

JUNE 30, 2020
SPECIAL TOWN BOARD MEETING
VIA ZOOM CONFERENCING
Meeting ID: 931 5589 0995
Password: 340684

Town Hall

8:00 A.M.

Greg Post, Supervisor led the pledge to the flag.

Because of the Novel Corona virus (COVID-19) Pandemic and the State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1 issued March 12, 2020 suspending the Open Meeting Law, the Town of Batavia Town Board meeting was held electronically via ZOOM video conference/call conference instead of a public meeting open for the public to attend in person.

Roll Call

Present: Supervisor Post
Deputy Supervisor Underhill
Councilwoman White
Councilwoman Michalak
Councilman Zambito

Others

Present: Town Clerk Morasco

The Supervisor called the meeting to order at 8:02 A.M.

RESOLUTION NO. 113:

Councilwoman White offered the following:

**ACQUIRE INTEREST IN FIVE PARCELS OF LAND
FOR PARK ROAD PROJECT**

WHEREAS, the Town of Batavia is seeking to acquire interest in the following parcels of land at the purchase amounts shown for the purpose of the Park Road Improvement Project:

1. Permanent Easement from AGRV Properties Incorporated, LLC for a portion of parcel # 8-1-23 at cost of \$10.00
2. Permanent Easement from Western Regional Off Track Betting for a portion of parcel # 8-1-21.12 at cost of \$10.00
3. Permanent Easement from Western Regional Off Track Betting for a portion of parcel # 8-1-22 at cost of \$10.00
4. Permanent Easement from Western Regional Off Track Betting for a portion of parcel # 8-1-68 at cost of \$10.00
5. Permanent Easement from 570 DAB 30, LLC for a portion of parcel # 8-1-21.2 at cost of \$10.00: and

WHEREAS, permanent easements for said properties have been prepared and executed by each

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respective property owner; and

WHEREAS, the Attorney for the Town and the Assistant Town Engineer have reviewed the Permanent Easements for the interest in these parcels and recommends the Town Board approve said agreement.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby approves acquiring interest in the following properties:

1. Permanent Easement from AGRV Properties Incorporated, LLC for a portion of parcel # 8-1-23 at cost of \$10.00
2. Permanent Easement from Western Regional Off Track Betting for a portion of parcel # 8-1-21.12 at cost of \$10.00
3. Permanent Easement from Western Regional Off Track Betting for a portion of parcel # 8-1-22 at cost of \$10.00
4. Permanent Easement from Western Regional Off Track Betting for a portion of parcel # 8-1-68 at cost of \$10.00
5. Permanent Easement from 570 DAB 30, LLC for a portion of parcel # 8-1-21.2 at cost of \$10.00

a copy of which is annexed hereto and made a part of the minutes, and be it further

RESOLVED, that the Town Supervisor is hereby authorized and directed to sign all documents necessary to secure the properties for the Park Road Improvement Project and to record the documents in the Genesee County Clerk's Office.

Second by: Councilman Zambito

Ayes: White, Zambito, Underhill, Michalak, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 114:

Deputy Supervisor Underhill offered the following:

**RESOLUTION TO APPROVE LICENSE AGREEMENT BETWEEN
MY-T-ACRES, INCORPORATED AND THE TOWN OF BATAVIA**

WHEREAS, the Town of Batavia owns a 2.9 acre parcel of real property situated on West Main Street Road; and

WHEREAS, My-T-Acres, Incorporated has made a request to obtain a license to use said real property for the sole purpose of placing a water pump on premises to serve its agricultural operation nearby; and

JUNE 30, 2020
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WHEREAS, the Town of Batavia is not currently using said parcel for any governmental purposes; and

NOW, THEREFORE, BE IT

RESOLVED, by the Town Board of the Town of Batavia, New York, that a proposed “License Agreement”, by and between the Town of Batavia and My-T-Acres, Incorporated, a copy of which is annexed and made part of the Town Board Minutes is hereby approved, and the Town Supervisor is authorized and directed to execute this Agreement on behalf of the Town of Batavia.

Second by: Councilwoman Michalak
Ayes: Underhill, Michalak, Zambito, White, Post
APPROVED by unanimous vote (5-0)

LICENSE AGREEMENT

This LICENSE AGREEMENT (this “License”) is made this ___ day of June, 2020, by and between the TOWN OF BATAVIA, a municipal corporation of the State of New York having its principal office and place of business at 3833 West Main Street Road, Batavia, New York, 14020 (the “Licensor”), and MY-T ACRES, INC., a New York corporation with an address of 8127 Lewiston Road, Batavia, New York 14020 (the “Licensee”).

WITNESSETH:

WHEREAS, Licensor owns a 2.9-acre parcel of real property situated on West Main Street Road in the Town of Batavia, as more particularly described in a deed recorded in the Genesee County Clerk’s Office at Liber 886 of deeds at Page 702 (the “Premises”); and

WHEREAS, Licensee desires to obtain a license to use the Premises solely for the purpose of placing a water pump on the Premises to serve its agricultural operation located nearby,

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree as follows:

1. License. Subject to the terms of this License, Licensor does hereby grant unto Licensee a nonexclusive license to utilize the Premises for the sole purpose of placing a water pump on the Premises to serve its agricultural irrigating operations for fields north of NYS Route 5, south of Interstate 90, and east of Kelsey Road, and for no other purpose whatsoever; provided, however, that prior to placement, the type of pump to be utilized by Licensee, and the precise location and manner of its placement, shall be approved by Licensor in its sole and absolute discretion. Licensee shall not be permitted to use or store any chemicals, pesticides, or hazardous substances of any kind on the Premises.

JUNE 30, 2020
SPECIAL TOWN BOARD MEETING
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2. License Term. The term of this License Agreement (the “Term”) shall commence on the date of this Agreement and continue until terminated by either party pursuant to the terms of this Agreement.
3. License Fee. For the non-exclusive right to utilize the Premises, Licensee shall pay to Licensor upon the execution of this License the sum of Five Hundred and 00/100 Dollars (\$500.00) (the “License Fee”).
4. Condition and Use of Premises. The Premises is hereby accepted by Licensee in “as is” condition and Licensee acknowledges that Licensor makes no representation with respect to the condition of same. Licensee agrees not to construct or install buildings, fixtures, utilities, or other improvements of any kind without the Licensor’s prior written consent, which may be granted or withheld at Licensor’s sole and absolute discretion. Licensee shall use the Premises in compliance with any and all applicable statutes, regulations and other regulatory requirements that may be in effect at any given time. Licensee shall not maintain any nuisance on the Premises, shall not use the Premises for any unlawful purposes, and shall not commit or suffer to be committed any waste on the Premises. Licensee, including all of its agents, employees, and/or contractors, shall comply with all local, state, and federal laws, regulations, ordinances and orders governing the Premises. Licensee shall not permit or allow the accumulation of any waste material, debris, refuse or garbage of any kind on the Premises.
5. Maintenance. Licensee shall return the Premises to its pre-licensed condition, reasonable wear and tear excepted.
6. Insurance. Licensee shall at all times during the term of this License carry and maintain comprehensive liability insurance, including property damage, insuring Licensor and Licensee against liability for injury to persons or property occurring on or about the Premises or arising out of the use or occupancy of Premises with limits of not less than \$5,000,000. Such policy shall name Licensor as additional insured. Certificates evidencing the insurance coverages shall be furnished to Licensor on or before the commencement of the use of the Premises by Licensee.
7. Indemnity and Hold Harmless.
 - a. Indemnification. Licensee shall neither hold, nor attempt to hold, Licensor or its employees or Licensor’s agents or their employees liable for, and Licensee shall indemnify and hold harmless Licensor, its employees and Licensor’s agents and their employees from and against, any and all demands, claims, causes of action, fines, penalties, damage, liabilities, injuries, judgments and expenses (including, without

JUNE 30, 2020
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limitation, attorneys' fees) incurred in connection with or arising from the use of the Premises by Licensee or any person claiming under Licensee.

- b. Environmental Indemnity and Hold Harmless. Licensee hereby covenants and agrees, at its sole cost and expense, to indemnify, protect, defend, and save harmless Licensor from and against any and all claims, damages, losses, liabilities, obligations, penalties, litigations, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, attorneys' and experts' fees, legal expenses and associated disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against Licensor relating to, resulting from or arising out of: (a) Licensee's use of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substances; (b) Licensee's failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises that was caused by Licensee; (c) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from Licensee's use of the Premises; (d) a violation of any Environmental Law by Licensee; and/or (e) the failure of Licensee to obtain any necessary Environmental Permit for Licensee's use of the Premises.
 - c. Liability of Licensor. Licensor or its agents shall not be liable for any damage to either the person or property of Licensee nor for the loss of or damage to any property of Licensee by theft or from any other cause whatsoever, nor for any injury or damage to persons or property or loss of or interruption to business of any nature unless caused by or due to the negligence of Licensor, its agents, servants and employees.
 - d. Survival. The indemnification and covenants provided by Licensee under this paragraph shall survive the expiration or early termination of this License Agreement.
8. Revocation and Termination. This License Agreement shall be considered a nonexclusive license to use the Premises and shall not create a tenancy relationship between the parties. This License Agreement is not an interest in real estate and is at the pleasure and discretion of Licensor and Licensee. Notwithstanding anything to the contrary contained herein, this License Agreement may be terminated by either Licensor or Licensee at any time on fifteen (15) days written notice to the other party.

JUNE 30, 2020
SPECIAL TOWN BOARD MEETING
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9. Inspections and Entry by Licensor. Licensor reserves the right to itself, its agents, and/or assigns to access the Premises at any reasonable time for purposes of consultation with Licensee, making repairs, improvements, inspections and/or to utilize portions of the Premises, and to do any other act or thing which Licensor deems necessary to preserve the Premises, none of which is to reasonably interfere with Licensee in carrying out its business.
10. Successor and Assign. Licensee's rights under this License Agreement are for the benefit of Licensee named herein. Licensee shall not assign, sublicense, or transfer any of its rights under this License without the prior written consent of Licensor (and any purported assignment, sublicense or transfer by Licensee of its rights under this License without such consent shall be null and void), and shall not permit any other party to use or occupy the Premises except in the ordinary course of Licensee's business.
11. Choice of Law. This License Agreement shall be construed and enforced in accordance with the laws of the State of New York.
12. Entire Agreement. This License contains all of the agreements between the parties with respect to the Premises, and may be amended only in writing by an instrument signed by all parties hereto. No provision of this License shall be deemed to have been waived by either party unless such waiver is in writing and signed by the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this License as of the day and year first written above.

TOWN OF BATAVIA

Date: _____

By: Gregory H. Post, Supervisor

MY-T ACRES, INC.

Date: _____

By: _____

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Title: _____

RESOLUTION NO. 115:

Supervisor Post offered the following:

PURCHASE OF LASERFICHE SUBSCRIPTIONS

WHEREAS, the Town of Batavia planned on utilizing one Laserfiche License for a dedicated computer for all staff users; and

WHEREAS, with the recent events of the Covid-19 pandemic and many staff members working remotely, they do not have access to the program; and

WHEREAS, General Code submitted a proposal for ten (10) annual Laserfiche Participant Users Subscriptions at a cost of \$97.00 each and remote services at a cost of \$150.00, with prorating to align with the existing anniversary date of the main system.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby approves the purchase of ten (10) annual Laserfiche Participant Users Subscriptions at a cost of \$97.00 each and remote services at a cost of \$150.00, with prorating to align with the existing anniversary date of the main system from General Codes, a copy of said proposal is annexed hereto and made a part of the minutes; and be it further

RESOLVED, the Supervisor is hereby authorized to execute said proposal; and be it further

RESOLVED, the expenditure will be appropriated from line item A1410.402.

Second by: Councilman Zambito

Ayes: Post, Zambito, White, Underhill, Michalak

APPROVED by unanimous vote (5-0)

ADJOURNMENT:

Motion Councilwoman White, second Deputy Supervisor Underhill to adjourn the Special Town Board Meeting at 8:06 A.M.

Ayes: White, Underhill, Michalak, Zambito, Post

MOTION CARRIED by unanimous vote (5-0)

Respectfully submitted,

Teresa M. Morasco
Town Clerk