. Upon receipt of a signed copy of this letter and approval from the City at the upcoming hearing, I will then instruct my attorney to prepare a formal Cross Access Easement and to commence coordination of the dedication documents on behalf of Main South. Otherwise, please call me to discuss.

Very truly yours,

Main South Limited Partnership, an Illinois limited partnership

By: Main-South Corp., an Illinois corporation,
its general partner

By: _____
Thomas L. Zumm, Treasurer

AGREED AND ACCEPTED:
HOLY CROSS CATHOLIC CHURCH OF BATAVIA

By: _____
Its: _____

Letter to Bud Jacobson
September 1, 2010
Page 4

Date: September __, 2010

ACKNOWLEDGED AND AGREED:
CITY OF BATAVIA

By: _____
Its: _____

**14. RESOLUTION 10-63-R: Windmill Lakes Detention/conservation Area Project
(WRM 9/3/10 City Services 9/7/10)**

Ald. Volk informed the Council that Windmill Lakes is a detention pond that holds storm water from the shopping area south of Main Street west of Randall Road and the Holy Cross Church. Severe erosion and sedimentation has occurred, impacting the detention pond to the extent that the wetlands and property next to Mill Creek have become impacted.

For the last 3 years the Conservation Foundation of Wheaton has worked with our Engineering Department, the Church, Main South the owners of the shopping area, and the Army Corps of Engineers to arrive at a permanent solution. Part of this is a \$200,000 grant from the Corps to support restoration and maintenance of the pond. The grant does require that work starts this year. Before work can start several agreements have to be executed.

1. Main South would deed 3 parcels to the City. The Main South covenants would be amended to provide that the City receives money from the association annually for maintenance of the detention/conservation parcel based upon true expenses, a minimum of \$3,900 annually for the first 5 years.
2. The Church would deed a parcel to the City, so that the City is in control of the entire drainage system in that area. The Church would pay \$900 annually to the City for its share towards the conservation project, for 5 years.
3. The City would enter into an agreement by which the Conservation Foundation would be given a conservation easement over the City parcels, allowing it to manage the area, including the work associated with the grant. The Conservation Foundation will take responsibility for the maintenance, but the City will ultimately be responsible for its care, with the contribution it receives from the owners association.

The City has a letter of intent signed by Mr. Tom Zumm of Main South agreeing to their part of this deal. There is yet to be a similar letter from the Church.

Resolution 10-63-R approves of the letter and authorizes the Mayor to execute such documents as are necessary to carry out its provisions upon review by the City Attorney so that the grant can be taken advantage of this year.

**Motion by Ald. Volk, seconded by Ald. O'Brien, to approve Resolution 10-63-
Motion carried 13 aye/ 0 nay/ 1 absent**

CC - men
9/7/10

Easement 11/4/10 (2)

88007631 D2 D6 2 of 2



This Document Prepared by and after
Recording to be Returned to:

Marcia Owens
Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive
Suite 2800
Chicago, Illinois 60606

2010K074782
SANDY WEGMAN
RECORDER - KANE COUNTY, IL

RECORDED: 11/4/2010 2:37 PM
REC FEE: 29.00 RHSPS FEE: 10.00
PAGES: 8

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made as of this 8 day of OCTOBER, 2010, by and between Main South Limited Partnership, an Illinois limited partnership ("Main South"), and Holy Cross Catholic Church of Batavia, a religious corporation ("Church").

The following recitals of fact are a material part of this Agreement:

- A. Main South is the owner of the property described in **Exhibit A** attached hereto and made a part hereof by this reference (the "**Main South Property**").
- B. Church is the owner of the property described in **Exhibit B** attached hereto and made a part hereof by this reference (the "**Church Property**").
- C. Church hereby desires and Main South agrees to grant and establish an easement for ingress and egress over, upon and across a portion of the Main South Property, which easement will (i) be for the benefit of current and future owners of the Church Property, and (ii) run with the land and be appurtenant to the Church Property, all as more fully set forth below.
- D. The Parties hereto wish to make certain agreements regarding such easements.

AGREEMENTS

- 1. **Recitals.** The foregoing recitals are hereby incorporated herein by reference.
- 2. **Grant of Access Easement to Church Property.** Subject to any express conditions, limitations or reservations contained herein, Main South hereby grants to Church, and its respective employees, agents, contractors, customers, invitees, mortgagees and licensees, a non-exclusive, perpetual easement for reasonable access, ingress and egress over the Main South Property, including, without limitation, the curb cut off of Main Street at the Main South Property, for the passage of motor vehicles and pedestrians to and from Main Street to the Church Property (the "Access Easement"). Main South shall have the right to modify the drives

6

Chg

49

located on the Main South Property, in its sole and absolute discretion, from time to time, so long as it does not materially interfere with access by the Church to the Church Property. Main South shall not close the access/curb cut to Main Street. **The Access Easement specifically does not grant any rights of parking whatsoever.**

3. **Maintenance Fee.** In consideration for Main South's grant of the Access Easement to Church, Church shall pay Main South an annual lump sum fee equal to \$900.00 per year (the "Maintenance Fee") commencing on the date of this Agreement and continuing annually thereafter, provided, however, such Maintenance Fee shall be increased on every fifth (5th) anniversary hereof by the lesser of (i) 10% or (ii) the amount determined by multiplying the then current Maintenance Fee by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the month of the date of this Agreement; the "Current Index Number" shall be the level of the Index for the month of September of the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84 = 100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Main South shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

The Maintenance Fee for the first year shall be paid to Main South with Church's execution and delivery of this Agreement, and each succeeding payment shall be made on the anniversary of this Agreement thereafter. Notwithstanding anything contained in this Paragraph 3 to the contrary, to the extent Church no longer needs or desires access off of Main Street at the curb cut located on the Main South Property and Church so notifies Main South in writing, the Access Easement shall be deemed terminated and Church shall have no further rights to use the Access Easement.

In return for the annual Maintenance Fee, Main South shall, at no further expense to Church, plow the Access Easement and keep the area reasonably free of accumulated snow and ice and shall repair potholes, if any, and maintain the Access Easement in good condition and repair including regular sealing of asphalt. In the event Main South does not cause the Access Easement Area to be repaired within a reasonable period of time after the request of Church, Church may, at its option, perform such maintenance and pay any and all costs and charges associated therewith, and require Main South to reimburse Church for such costs together with interest at 8% per annum if not paid within thirty (30) days.

5. **Indemnification.** Church hereby agrees to indemnify, defend and hold Main South harmless from and against all claims, damages, liabilities, and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or such property arising from or in any manner relating to the breach of this Agreement or the use by Church or its aforesaid permittees of the Access Easement.

6. **No Rights in Public.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Main South Property.

7. **Insurance.** Each of Main South and Church shall obtain and keep in full force and effect, at its cost and expense, or at the cost and expense of its tenant or permittee, a policy of comprehensive public liability insurance with respect to the easement areas, written on an "occurrence basis" not a "claims basis," under which policy the other party shall be named as an additional insured, and with not less than \$1,000,000 single coverage limits for each occurrence of injury or property damage and shall provide a copy of such insurance certificate and any renewals or notices thereof to the other party promptly upon receipt of the same.

8. **Term.** The easements contained herein shall continue in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record owners of the Main South Property and the Church Property.

9. **Miscellaneous.**

9.1. **Attorneys' Fees.** In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

9.2. **Amendment.** The parties hereto agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record owners of the Main South Property and the Church Property, evidenced by a document that has been fully executed and acknowledged by all such record owners and recorded in the official records of Kane County, Illinois.

9.3. **Covenants to Run with Land.** It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

9.4. **Authority.** Each party represents and warrants to the other that it has all necessary right, title and authorization to enter into this Agreement.

9.5. **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed, one (1) business day after deposit with a reputable overnight courier (such as Fed Ex or UPS) or three (3) days after deposit in the U.S. mail if sent postage prepaid by U.S. registered or certified mail, return receipt requested, addressed as follows:

If to Main South:	Main South Limited Partnership 2720 S. River Road, Suite 100 Des Plaines, Illinois 60018 Attn: Thomas L. Zumm
-------------------	--

With a copy to: Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive
Suite 2800
Chicago, Illinois 60606
Attention: Marcia Owens

If to Church: Holy Cross Catholic Church of Batavia
Attn: William Jacobson, Business Manager
2300 Main Street
Batavia, Illinois 60510

With a copy to: Catholic Diocese of Rockford
Attn: Ellen Lynch, General Counsel
555 Colman Center Drive
P.O. Box 7044
Rockford, Illinois 61125

Any party may change the name of the person or address to which notices and other communications are to be given by so notifying the other parties in the manner provided herein.

9.6 **Counterparts.** Each of Main South and Church acknowledge and agree that this Agreement may be executed in any number of counterpart original instruments, all of which taken together shall constitute but one fully executed Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

MAIN SOUTH LIMITED PARTNERSHIP,
an Illinois limited partnership

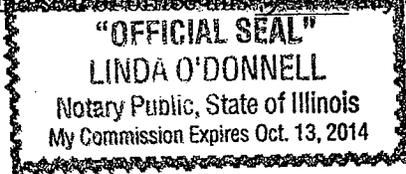
By: Main-South Corp., an Illinois
corporation, its general partner

By: Thomas L. Zumm
Thomas L. Zumm, Treasurer

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE ME, a Notary Public, in and for said County and State, personally appeared before me Thomas L. Zumm, Treasurer of Main-South Corp., an Illinois corporation and general partner of Main South Limited Partnership, an Illinois limited partnership, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed and the free act and deed of said company.

Given under my hand and seal of office this 5th day of October, 2010.



Linda O'Donnell
Notary Public

Commission Expires:

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

HOLY CROSS CATHOLIC CHURCH
OF BATAVIA, a religious corporation

By: *Daniel J. Deutsch*
Daniel J. Deutsch, Treasurer

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

A Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Daniel J. Deutsch, personally known to me to be the Treasurer of Holy Cross Catholic Church of Batavia, a religious corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Treasurer, he signed and delivered the said instrument as Treasurer of said corporation, pursuant to authority given under the bylaws of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 6th day of October 2010.

Sally A. Mullen
Notary Public

Commission Expires:
11/13/2010

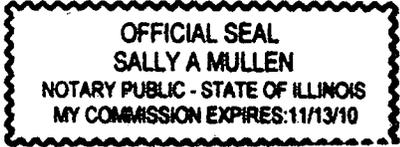


EXHIBIT A

MAIN SOUTH PROPERTY

THE NORTH 100.0 FEET OF LOT 11 OF PART OF UNIT NO. 2, WINDMILL LAKES, BATAVIA, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 13, 1993 AS DOCUMENT 93K79562, IN KANE COUNTY, ILLINOIS.

Common Address: SWC of Main Street and Randall Road, Batavia, Illinois
PIN: 12-20-401-019

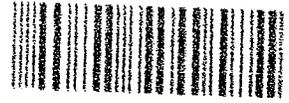
EXHIBIT B

CHURCH PROPERTY

LOT 2 IN UNIT NO. 1, WINDMILL LAKES, BATAVIA, KANE COUNTY, ILLINOIS, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS, EXCLUDING THE FOLLOWING PARCEL:

THAT PART OF LOT 2, UNIT NO. 1, WINDMILL LAKES, BATAVIA, KANE COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST NORTHERLY NORTHEAST CORNER OF SAID LOT; THENCE SOUTHERLY ALONG AN EASTERLY LINE OF SAID LOT 100.0 FEET TO AN ANGLE POINT THEREIN FOR A POINT OF BEGINNING; THENCE WESTERLY ALONG A WESTERLY EXTENSION OF A NORTHERLY LINE OF SAID LOT FORMING AN ANGLE OF 89°50'48" FROM THE PROLONGATION OF THE LAST DESCRIBED COURSE (MEASURED CLOCKWISE THEREFROM) 22.52 FEET; THENCE SOUTHERLY ALONG A LINE FORMING AN ANGLE OF 103°07'38" FROM THE LAST DESCRIBED COURSE (MEASURED CLOCKWISE THEREFROM) 68.68 FEET; THENCE SOUTHERLY, SOUTHWESTERLY AND WESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 51.91 FEET TANGENT TO THE LAST DESCRIBED COURSE 53.60 FEET; THENCE WESTERLY ALONG A LINE TANGENT TO THE LAST DESCRIBED CURVE AT THE LAST DESCRIBED POINT 88.46 FEET; THENCE WESTERLY, SOUTHWESTERLY AND SOUTHERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 22.67 FEET TANGENT TO THE LAST DESCRIBED COURSE 27.58 FEET; THENCE SOUTHERLY ALONG A LINE TANGENT TO THE LAST DESCRIBED CURVE AT THE LAST DESCRIBED POINT 57.90 FEET; THENCE SOUTHERLY ALONG A LINE FORMING AN ANGLE OF 174°29'24" FROM THE LAST DESCRIBED COURSE (MEASURED CLOCKWISE THEREFROM) 53.31 FEET; THENCE SOUTHERLY AND SOUTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 73.0 FEET TANGENT TO THE LAST DESCRIBED COURSE 62.54 FEET TO A SOUTHERLY LINE OF SAID LOT; THENCE EASTERLY ALONG SAID SOUTHERLY LINE FORMING AN ANGLE OF 34°54'51" FROM A LINE TANGENT TO THE LAST DESCRIBED CURVE AT THE LAST DESCRIBED POINT (MEASURED CLOCKWISE THEREFROM) 318.20 FEET TO THE SOUTHEAST CORNER OF SAID LOT; THENCE NORTHERLY ALONG AN EASTERLY LINE OF SAID LOT FORMING AN ANGLE OF 99°06'19" FROM THE LAST DESCRIBED COURSE (MEASURED CLOCKWISE THEREFROM) 270.0 FEET TO AN ANGLE POINT THEREIN; THENCE WESTERLY ALONG A NORTHERLY LINE OF SAID LOT FORMING AN ANGLE OF 89°50'48" FROM THE LAST DESCRIBED COURSE (MEASURED CLOCKWISE THEREFROM) 120.0 FEET TO THE POINT OF BEGINNING IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

Common Address: 2300 Main Street, Batavia, Illinois
PIN: 12-20-401-002-0000



2010K074783
SANDY WEGMAN
RECORDER - KANE COUNTY, IL

RECORDED: 11/4/2010 2:38 PM
REC FEE: 28.00 RHPFS FEE: 10.00
PAGES: 7

P2 DG 880007457 1 of 3

**CHANGE IN ADMINISTRATIVE OWNER
DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS AND
RESTRICTIONS**

This Instrument Was Prepared By and After Recording Return to:
Marcia Owens
Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive, Suite 2800
Chicago, Illinois 60606

Chy
Company

CHANGE IN ADMINISTRATIVE OWNER

DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS AND RESTRICTIONS

This Change in Administrative Owner (the "Second Amendment") is made as of the 8th day of October, 2010, by Main South Limited Partnership, an Illinois limited partnership (hereinafter referred to as "Declarant").

WITNESSETH

WHEREAS, Declarant entered into that certain Declaration of Reciprocal Easements, Covenants, and Restrictions, dated November 20, 1990 and recorded with the Kane County Recorder of Deeds on November 26, 1990 as Document 90K61476, as amended and restated by that certain First Amendment to Declaration of Reciprocal Easements, Covenants and Restrictions, dated January 4, 1991 and recorded January 15, 1991 as Document 90K02401 (collectively, the "Declaration"), which Declaration affects the property legally described on Exhibit A attached to this Second Amendment and incorporated herein by reference; and

WHEREAS, Section 11.02 of the Declaration provides that Declarant shall have the right to amend the Declaration at any time, or from time to time, provided that no such modification or amendment adversely affects the ownership interest of any Owner and that no such modification or amendment broadens or increase the liabilities and obligations imposed on each Owner under the Declaration; and

WHEREAS, Declarant desires to change the parcel assigned to the role of Administrative Owner under the Declaration; and

WHEREAS, such change in the parcel assigned to the role of Administrative Owner shall not affect any Owner (other than Declarant) and shall not broaden or increase the liabilities and obligations imposed on each Owner under the Declaration.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby state as follows:

1. **Recitals Incorporated; Certain Defined Items.** The Recitals set forth above are hereby incorporated into this First Amendment and shall be deemed terms and provisions hereof, the same as if fully set forth in this Section 1. Capitalized terms that are not otherwise defined in this Second Amendment, but are defined in the Declaration, shall have the same meanings as are ascribed to such terms in the Declaration.

2. **Administrative Owner.** The first sentence of Section 1.01(a) of the Declaration is hereby amended as follows:

"(a) 'Administrative Owner' shall mean and refer to the Owner of Lot 14 as shown on the Site Plan attached hereto as Exhibit B and incorporated herein by reference."

3. **Conflict; Survival.** In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Declaration, the terms and provisions of this

Second Amendment shall control in all events. Except as specifically modified or amended by the terms of this Second Amendment, the Declaration remains in full force and effect, without change or modification.

4. **Counterparts; Signature Pages.** This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Second Amendment may be executed and notarized on separate pages and when attached to this Second Amendment shall constitute one complete document.

EXHIBIT A

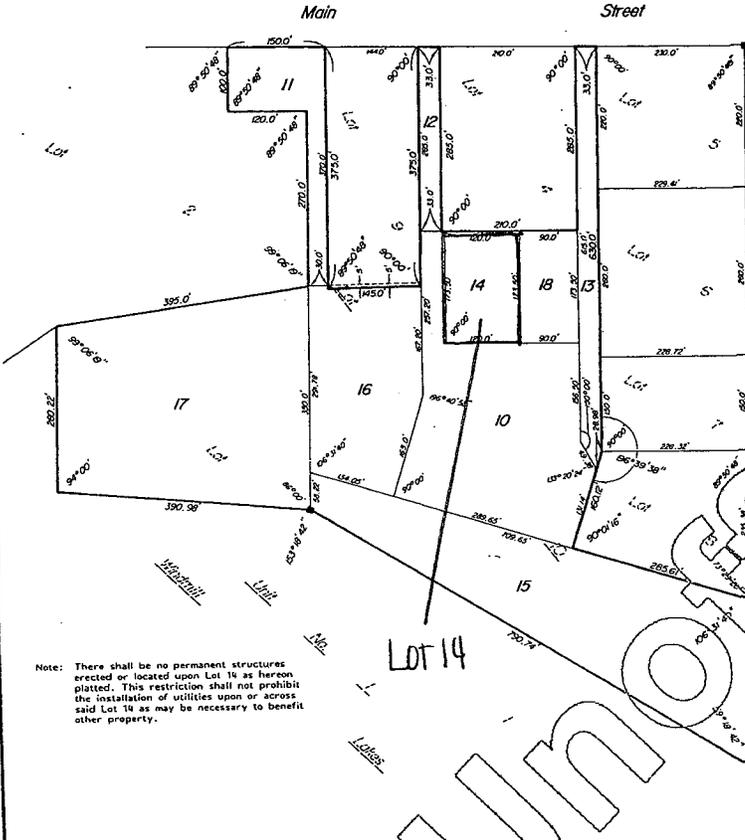
LEGAL DESCRIPTION

LOTS 4, 5, 6, 7, 8 AND 9 IN UNIT NO. 2 WINDMILL LAKES SUBDIVISION, BATAVIA, KANE COUNTY, ILLINOIS AND LOTS 10, 11, 12, 13, 14, 15, 16, 17 AND 18 OF RESUBDIVISION OF PART OF UNIT NO. 2, WINDMILL LAKES, BATAVIA, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 13, 1993 AS DOCUMENT 93K79562, IN KANE COUNTY, ILLINOIS.

EXHIBIT B

SITE PLAN

Resubdivision of Part of Unit No. 2 Windmill Lakes Batavia Kane County Illinois



State of Illinois Iss I, [Notary Name], a Notary Public in and for the County of Kane and State aforesaid, hereby certify that [Aldi Inc.] of Aldi Inc., an Illinois corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing owner's certificate, as said officers, appeared before me this day and acknowledged the execution of the annexed plat and accompanying instrument as their free and voluntary act and as the free and voluntary act of said Aldi Inc.

State of Illinois Iss This is to certify that Main South Limited Partnership, an Illinois limited partnership, is the owner of part of the land described in the foregoing surveyor's certificate and has caused the same to be surveyed, subdivided and platted, as shown by the annexed plat, for the uses and purposes therein set forth, as allowed and provided by statute, the subdivision to be known as "RESUBDIVISION OF UNIT NO. 2, WINDMILL LAKES, BATAVIA, KANE COUNTY, ILLINOIS", and it hereby acknowledges and adopts the same under the style and title aforesaid.

State of Illinois Iss I, [Notary Name], a Notary Public in and for the County of Cook and State aforesaid, hereby certify that [Main South Limited Partnership] of Main South Limited Partnership, an Illinois limited partnership, who are personally known to me to be the same person whose name is subscribed to the foregoing owner's certificate, appeared before me this day and acknowledged the execution of the annexed plat and accompanying instrument as his free and voluntary act and as the free and voluntary act of said Main South Limited Partnership.

State of Illinois Iss Accepted and approved by LaSalle National Bank (f/k/a The Exchange National Bank), as Mortgagee. Dated at Chicago, Illinois, this 23 day of Sept. 1993.

State of Illinois Iss Accepted and approved by the City Council of the City of Batavia, Illinois, on 6th day of Sept. 1993. State of Illinois Iss Accepted and approved by the City of Batavia Planning Commission, this 10th day of August, 1993.

State of Illinois Iss This is to certify that I, Lorraine P. Sava, County Clerk in and for the County and State aforesaid, find no redeemable tax sale, unpaid forfeiture taxes or unpaid current taxes against any of the real estate described in the foregoing surveyor's certificate. Dated at Geneva, Illinois, this 13th day of October, 1993.

State of Illinois Iss This instrument No. 93K79562 was filed for record in the Recorder's Office of Kane County, Illinois, on the 13th day of October, 1993, at 2:12 o'clock P.M., and was recorded in Plat Envelope No. 794-A.

UTILITY EASEMENT PROVISIONS Provisions for utility easements over the Lots hereon platted shall be contained in a certain Second Amendment to and First Restatement of, Reciprocal Easements, Covenants and Restrictions, (the "Second Amended and Restated Declaration"), into which the owners of all of the Lots hereon platted shall enter. Said utility easements, as set forth in the Second Amended and Restated Declaration, shall replace and supersede any utility easement provisions for in the original plat of subdivision of any or all of the property affected by this Plat of Subdivision. As a set forth in any prior plat of subdivision of any or all of the property affected by this Plat of Subdivision, the easements referred to therein shall be the only recorded utility easements with respect to the property affected by this Plat of Subdivision. All other utility easements shall be thereupon vacated.

BIKE TRAIL EASEMENT PROVISIONS A 10 foot-wide non-exclusive easement over that portion of Lots 11, 15 and 16 platted hereon, lying within 10 feet of the Lot line that is common to all of said Lots 11, 15 and 16 and Lots 1 and 2 in Unit No. 1, Windmill Lakes and Lot 17 hereon platted, is hereby reserved for and granted to the City of Batavia for the purpose of constructing, maintaining, patrolling and altering a public pathway for pedestrian and non-motorized vehicular use. Said bike trail easement is restricted to the placement of said pathway and may include trees, shrubs, bushes, lawns, and other forms of vegetation. No permanent buildings or structures shall be constructed or maintained on, across, over, or through said bike trail easement. Nothing contained in this paragraph shall preclude the exercise of rights hereinabove granted for utility easements. No such bike trail easement may be claimed or inferred as to any location unless written approval of such location has been duly recorded in the Kane County Recorder's Office.

Note: There shall be no permanent structures erected or located upon Lot 14 as hereon platted. This restriction shall not prohibit the installation of utilities upon or across said Lot 14 as may be necessary to benefit other property.

State of Illinois Iss This is to certify that I, John A. Thornhill, Jr., an Illinois Professional Land Surveyor of Donahue and Thornhill, Inc., have surveyed, subdivided and platted part of Lot 10 and Lots 11, 12, and 13, Unit No. 2, Windmill Lakes, Batavia, Kane County, Illinois and that part of Lot 1, Unit No. 1, Windmill Lakes, Batavia, Kane County, Illinois as follows: Beginning at the most northerly northeast corner of said Lot 1; thence southerly along an east line of said Lot 1, 350.0 feet to an angle in said east line; thence westerly along a line drawn parallel with said east line from an angle in the northerly line of said Lot that is 395.0 feet westerly of the point of beginning; thence northerly along said parallel line forming an angle of 90°00' with the last described course (measured counter-clockwise therefrom) 269.22 feet to an angle in said northerly line; thence easterly along said northerly (measured counter-clockwise therefrom) 395.0 feet to a line forming an angle of 89°00'10" with the last described course (measured counter-clockwise therefrom) 395.0 feet to the point of beginning, all in the City of Batavia, Kane County, Illinois and containing 10.337 acres as shown by the plat hereon drawn which is a correct representation of said survey and subdivision. I further certify that the above described tract is within the corporate limits of the City of Batavia, which has adopted an official plan, and said tract is not located within a special flood hazard area as identified by the Federal Emergency Management Agency. All distances are given in feet and decimal parts thereof.



Dated at Geneva, Illinois, October 15, 1993 Illinois Professional Land Surveyor No. 1740

State of Illinois Iss This is to certify that Aldi Inc., an Illinois corporation, is the owner of part of the land described in the foregoing surveyor's certificate and by the duty elected officers has caused the same to be surveyed, subdivided and platted, as shown by the annexed plat, for the uses and purposes therein set forth, as allowed and provided by statute, the subdivision to be known as "RESUBDIVISION OF UNIT NO. 2, WINDMILL LAKES, BATAVIA, KANE COUNTY, ILLINOIS", and it hereby acknowledges and adopts the same under the style and title aforesaid. Dated at [Geneva], Illinois, this 10th day of August, 1993.

DONAHUE AND THORNHILL, INC. 7 RICHARDS STREET GENEVA, ILLINOIS 60134 (708) 232-7418

53

CITY OF BATAVIA

DATE: 5/12/16
TO: Mayor and City Council
FROM: Peggy Colby, Finance Director
RE: Ordinance 16-20 Water Pollution Control Program Authorizing Loan Agreement City of Batavia a Home Rule Entity

The Wastewater Treatment Plant improvements as presented in Task Order #8 with Trotter & Associates approved by Resolution 16-11-R will be financed with an IEPA Loan. Ordinance 16-20 is an Authorizing Ordinance for the issuance of up to \$30,000,000 in an IEPA Loan. This is not the official Bond Ordinance but is a requirement to proceed through the application process. The loan will have a Official Bond Ordinance prepared by Chapman and Cutler that will need to be approved by the City Council at a later date.

The projected cost for Phase I is currently \$27.7 million including projected construction loan interest. The amount in the authorizing Ordinance is set higher than expected to provide for unforeseen costs. The City Council has authorized three years of 6% rate increases to cover the costs of Phase I, however it should be noted that at least one more year of an increase is necessary to support Phase I. Further rate increases beyond 6% will be necessary for Phases II and III. The costs for the project are high and will impact ratepayers. Please recall that the City Council authorized Gary Holm to hire a separate engineering firm to conduct value engineering on the project so that we could be assured that we would have the most cost effective plan. Some savings did result from that process.

The City will also need to have some sort of interim financing or line of credit to fund construction once it starts since the IEPA loans are done on a reimbursement basis. That will be brought to the Council towards the end of the year.

Requested Action by Council: Recommendation for approval of Ordinance 16-20 Water Pollution Control Program Authorizing Loan Agreement City of Batavia a Home Rule Entity which authorizes up to \$30,000,000 in an IEPA Loan for the Wastewater Treatment Plant Rehabilitation Phase I. Thank you.

cc. Mayor and City Council
William McGrath
Gary Holm
Byron Ritchason
File

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 16-20**

**WATER POLLUTION CONTROL LOAN PROGRAM
AUTHORIZING LOAN AGREEMENT
CITY OF BATAVIA
A HOME RULE ENTITY**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
THIS 6TH DAY OF JUNE 2016**

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Batavia,
Kane & DuPage Counties, Illinois,
This 6th day of June, 2016

Prepared by:
City of Batavia
100 N. Island Ave.
Batavia, IL 60510

**AUTHORIZING LOAN AGREEMENT
(WATER POLLUTION CONTROL LOAN PROGRAM –CITY OF BATAVIA)**

ORDINANCE NUMBER 16-20

AN ORDINANCE authorizing the City of Batavia, of
Kane and Dupage County, Illinois, to borrow funds
from the Water Pollution Control Loan Program

WHEREAS, The City of Batavia, Kane and DuPage Counties, Illinois (the “*City*”), is a duly organized and existing home rule municipality and unit of local government of the State of Illinois, and is operating under and pursuant to the provisions of the Illinois Municipal Code; and

WHEREAS, The City currently owns and operates a Sewer system (the “*Wastewater System*”) and in accordance with the provisions of 65 ILCS 5/11-139 and the Local Government Debt Reform Act, 30 ILCS 350/1 et seq. (collectively “the Act”); and

WHEREAS, the MAYOR and CITY COUNCIL of the City of Batavia (“the Corporate Authorities”) have determined that it is advisable, necessary, and in the best interest of the public health, safety, and welfare to improve the System, including the following:

Project Description

Improvements to the City of Batavia Wastewater Treatment plant with new infrastructure all in accordance with the plans and specifications prepared by the consulting engineers and which has an estimated useful life of 30 years.

WHEREAS, the estimated cost of construction and installation of the Project, including engineering, legal, financial and other related expenses is \$30,000,000, and there are insufficient funds on hand and lawfully available to pay these costs; and

WHEREAS, the loan shall bear an interest rate as defined by 35 Ill. Adm. Code 365, which does not exceed the maximum rate authorized by the Bond Authorization Act, as amended, 30 ILCS 305/0.01 et seq., at the time of the issuance of the loan; and

WHEREAS, the principal and interest payment shall be payable semi-annually, and the loan shall mature in 20 years, which is within the period of useful life of the Project; and

WHEREAS, the costs are expected to be paid for with a loan to the City of Batavia from the Water Pollution Control Loan Program through the Illinois Environmental Protection Agency, the loan to be repaid from sewer revenues and the loan is authorized to be accepted at this time pursuant to the Act; and

WHEREAS, in accordance with the provisions of the Act, the City of Batavia is authorized to borrow funds from the Water Pollution Control Loan Program in the aggregate principal amount of \$30,000,000 to provide funds to pay the costs of the Project; and

WHEREAS, the loan to the City of Batavia shall be made pursuant to a Loan Agreement, including certain terms and conditions between the City of Batavia and the Illinois Environmental Protection Agency;

NOW THEREFORE, be it ordained by the Corporate Authorities of the City of Batavia of Kane and Dupage County, Illinois, as follows:

SECTION 1. INCORPORATION OF PREAMBLES

The Corporate Authorities hereby find that the recitals contained in the preambles are true and correct, and incorporate them into this Ordinance by this reference.

SECTION 2. DETERMINATION TO BORROW FUNDS

It is necessary and in the best interests of the City of Batavia to construct the Project for the public health, safety, and welfare, in accordance with the plans and specifications, as described; that the System continues to be operated in accordance with the provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.; and that for the purpose of constructing the Project, it is hereby authorized that funds be borrowed by the City of Batavia in the aggregate principal amount (which can include construction period interest financed over the term of the loan) not to exceed \$30,000,000.

SECTION 3. ADDITIONAL ORDINANCES

The Corporate Authorities may adopt additional ordinances or proceedings supplementing or amending this Ordinance, providing for entering into the Loan Agreement with the Illinois Environmental Protection Agency, prescribing all the details of the Loan Agreement, and providing for the collection, segregation and distribution of the sewer revenues of the System, so long as the maximum amount of the Loan Agreement as set forth in this Ordinance is not exceeded and there is no material change in the project or purposes described herein. Any additional ordinances or proceedings shall in all instances become effective in accordance with the Act or other applicable laws. This Ordinance, together with such additional ordinances or proceedings, shall constitute complete authority for entering into the Loan Agreement under applicable law.

However, notwithstanding the above, the City of Batavia may not adopt additional ordinances or amendments which provide for any substantive or material change in the scope and intent of this Ordinance, including but not limited to interest rate, preference or priority of any other ordinance with this Ordinance, parity of any other ordinance with this Ordinance, or otherwise alter or impair the obligation of the City of Batavia to pay the principal and interest due to the Water Pollution Control Loan Program without the written consent of the Illinois Environmental Protection Agency.

SECTION 4. LOAN NOT INDEBTEDNESS OF City of Batavia

Repayment of the loan to the Illinois Environmental Protection Agency by the City of Batavia pursuant to this Ordinance is to be solely from the revenue derived from sewer revenues of the System, and the loan does not constitute an indebtedness of the City of Batavia within the meaning of any constitutional or statutory limitation.

SECTION 5. APPLICATION FOR LOAN

The Mayor is hereby authorized to make application to the Illinois Environmental Protection Agency for a loan through the Water Pollution Control Loan Program, in accordance with the loan requirements set out in 35 Ill. Adm. Code 365.

SECTION 6. ACCEPTANCE OF LOAN AGREEMENT

The Corporate Authorities hereby authorize acceptance of the offer of a loan through the Water Pollution Control Loan Program, including all terms and conditions of the Loan Agreement as well as all special conditions contained therein and made a part thereof by reference. The Corporate Authorities further agree that the loan funds awarded shall be used solely for the purposes of the project as approved by the Illinois Environmental Protection Agency in accordance with the terms and conditions of the Loan Agreement.

**SECTION 7. AUTHORIZATION OF MAYOR
TO EXECUTE LOAN AGREEMENT**

The MAYOR is hereby authorized and directed to execute the Loan Agreement with the Illinois Environmental Protection Agency. The Corporate Authorities may authorize by resolution a person other than the MAYOR for the sole purpose of authorizing or executing any documents associated with payment requests or reimbursements from the Illinois Environmental Protection Agency in connection with this loan.

SECTION 8. SEVERABILITY

If any section, paragraph, clause or provision of this Ordinance is held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

SECTION 9. REPEALER

All ordinances, resolutions, orders, or parts thereof, which conflict with the provisions of this Ordinance, to the extent of such conflict, are hereby repealed.

CITY OF BATAVIA ORDINANCE 16-20

PRESENTED to the City Council of the City of Batavia, Illinois, this 6th day of June 2016.

PASSED by the City Council of the City of Batavia, Illinois, this 6th day of June 2016.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 6th day of June 2016.

Jeffery D. Schielke, Mayor

COUNCIL VOTE:

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	Fischer					O'Brien				
2	Callahan					Wolff				
3	Chanzit					Hohmann				
4	Stark					Mueller				
5	Thelin Atac					Botterman				
6	Cerone					Russotto				
7	Brown					McFadden				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office:		Mayor and 14 aldermen								

ATTEST:

Heidi L. Wetzel, City Clerk