

TO: Mayor and City Council (PU)

FROM: Gary Holm, Director of Public Works

DATE: May 5, 2023

RE: Resolutions 23-068 and 23-069 Approval of a Temporary Construction License and Grant of Easement with Target Corp. for reconstruction of the Randall Rd. Sanitary Lift Station

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The City's sanitary sewer lift station, located in front of 115 N Randall Rd., is at end-of-life and in need of reconstruction. On January 17, 2023 City Council approved a contract with Integral Construction for the reconstruction project.

In order to facilitate reconstruction, the City requested that the adjacent property owner, Target Corp., grant both a temporary construction license as well as a permanent easement. Target Corp. has been very cooperative and has agreed to grant the City both documents.

The temporary construction license and permanent grant of easement have both been reviewed by Target's and the City's attorneys.

**Staff recommends:**

**RES 23-068-R Approval of a Temporary Construction License with Target Corp. for reconstruction of the Randall Rd. Sanitary Lift Station**

**and**

**RES 23-069-R Approval of a Grant of Easement with Target Corp. for reconstruction of the Randall Rd. Sanitary Lift Station**

**CITY OF BATAVIA, ILLINOIS  
RESOLUTION 23-068-R**

**APPROVAL OF A TEMPORARY CONSTRUCTION LICENSE WITH TARGET CORP. FOR  
RECONSTRUCTION OF THE RANDALL RD. SANITARY LIFT STATION**

**WHEREAS**, the City of Batavia is responsible to own and maintain sanitary sewer lift stations as part of its sanitary sewer collection system; and

**WHEREAS**, the Randall Road Lift Station is nearing end-of-life and is in need of full reconstruction; and

**WHEREAS**, the City has previously awarded a contract for reconstruction of the Randall Rd. Lift Station; and

**WHEREAS**, a temporary construction license is required to facilitate construction activities; and

**WHEREAS**, the property owner, Target Corp., desires to grant the City a temporary license, subject to certain conditions; and

**WHEREAS**, the City desires to accept the license, subject to the conditions that have been agreed; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and 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 approve a temporary construction license with Target Corp., attached hereto as Exhibit I, for reconstruction of the Randall Road Lift Station.

CITY OF BATAVIA, ILLINOIS RESOLUTION 23-068-R

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**PRESENTED** to the City Council of the City of Batavia, Illinois, this 15<sup>th</sup> day of May, 2023.

**PASSED** by the City Council of the City of Batavia, Illinois, this 15<sup>th</sup> day of May, 2023.

**APPROVED** by me as Mayor of said City of Batavia, Illinois, this 15<sup>th</sup> day of May, 2023.

\_\_\_\_\_  
Jeffery D. Schielke, Mayor

Ward	Alderman	Aye	Nay	Abstain	Absent
1	Baerren				
1	Solfa				
2	Lehman				
2	Wolff				
3	Ajazi				
3	Chanzit				
4	Malay				
4	Connelly				
5	Uher				
5	Beck				
6	Cerone				
6	VACANT				
7	Vogelsinger				
7	Miller				
Mayor	Schielke				
		<b>AYES</b>	<b>NAYS</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
	<b>TOTALS</b>				

*total holding office: Mayor and 13 Aldermen*

ATTEST:

\_\_\_\_\_  
Kate Garrett, City Clerk

**RES 23-068-R**  
**EXHIBIT I**

**TEMPORARY CONSTRUCTION LICENSE**

THIS TEMPORARY CONSTRUCTION LICENSE (this “Agreement”) is made and entered into as of the \_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), by and between TARGET CORPORATION, a Minnesota corporation (“Target”) and the CITY OF BATAVIA, an Illinois Municipal Corporation (“Licensee”).

**RECITALS:**

A. Target is the owner of a certain parcel of real property situated at 115 N. Randall Road in Batavia, Kane County, Illinois (the “Target Tract”).

B. Licensee is the beneficiary of an existing sanitary sewer easement within the Target Tract (the “Easement”). In order to facilitate Licensee’s rehabilitation of an existing sanitary sewer lift station within the Easement (“Construction Work”), Licensee has requested that Target grant to Licensee the right to enter upon the certain limited area of the Target Tract indicated on Exhibit A (the “Temporary Construction Area”) and to utilize the Temporary Construction Area for the temporary staging and storage of construction materials and equipment, and for such incidental uses and purposes as are reasonable and necessary for completion of the Construction Work pursuant to the terms and conditions of this Agreement.

C. Target is willing to permit such temporary access, subject to and in accordance with the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, it is agreed as follows:

1. Grant of License. Target hereby grants unto Licensee a non-exclusive license (the “License”) to enter upon and use the Temporary Construction Area for the purpose of performing the Construction Work, subject to the terms of this Agreement.

2. Term. The term of the License shall commence on the Effective Date and shall terminate on the earlier of (a) October 15, 2023, or (b) the date of completion of the Construction Work. Notwithstanding the foregoing, Licensee agrees that no portion of the Construction Work and no use of the Temporary Construction Area shall occur during the months of November, December or January.

3. Use of the Temporary Construction Area. The License is granted to Licensee only for the purpose stated herein and for no other purpose, and Licensee shall not be entitled to use the Temporary Construction Area or any other portion of the Target Tract for any other purpose. In connection with the use of the Temporary Construction Area, Licensee agrees to each of the following terms and conditions:

a. Licensee shall, at its sole cost and expense, at all times keep the Temporary Construction Area and the Target Tract free from any and all debris and trash relating to the

Construction Work, and will properly fence and secure all materials and equipment stored within the Temporary Construction Area.

b. Licensee shall not use the Temporary Construction, or cause or permit the same to be used, for any use or purpose in violation of this Agreement or any laws, ordinances, regulations or requirements of any governmental entity.

c. Licensee shall not cause or permit the Temporary Construction Area to be put in an unsafe condition or cause a condition upon the Temporary Construction Area that could be categorized legally as an “attractive nuisance”.

d. Licensee shall not bring to or upon, or cause or permit to be brought to or upon, the Target Tract any objectionable noises, odors or nuisances or any hazardous wastes or substances as defined by federal or state law.

e. Licensee shall comply with, or cause compliance with, all health, police, and safety statutes, ordinances, regulations, zoning, building, and code requirements governing the use of the Temporary Construction Area and/or the Construction Work.

f. Licensee shall not permit liens or claims of any nature relating to the Construction Work to be filed or charged against the Target Tract. Should any such lien be filed against the Target Tract, Licensee shall, within 30 days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

g. No existing improvements within the Temporary Construction Area shall be removed or disturbed by Licensee and/or its officers, employees, agents, general contractor, any subcontractors, materialmen, suppliers or any other person or entity associated with the Construction Work (collectively, “Licensee’s Permittees”). Licensee shall use its best efforts to prevent any damage to the Target Tract, any interruption of utility service, and any other interference with operations on the Target Tract. Any damage to the Target Tract caused by or related to the use of the Temporary Construction Area or performance of the Construction Work (including, but not limited to, damage to landscaping, plants or grass) shall be immediately repaired by Licensee at its sole cost and expense. Licensee shall not have any right of overhang or encroachment on, over, within or under the Target Tract for any reason or in any manner whatsoever.

h. Licensee assumes all risk of loss or damage to the property of Licensee and/or Licensee’s Permittees associated with the Construction Work and/or use of the Temporary Construction Area, including any loss or damage caused by water, fire, windstorm, explosion, theft, or other cause. Licensee shall be responsible for all costs related to the use of the Temporary Construction Area pursuant to this Agreement and shall have responsibility for the security and safety of all persons and property directly or indirectly associated with the Construction Work and use of the Temporary Construction Area pursuant to this Agreement. Target will not be liable to Licensee, or those claiming through Licensee (including, but not

limited to, Licensee's Permittees), for injury, death or property damage occurring on or about the Temporary Construction Area.

i. All activity within the Temporary Construction Area shall be coordinated with representatives of Target. If a representative of Target reasonably believes that activity within the Temporary Construction Area is creating or could create a risk of damage to the any improvements on the Target Tract, any interruption of utility service, or any other interference with operations on the Target Tract, then Licensee shall immediately cease or cause the cessation of such activity and remediate such risk to the reasonable satisfaction of Target.

j. If, in the course of performing activities relating to the Construction Work, Hazardous Materials or debris are encountered on, within or under the Target Tract that was not released by Target, Licensee (and not Target) shall be responsible for the remediation and/or disposal of such materials in accordance with Environmental Laws. For purposes of this Agreement, the term (i) "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

k. Immediately following the sooner of completion of the Construction Work, or expiration of the license granted herein, Licensee must cause to be removed from the Temporary Construction Area all debris, surplus material, and construction equipment and leave the Temporary Construction Area in a neat and presentable condition. Further, Licensee shall have the continuing obligation to cause the prompt restoration to smooth surface contours and neat condition any portion of the Easement area that settles.

5. Default. If Licensee, or any of Licensee's Permittees, at any time breaches one or more of the provisions of this Agreement, Target shall notify Licensee of such breach in writing. If such breach is not cured within five (5) Business Days (as defined below) following receipt of such notice by Licensee, Target may (in addition to all other rights and remedies at law or in equity) elect to reasonably cure such default at Licensee's sole risk and expense and/or terminate this Agreement and the License granted herein. Notwithstanding the foregoing, if the breach is an emergency condition, Target may (in addition to all other rights and remedies at law or in equity) elect to reasonably cure such breach at Licensee's sole risk and expense upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as reasonably possible thereafter and/or immediately terminate this Agreement and the License granted herein. If Target elects to reasonably cure such breach, Licensee shall reimburse Target for all costs and expenses incurred in connection with such curative action within thirty (30) days after receipt of demand therefor. The term "Business Day" means any day except any Saturday, any Sunday, and any day that is a federal legal holiday in the United States.

6. Indemnification. Licensee agrees to defend, indemnify and hold Target harmless from and against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including, without limitation, attorneys' fees and court costs) incurred by Target as a result of or in connection with (a) the use of the Temporary Construction Area hereunder by Licensee or Licensee's Permittees and/or (b) the Construction Work. Licensee shall bear, pay and discharge, promptly as and when the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise, against Target and shall hold Target harmless against all such claims, losses, damages, liabilities, costs and expenses, and shall assume the burden and expense of defending all suits, administrative proceedings and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences covered by the foregoing indemnification obligation.

7. Insurance. On or before the commencement of any use of the Temporary Construction Area, Licensee shall ensure that its contractors and subcontractors performing the Construction Work have provided to Target evidence of the insurance described in Exhibit B attached hereto and made a part hereof.

8. Notices. All notices, terminations, demands, acceptances, requests and approvals required or permitted to be given under this Agreement (each of which is herein sometimes referred to as a "Notice") must be in writing and must be delivered personally, or by prepaid nationally recognized overnight or second day courier, or by deposit in the United States mail, prepaid and certified or registered mail, return receipt requested, addressed in each instance to Target or Licensee, as the case may be, at the following addresses:

If to Target:	Target Corporation Property Development Attn: Real Estate – Existing Stores 1000 Nicollet Mall Minneapolis, Minnesota 55403
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If to Licensee:	City of Batavia Attn: City Administrator 100 N. Island Avenue Batavia IL 60543
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Each such Notice shall be deemed to have been given as of the date the same is personally delivered to the party to be notified or the date the same is delivered to the address designated hereunder for the party to be notified, as the case may be; provided, however, that rejection or refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request. Each party shall have the right from time to time and at any time upon at least ten (10) days' written notice thereof, to change its respective address, and each party shall have the right to specify as its address any other address within the United States of America.

9. Attorneys' Fees. If a suit is brought to enforce the terms and provisions of this Agreement, or for damages as a result of a party's breach of any term, covenant, agreement or

other provision contained herein, the successful party shall be entitled to an award against the other party for the successful party's reasonable attorneys' fees and court costs incurred in connection with any such suit.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Target Tract is located.

11. Binding Effect. This Agreement will inure to the benefit of and bind the respective successors, heirs, personal representatives and permitted assigns of the parties hereto. This Agreement may not be assigned by Licensee, voluntarily or involuntarily, by operation of law or otherwise. Any purported or attempted assignment in violation of this Agreement shall be null and void and of no effect.

12. Recitals; Entire Agreement. The Recitals set forth above are hereby incorporated into and shall be deemed part of this Agreement. This instrument constitutes the entire agreement between the parties respecting the License. This Agreement can not be amended except in writing executed by all of the parties hereto.

13. No Joint Venture or Easement. Nothing contained in this Agreement shall be construed to create a joint venture between the parties hereto or create an easement in favor of Licensee.

14. Authority; Condition. Target and Licensee each represents and warrants to the other that it has the full capacity, right, power and authority to execute, deliver and perform under this Agreement and that all required actions, consents and approvals therefor have been duly taken and obtained. Licensee agrees that it is accepting the License without any warranty or representation regarding the License or the Temporary Construction Area whatsoever, in their "AS-IS", "WHERE-IS", "WITH ALL FAULTS" condition, and subject to all valid and existing licenses, leases, grants, exceptions, encumbrances, title defects, matters of record, reservations and conditions affecting the Target Tract and/or affecting access thereto.

15. Construction; Captions; Counterparts. This Agreement shall not be construed strictly for or against any party. The captions set forth herein are for convenience only and are not a part of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one instrument.

16. Survival. All of the covenants, agreements and indemnities of the parties made herein shall survive the expiration or earlier termination of the License.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the date first above set forth.

TARGET:  
TARGET CORPORATION,  
a Minnesota corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

LICENSEE:  
CITY OF BATAVIA

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**EXHIBIT A**

**Site Drawing**

## **EXHIBIT B**

### **Insurance Requirements**

Prior to commencing any use of the Temporary Construction Area, Licensee shall require each of its contractors and subcontractors to obtain, and thereafter maintain, so long as any use of the Temporary Construction Area is occurring, at least the minimum insurance coverages set forth below:

1. Workers' Compensation and Employer's Liability insurance:
  - (a) Worker's Compensation insurance as required by any applicable law or regulation.
  - (b) Employer's Liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
  
2. Commercial General Liability insurance covering all operations by or on behalf of the Contractor, which shall include the following minimum limits of liability and coverages:
  - (a) Required coverages:
    - (i) Premises and Operations.
    - (ii) Products and Completed Operations.
    - (iii) Contractual Liability, insuring the indemnity obligations assumed by the Contractor under the contract documents.
    - (iv) Broad Form Property Damage (including Completed Operations).
    - (v) Explosion, Collapse and Underground Hazards.
    - (vi) Personal Injury Liability.
  - (b) Minimum limits liability:
    - (i) \$1,000,000 each occurrence (for bodily injury and property damage).
    - (ii) \$1,000,000 for Personal Injury Liability.

- (iii) \$2,000,000 general aggregate applying separately to the work contemplated under the Agreement.
- 3. Automobile Liability insurance, including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$2,000,000 combined single limit each accident for bodily injury and property damage. The Contractor shall require each of his subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

Target shall be named as an additional insured on each policy (for the Commercial General Liability policy, pursuant to a CG 2010 11-85 version Form B endorsement, or equivalent), and each policy shall provide that the same shall not be cancelled, allowed to expire, or reduced in amount or coverage below the requirements set forth above without at least thirty (30) days prior written notice to Target. If any of the insurance policies are cancelled, expire or the amount or coverage thereof is reduced below the level required, then Licensee shall immediately stop or cause to be stopped all work on and use of the Temporary Construction Area until either the required insurance is reinstated, or replacement insurance is obtained, and evidence thereof is given to Target. All insurance required above shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/X which are authorized to do business in the State in which the Target Tract is located.