

**DECEMBER 19, 2012
REGULAR TOWN BOARD MEETING**

Town Hall

7:00 P.M.

Paul Barrett, Fire Chief led the pledge to the flag.

Roll Call

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

Others

Present: Town Clerk Morasco
Paul Barrett, Fire Chief
John Fitzsimmons, President
Roger Muehlig, Daily News Reporter

The Supervisor called the meeting to order at 7:00P.M.

November 19, 2012 Regular Town Board Meeting, December 5, 2012 Public Hearing-Creek/East Roads Proposed Water District, and December 5, 2012 Special Town Board Meeting:

Motion Deputy Supervisor Underhill, second Councilwoman Michalak to approve the minutes as written.

Ayes: Underhill, Michalak, Zambito, Lang, Post

MOTION CARRIED by unanimous vote (5-0)

RESOLUTION NO. 192:

Councilman Lang offered the following:

**AUTHORIZING AGREEMENT FOR
FIRE PROTECTION SERVICES FOR FISCAL YEAR 2013**

WHEREAS, there has been duly established in the Town of Batavia a Fire Protection District known as the "Town of Batavia Fire Protection District" as such territory is more fully described in the Resolution establishing such District as was duly adopted by the Town Board of the Town of Batavia, Genesee County, New York, on March 24, 1948;

WHEREAS, it is proposed that a Contract be entered into with the Town of Batavia Fire Department, Inc. for the furnishing of fire protection in said District by said Town of Batavia Fire Department, Inc.; and

WHEREAS, due notice has been given of a Public Hearing held at the Town Hall of the Town of Batavia, New York on the 19th day of December, 2012, at 6:55 P.M. to consider such Contract, the notice thereof duly specifying the time and place of the Public Hearing as aforesaid and describing the time and place of the Public Hearing as aforesaid and describing in general terms and proposed Contract; and

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WHEREAS, said Public Hearing was duly conducted as advertised and all persons interested therein and presenting themselves were heard; now, therefore, be it

RESOLVED, it is in the public interest for this Board to contract with the Town of Batavia Fire Department, Inc., and be it further

RESOLVED, upon receiving certified copies of resolutions duly adopted by said Town of Batavia Fire Department, Inc., membership and Directors approving the terms and conditions of said Contract that this Town Board shall contract with said Town of Batavia Fire Department, Inc. for the furnishing of fire protection to such District according to the terms of said Contract, a copy of which is annexed to this Resolution and is make a part thereof, and be it further

RESOLVED, such contract shall be executed on behalf of the Town of Batavia, New York by its Supervisor and Town Clerk.

Second by: Councilman Zambito

Ayes: Lang, Zambito, Underhill, Michalak, Post

APPROVED by unanimous vote (5-0)

Discussion- The Supervisor commended the Town of Batavia Fire Department for the extraordinary service they provide. He thanked the department and the members for protecting and servicing us.

The Fire Chief thanked the Town Board for all the support and assistance they have provided.

TOWN OF BATAVIA FIRE DEPARTMENT AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2012, by and between the **TOWN OF BATAVIA, NEW YORK**, (hereinafter designated as "Town") and the **TOWN OF BATAVIA FIRE DEPARTMENT, INC.** of Batavia, New York, (hereinafter designated as "Fire Department").

WITNESSETH:

WHEREAS, there has been duly established in the said Town of Batavia a fire protection district known as the "Town of Batavia Fire Protection District" as such' territory is more fully described in the Resolution establishing such District and duly adopted by the Town Board of the said Town of Batavia, Genesee County, New York on 24th day of March, 1948; and

WHEREAS, following a public hearing duly called, the said Town has duly authorized a Contract with the Fire Department for fire protection in said District upon the terms and conditions herein set forth; and

WHEREAS, this Agreement has also been duly authorized by the Directors and membership of

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the Fire Department, and the Fire Department has provided to the Town certified copies of Resolutions of approval of this Agreement by the Town of Batavia Fire Department Board of Directors and by its membership.

NOW, THEREFORE, the Town does engage the Fire Department to furnish fire protection to said District and the Fire Department agrees to furnish such protection in the manner following, to wit:

1. The equipment and personnel of the Fire Department shall at all times during the term of this Agreement be subject to call for attendance upon any fire occurring in such District, and when notified by any means of a fire within the District, said Fire Department shall respond and attend upon the fire without delay with one or more companies and with suitable fire-fighting equipment and apparatus of the Fire Department. Upon arriving at the scene of the fire, the firefighters of the Fire Department attending shall proceed diligently and in every way reasonably suggested under the circumstances to the extinguishments of the fire and the saving of life and property in connection therewith.

2. The Fire Department covenants and agrees at all times to maintain in force on and in respect to vehicles and equipment owned by it or subject to its control or use, while responding to, attending at or leaving from fires, alarms or calls both inside and outside said District, including, but not limited to, responses in connection with Mutual Aid Plan referred to in Paragraph 5 of this Agreement, an underlying public liability insurance policy for injury to persons and property, including wrongful death, with limits of \$500,000.00 for each person, \$1,000,000.00 for each accident and \$250,000.00 property damage for each accident and an excess public liability policy in the amount of \$3,000,000.00 insuring the Fire Department and the Town against any loss by reasons of personal injury including wrongful death, or property damage caused or contributed to by the negligent operation of said vehicles and/or equipment in connection with a fire, alarm or call in or from said District or in connection with a mutual aid response. In addition, the Fire Department agrees at all times to maintain in force public liability insurance to protect itself and the Town from all other losses occurring in its operations other than those arising out of the use and operation of said vehicles and/or equipment to persons for injury, including wrongful death, and to property in amounts for underlying and excess liability similar to that maintained for vehicles and/or equipment. All liability insurance policies must be obtained through insurance companies licensed to do business within the State of New York, must name the Town of Batavia as insured and must be maintained for the life of this Agreement.

The Fire Department shall deliver a copy of the policy of said insurance to the Town prior to the execution of this Agreement, covenants to pay the premiums thereon in timely fashion and to have said insurance policies provide for thirty (30) days written notice to the Town prior to cancellation. If the Fire Department shall fail to pay said premiums due hereunder in a timely fashion, the Town shall have the right to pay the same and to deduct the cost thereof from the amounts due the Fire Department under paragraph 7 of this Agreement.

In addition, the Fire Department hereby covenants and agrees to indemnify and hold the Town harmless from any and all losses and damages which the Town may sustain, suffer or be required to pay by reason of any claims made against said Town for injury to persons or property, including wrongful death, arising out of the performance of this agreement by the Fire Department to the extent that said losses and damages are not fully covered and paid by the insurance referred to herein.

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3. Should any loss or damage whatsoever be sustained to the fire apparatus or other equipment, said loss or damage, including the cost of materials and any other special or incidental expenses incurred in the operation of the fire apparatus or equipment of the Fire Department in answering, attending upon or returning from a call for assistance in said Town of Batavia Fire Protection District, irrespective of the cause thereof, shall be a charge upon the Fire Department and not against the Town or against the Town of Batavia Fire Protection District. This fact is taken into consideration by both parties in arriving at the consideration to be paid to the Fire Department pursuant to this Agreement.

4. To the extent that the same is not otherwise provided for by the Genesee County Mutual Aid Plan, by the county of Genesee or by some other source, the Town of Batavia shall pay at its own expense or provide necessary insurance coverage at its expense for any and all claims authorized by law for medical expenses, loss of wages, compensation or other claims arising by reason of the injury or death of a fireman, or member of the Fire Department Emergency Relief Squad, a Fire Police Squad or a Fire Patrol sustained while answering or attending upon or returning from any such call in said District.

5. The Fire Department is hereby authorized by the Town to participate in the Genesee County Mutual Aid Plan and to answer calls for aid and assistance according to said Mutual Aid Plan and System. Nothing contained in this Agreement shall be deemed to prevent the Fire Department from securing reimbursement from any entities other than the Town and the Town of Batavia Fire Protection District for either any loss or damage to its fire apparatus, equipment or materials used for the locality that issues a call for aid or for payments to injured or deceased firemen as provided by any law of the State of New York.

6. In the event that the fire-fighting equipment owned by the Fire Department is in such condition that said Fire Department is unable to fulfill its obligations under this contract to answer or attend any fire occurring in said Town of Batavia Fire Protection District for a period of twenty-one (21) days or longer, the Fire Department covenants to reimburse the Town on a pro rata basis the sums provided to be paid to the Fire Department pursuant to this Agreement retroactive to the first day of said twenty-one (21) day period for the entire period of time during which it is unable to fulfill its obligations under this Agreement.

7. A. The Town covenants and agrees to pay to the Fire Department in consideration for services to be performed pursuant to this Agreement the sum of Seven Hundred Fifty Thousand Four Hundred Fifty Six Dollars (\$750,456.00).

B. The sums as stated in this paragraph to be due and payable on the 1st day of February, 2013, upon presentation to the Town of a duly verified voucher therefore.

8. The Town covenants to provide snowplowing services for the parking and driveway area to the Fire Hall owned by the Fire Department, as well as routine maintenance of said parking lot and driveway area, both only to the extent that the Superintendent of Highways of the Town determines that said services can be provided. The Fire Department agrees to provide all materials and supplies for said maintenance services; acknowledges that said routine maintenance services shall be provided only during normal business hours of the Town of Batavia Highway Department and as other Town Highway Department functions permit. The Fire Department further acknowledges that said snowplowing services shall be provided only after the Town's Superintendent of Highways is satisfied that the highways of the Town of

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Batavia are reasonably free and clear of ice and snow and that men and machinery under his supervision and control are free to provide said services. The Fire Department hereby covenants to indemnify and to hold the Town harmless for any injury, loss or damage which the Fire Department or any other person, firm or corporation may suffer, sustain or be required to pay by reason of the Town not providing or failing to provide adequate snowplowing and/or maintenance services under the provisions of this Paragraph.

9. A. The Fire Department will provide an independent, certified audit of the financial affairs of the Fire Department.

B. Upon the Fire Department complying with the requirements of section A of this paragraph, the Town shall immediately pay to the Fire Department all remaining sums owing under the terms of this Agreement.

10. A. The Fire Department shall provide written notice to the Town of capital purchases as early as possible, but in no event not less than 30 days prior thereto; provided, however, that this provision shall not be construed as requiring or constituting any municipal approval or involvement in the corporate affairs of the Fire Department by the Town.

B. The Fire Department shall continue to exercise sound financial practices and planning, including maintenance of capital reserve accounts where feasible.

11. All moneys to be paid under any provision of this Agreement, as well as other payments which may be made from time to time according to applicable provisions of law which regulate the terms and provisions of this Agreement, shall be a charge upon the said Fire Protection District to be assessed and levied upon the taxable real property in said District and collected with the Town Taxes.

12. This Agreement shall become operative and effective from 12:01 a.m. January 1, 2013, and shall continue for a term of one (1) year which will expire at midnight on December 31, 2013.

13. It is understood and agreed that this contract is subject to the provisions of Section 184 of the Town Law of the State of New York.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement in duplicate the day and year first above written.

TOWN BOARD OF THE TOWN OF BATAVIA

BY _____
GREGORY H. POST

(SEAL)

ATTEST:

TERESSA M. MORASCO, TOWN CLERK

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TOWN OF BATAVIA FIRE DEPARTMENT, INC.

BY _____
JOHN FITZSIMMONS, PRESIDENT

(SEAL)

**STATE OF NEW YORK)
COUNTY OF GENESEE) ss:**

On the ____ day of _____, 2012, before me came GREGORY H. POST, to me known, who, being by me duly sworn, did depose and say that he resides at 8472 Seven Strings Road in the Town of Batavia, New York; and he is the Supervisor of the **TOWN OF BATAVIA, NEW YORK** the municipal corporation described in and who executed the foregoing Agreement; that he knows the seal of said Town; that it was affixed by order of the Town Board of said Town; and that he signed his name thereto by like order.

NOTARY PUBLIC

**STATE OF NEW YORK)
COUNTY OF GENESEE) ss:**

On the ____ day of _____, 2012, before me came JOHN FITZSIMMONS, to me known, who, being by me duly sworn, did depose and say that, he resides at 5009 East Main St Rd, Batavia, New York; and he is the President of the **TOWN OF BATAVIA FIRE DEPARTMENT, INC.** the corporation described in and which executed the foregoing Agreement; that he knows the seal of said Corporation; that it was affixed by order of the Board of Directors of said Corporation; and that he signed his name thereto by like order.

NOTARY PUBLIC

RESOLUTION NO. 193:

Deputy Supervisor Underhill offered the following:

**AUTHORIZATION TO EXECUTE
AGREEMENT BETWEEN THE NEWYORK STATE
DEPARTMENT OF MOTOR VEHICLES FOR USAGE OF THE TOWN HALL**

RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to execute the agreement, (attached) between New York State Department of Motor Vehicles and the Town of Batavia for the use of a room at the Town Hall for the purpose of Motor Vehicle Hearings.

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

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AGREEMENT

This Agreement is made by and between the New York State Department of Motor Vehicles (“DMV”), located at 6 Empire Plaza, Swan Street Building, Albany, New York 12228, and the Town of Batavia (the “Town”), located at 3833 West Main Street Road, Batavia, NY 14020. DMV and the Town shall collectively be referred to herein as the “Parties”.

The purpose of this Agreement is for the rental of the currently used Hearing Room in the Batavia Town Hall, located at 3833 West Main Street Road, Batavia, NY, for conducting DMV Safety and Business Hearings.

The Parties agree as follows:

1. **TERM & HOURS OF USE:** This Agreement shall take effect on January 1, 2013 and will remain in effect for a period of one (1) year, ending on December 31, 2013, with the option to amend or extend for additional one (1) year periods. DMV shall use the Hearing Room from no more than three days each month, between the hours of 10:00 A.M. and 3:00 P.M.

2. **FEE:** DMV shall pay the Town the sum of Nine Hundred Dollars (\$900.00) for the use of said Hearing Room, said sum representing a rental fee of Seventy-Five Dollars (\$75.00) per month for a period of twelve (12) months. Payment shall be made upon DMV’s receipt of the Town’s invoice for payment and in accordance with Article XI-A of the NYS Finance Law. Should either party terminate this MOU, the Town agrees to reimburse DMV Seventy-Five Dollars (\$75.00) for each full month remaining from the date of termination to the expiration date of this agreement.

3. **CHANGE OF SCHEDULED USE OR LOCATION OF HEARING ROOM:** The Town shall make such Hearing Room available to DMV as scheduled. However, the Parties agree to make reasonable effort to accommodate each other's scheduling needs concerning any change in the location or scheduled use of the Hearing Room.

- a. **NOTICE OF CHANGE:** In the event DMV requires a change of the dates the Hearing Room will be used, or the Town needs to change the Hearing Room another location, the party requesting the change must provide the other party with written notice of such changes no later than 45 days before the next scheduled use date.
- b. The Town agrees that any change in location shall be to similar accommodations located in the same building, where possible, or to a building located in the same town.

Such similar accommodations must (a) be within a reasonable distance from the current site, and (b) provide adequate parking, heating, air conditioning, lighting, rest room, and electrical facilities required for conducting DMV’s Safety and Business Hearings.

- c. DMV’s use of the Hearing Room less than three days per month in any month shall not constitute

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a waiver of DMV's right to use the room as scheduled in any subsequent month.

4. **ACCESS TO HEARING ROOM:** The Town shall provide access to the Hearing Room to all individuals required for the conduct of such hearings, including all parties and witnesses.
5. The Town shall provide janitorial and maintenance services to the premises; and DMV will make reasonable effort to keep the Hearing Room clean and orderly.
6. **TERMINATION:** Either party may terminate this Agreement upon sixty (60) days' written notice to the other party.

Notice of termination must be directed as follows:

TO DMV: Dale Schifter Solomon Senior Administrative Law Judge 30-56 Whitestone Expressway Flushing, NY 11354	TO TOWN: Gregory H. Post Town Supervisor Town of Batavia 3383 West Main Street Road Batavia, NY 14020
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In Witness Whereof, the Parties hereto have executed this agreement by their duly authorized officer or representative.

Dated: _____

Town of Batavia By, _____ Gregory H. Post Town Supervisor	New York State Department of Motor Vehicles By, _____ Maureen Younkin Director, Procurement Services
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RESOLUTION NO. 194:

Supervisor Post offered the following:

**APPLICATION X-TENDER/QUICK SCAN PRO
MAINTENANCE AGREEMENT
BETWEEN BIEL'S AND THE TOWN OF BATAVIA**

WHEREAS, the Town purchased Documentum Software (Application X-tender & Quick Scan Pro in January 2009 from Biel's for records management; and

WHEREAS, in January 2010 additional modules and applications were purchased from Biel's

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through the Local Government Records Management Grant funds received by the Town; and

WHEREAS, the annual maintenance cost for this software is five thousand, seven hundred, twelve dollars (\$5,712.00) (agreement attached), the current agreement expires January 13, 2013.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to execute the annual Maintenance Agreement for the Documentum Software between the Town of Batavia and Biel's at a cost of five thousand, seven hundred, twelve dollars (\$5,712.00) for one (1) year starting January 14, 2013.

Second by: Councilman Zambito

Ayes: Post, Zambito, Underhill, Lang, Michalak

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 195:

Councilwoman Michalak offered the following:

**CODE ENFORCEMENT OFFICER AGREEMENT BETWEEN
THE TOWN OF BATAVIA AND THE TOWN OF PAVILION**

WHEREAS, the Town of Batavia and the Town of Pavilion wish to enter into a Code Enforcement Officer Agreement; and

WHEREAS, the agreement addresses the need for the Town of Pavilion to have its Codes enforced by the Town of Batavia Code Official

NOW, THEREFORE, BE IT

RESOLVED, pursuant to Article 5-G of the General Municipal Law, the Batavia Town Board wishes to enter into an agreement between the Town of Batavia and the Town of Pavilion for Code Enforcement services (agreement attached); and be it

FURTHER RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to execute the aforementioned agreement.

Second by: Councilman Zambito

Ayes: Michalak, Zambito, Lang, Underhill, Post

APPROVED by unanimous vote (5-0)

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, _____ by and between the **Town of Pavilion**, a municipal corporation with offices at 1 Woodrow Drive, Pavilion, NY 14525 ("Pavilion"), and the **Town of Batavia**, a municipal corporation with office at 3833 West Main Road, Batavia, NY 14020 ("Batavia"),

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WHEREAS, pursuant to article 5-G of the General Municipal Law, Pavilion and Batavia are authorized to enter into an intermunicipal cooperative agreement for the provision of Code Enforcement services, and

WHEREAS, Batavia employs fully qualified Code Enforcement Officers to enforce Zoning Code, Fire and Building Codes and other various codes and regulations, and

WHEREAS, Pavilion has identified a need to have its Codes enforced by Batavia, and

WHEREAS, Batavia intends to continue to maintain the position of Code Enforcement Officer and to provide Code Enforcement Duties in both the Town of Batavia and the Town of Pavilion.

NOW THEREFORE, pursuant to Article 5-G of the General Municipal Law, it is agreed as follows:

First: That Pavilion shall appoint the Code Enforcement Officers of the Town of Batavia as its Code Enforcement Officers.

Second: In consideration for compensation for the services set forth herein, Pavilion shall pay Batavia \$15,000.00 per year of this agreement. The sum shall be paid during the 2013 budget year to provide services for the year of 2013.

Third: The services that will be provided will be to administer the adopted NYS Building Codes, Town of Pavilion Zoning Code and Town of Pavilion Land Separation Law.

Fourth: Services provided will be on call and available during business hours of Monday thru Friday work week from 9am- 3pm.

Fifth: The Code Officer shall for all purposes be deemed an employee of Batavia. The Code Officer shall not in any way be construed as an employee of Pavilion. Batavia shall pay the Code Officers salary and make employer's contributions for retirement, social security, health insurance, worker's compensation, unemployment and other similar benefit.

Sixth: This agreement does not include attorney services and Pavilion shall provide and pay for all attorney services and expenses in its jurisdiction.

Seventh: This agreement shall become effective on January 1st 2013 and expire on December 31st 2013 with an option for either municipality to terminate this agreement upon a ninety (90) day written notice to the other municipality.

Eighth: There are no other agreements or understandings, either oral or written, between the parties affecting this agreement. No changes, additions or deletions of any portions of this agreement shall be valid or binding upon the parties hereto unless the same is approved in writing by the parties.

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IN WITNESS WHEREOF, the Towns have caused this Agreement to be signed by the Supervisors and the Town Seal attached on the date first set forth above.

TOWN OF PAVILION

TOWN OF BATAVIA

Theron Howard, Supervisor

Gregory H. Post, Supervisor

STATE OF NEW YORK)
COUNTY OF GENESEE) SS.

On the _____ day of _____, 201__ before me, the undersigned, a Notary Public in and for said State, personally appeared **Theron Howard**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF GENESEE) SS.

On the _____ day of _____, 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared **Gregory H. Post**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

RESOLUTION NO. 196:

Councilman Zambito offered the following:

**RESOLUTION TO APPROVE AMENDED AGREEMENT
FOR DEVELOPMENT OF RECREATIONAL FIELDS**

WHEREAS, the Town desires to increase the number and enhance the quality of recreational opportunities available to Town residents, and

WHEREAS, the Developers have proposed to maintain athletic fields in the Town of Batavia for use by Community Organizations and Non-Community Organizations, and

WHEREAS, the Town and the Developers previously entered into an Agreement on April

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26,2011 which will end on December 31, 2012, and

WHEREAS, the Town of Batavia Engineering Department prepared the 2012 Park Report which documented the benefits of the Sports Park. This report recommended that the Town Board consider extending the Sports Park agreement to continue to monitor the benefits to the community, and

WHEREAS, the parties desire to extend the prior Agreement until December 31, 2013, with some additional terms and conditions, in order to obtain additional information and to monitor the activities of the Park.

WHEREAS, the Town desires to continue to investigate the feasibility of the Sports Park for recreational development and is committing money and “in kind” services as set forth in a proposed Amended Agreement for the purpose of monitoring and obtaining information and documentation about the needs and benefits of activities and programs. The Town of Batavia Engineering Department will prepare a report in December of each year to document the revenue generated from the Park and provide actual statistics necessary for the Town Board to determine if this program should be continued at this location in the Town of Batavia.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Batavia, New York, that the proposed “Amended Agreement for Development of Recreational Fields”, a copy of which is annexed and made part of the Town Board Minutes, is hereby approved, and the Town Supervisor is hereby authorized and directed to execute this Amended Agreement on behalf of the Town of Batavia, and

BE IT FURTHER RESOLVED that funds in the amount of \$89,250.00, as set forth in the aforesaid Amended Agreement, is hereby authorized to be expended from line item A7110.402.

Second by: Deputy Supervisor Underhill

Ayes: Zambito, Underhill, Michalak, Lang, Post

APPROVED by unanimous vote (5-0)

AMENDED AGREEMENT

FOR DEVELOPMENT OF RECREATIONAL FIELDS

THIS AGREEMENT, made the _____ day of _____, 2012, by and between **THE TOWN OF BATAVIA, NEW YORK**, a municipal corporation, with offices located at 3833 West Main Street Road, Batavia, New York 14020, (hereinafter referred to as “Town”); and **CY PROPERTIES, LLC**, a limited liability corporation, with offices located at 6465 Transit Road, Elba, New York, and **HAWLEY PROPERTIES, LLC**, a limited liability corporation, with offices located at 8164 Bank Street Road, Batavia, New York 14020 (hereinafter referred to as “Developers”).

WITNESSETH:

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WHEREAS, the Town desires to increase the number and enhance the quality of recreational opportunities available to Town residents, and

WHEREAS, the Town and the Developers previously entered into an Agreement on April 26, 2011 which will end on December 31, 2012, and

WHEREAS, the Town of Batavia Engineering Department prepared the 2012 Park Report which documented the benefits of the Sports Park. This report recommended that the Town Board consider extending the Sports Park agreement to continue to monitor the benefits to the community and

WHEREAS, the parties desire to extend the prior Agreement until December 31, 2013, with some additional terms and conditions, in order to obtain additional information and to monitor the activities of the Park.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. The Town will contribute a cash amount of \$89,250.00 per year of the term of the agreement
2. The Developers will maintain recreational fields located within the boundaries of the Town of Batavia that will be used by existing Community Organizations and Non-Community Organizations, including, but not limited to, use by youth from Youth Recreation Programs established in the Town and City of Batavia that receive financial contributions from the Town.
3. During the term of this Agreement, the Developers will charge fees for use of the fields that shall not exceed any amount currently paid by the Town, Genesee Community College, the City of Batavia or the Batavia City School District for use of existing recreational facilities. The fees charged for all other Organizations shall be at the sole discretion of the Developers.
4. In further consideration of the monetary contributions by the Town, the Developers will provide services to the Town to coordinate and schedule the use of the recreational facilities. The Developers agree to schedule a minimum of 5 major tournaments for the 2013 season bringing in an economic benefit to the community of \$200,000.00 or more. These tournaments will strive to bring in as many out of Town teams as possible. The Developers will coordinate these tournaments and promote use of the local hotels with the visiting teams. The Developers will work with the Chamber of Commerce to track the hotel nights that are booked for each tournament.
5. This Agreement is subject to the Developers obtaining approval from any other Governmental Agencies as needed and to obtain all required permits.
6. The Developers hereby agree to indemnify and hold harmless the Town for all claims, losses, costs and damages arising out of any activities of the Developers pursuant to the terms and conditions of this Agreement including costs of settling any actions and reasonable attorney's fees for defense. Each party will provide the other with timely notice of any claims and fully cooperate with each other to defend the same.
7. The Developers shall require all individuals or organizations that use the facilities to provide to the Developers and the Town proof of insurance certifying that accident and liability insurance is in full force and effect during the use of these facilities in a coverage amount to be not less than one (1)

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million dollars, with the Developers and the Town being named as additional insureds on all such insurance policies.

8. The term of this Agreement shall be for a period commencing on the date set forth above in this Amended Agreement and ending on December 31, 2013. The Town Engineering Department will prepare a report in December, 2013 to review the benefits of the Sports Park and determine if the terms of this agreement are being met by both parties. If the benefits to the community are no longer justifiable per the Town Board review or the terms of this agreement are not being met by both parties, this agreement will be terminated and a new agreement may be executed for the 2014 season.

9. At the termination of this Agreement, the Town will consider its recreational needs and further contribution to projects and services of the Developers to meet these needs. In this regard, the Developers will collect the information, documentation and statistics as requested by the Town concerning the use of the facilities during the term of this Amended Agreement, and provide the same to the Town upon request.

IN WITNESS WHEREOF the parties have last signed this Agreement the day and year first written above.

CY PROPERTIES, LLC

By: _____
Print Name

Print Title

TOWN OF BATAVIA, NEW YORK

By: Gregory H. Post
Town of Batavia Supervisor

HAWLEY PROPERTIES, LLC

By: _____
Print Name

Print Title

State of New York }
County of Genesee }ss.

On this _____ day of _____, 2012, before me, the undersigned, personally appeared Gregory H. Post, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

State of New York }
County of Genesee }ss.

On this _____ day of _____, 2012, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

State of New York }
County of Genesee }ss.

On this _____ day of _____, 2012, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

RESOLUTION NO. 197:

Councilman Lang offered the following:

**RESOLUTION OF FINDINGS FOR APPLICATION TO STATE COMPTROLLER
FOR CREEK AND EAST ROAD WATER DISTRICT**

WHEREAS, the Town Board of the Town of Batavia, adopted a Resolution on December 5, 2012, establishing a Water District on portions of the East Road, Creek Road, Lehigh Road and Dorman Road in the Town of Batavia, and

WHEREAS, this Resolution was subject to approval of the Office of the State Comptroller, Department of Audit and Control, and

WHEREAS, said Resolution authorized the Town Supervisor, assisted by the Town Attorney and Town Bond Counsel, to prepare the necessary application to the State Comptroller.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Batavia as follows:

- (1) That the annexed application was prepared at the direction of the Batavia Town Board.
- (2) The Town Board has reviewed this application and believes the contents of the application

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to be accurate.

(3) The Town Board has determined that Creek and East Road Water District, for which permission is sought, is in the public interest and will not constitute an undue burden on the properties which will bear the cost thereof.

(4) The cost of the proposed improvements is to be assessed in whole or in part against the benefited area, and the Town Board has determined that all real property to be so assessed will be benefited by the proposed improvements and no benefited property has been excluded.

Second by: Councilman Zambito

Ayes: Lang, Zambito, Underhill, Michalak, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 198:

Deputy Supervisor Underhill offered the following:

**SHARED SERVICES AGREEMENT
WITH EAST PEMBROKE FIRE DEPARTMENT**

WHEREAS, the Highway Superintendent has requested that the Town of Batavia enter into a shared services agreement with the East Pembroke Fire Department for sharing equipment, materials and services for the mutual benefit of both parties.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Supervisor is hereby authorized and directed to execute the Shared Services Agreement with the East Pembroke Fire Department, annexed to and made part of this resolution, which shall be effective for five (5) years and shall expire five (5) years from the date of its signing.

Second by: Councilman Lang

Ayes: Underhill, Lang, Michalak, Zambito, Post

APPROVED by unanimous vote (5-0)

Discussion: The Supervisor explained that the Town is going to utilize the Town Engineer and Town Code Enforcement Officer to get the East Pembroke Fire Department where they should be.

**TOWN OF BATAVIA
SHARED SERVICES AGREEMENT
WITH THE
EAST PEMBROKE FIRE DEPARTMENT**

THIS AGREEMENT, made the _____ day of _____, 20____, by and between the **TOWN OF BATAVIA**, a Municipal Corporation of the State of New York, with its office located at 3833 West Main Street Road, Batavia, New York 14020, and the **EAST PEMBROKE VOLUNTEER FIRE DEPARTMENT, INC.**, a Domestic Not-For-Profit Corporation, with its office located at 2623

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West Main Road, East Pembroke, New York 14056.

W I T N E S S E T H:

WHEREAS, the Parties set forth herein agree that that purpose of this Agreement is to facilitate the sharing of machinery, equipment, services and manpower for the mutual benefit of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. For purposes of this Agreement, the following terms shall be defined as follows:

a. "Agreement" shall mean this "Town of Batavia Shared Services Agreement with the East Pembroke Fire Department".

b. "Department" shall mean the East Pembroke Volunteer Fire Department, Inc.

c. "Town" shall mean the Town of Batavia.

d. "Party" shall mean either the Town or the Department or both, as the context implies.

e. "Superintendent" shall mean the Town of Batavia Highway Superintendent.

f. "Department Representative(s)" shall mean the individual or individuals designated by the Department to arrange shared services on behalf of the Department with the Town.

g. "Shared Service" shall mean any service provided by the Town or the Department for the other Party that is consistent with the purposes and intent of this Agreement and shall include but not be limited to:

- i The renting, exchanging or lending of machinery, tools and equipment, with or without operators;
- ii The providing of a specific service (ie: engineering, code enforcement)
- iii The maintenance of machinery or equipment.

2. Within ten (10) days of the execution of this Agreement, the Department shall notify the Superintendent in writing of the names of the individual or no more than two individuals, who may act jointly or separately, as the Department Representative(s), to effectuate the terms and conditions set forth herein; provided further that the Department shall immediately notify the Superintendent in writing of any changes in one or both of these Representatives.

3. The Town of Batavia by this Agreement grants unto the Superintendent, and the Department by this Agreement grants unto the Department Representative(s), the authority to enter into any shared service

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arrangements with each other, subject to the following terms and conditions:

a. The Town and the Department agrees to rent, exchange or lend to the other Party any and all materials, machinery, and equipment, with or without operators, which the Town or Department may need for its purposes. The determination as to whether such machinery, with or without operators, or material, is available for renting, exchanging or lending, shall be made by the Superintendent and the Department Representative(s), based upon what will be in the best interests of the Town or Department. The value of the materials or supplies loaned to each other under this Agreement may be returned to the Town or Department in the form of similar types and amounts of materials or supplies, or by the supply of equipment or the giving of services of an equal value, to be determined by the mutual consent of the respective Superintendent and Department Representative(s).

b. The Town and the Department agree to repair or maintain their respective machinery or equipment under terms that may be agreed upon by the Superintendent and the Department Representative(s).

c. An operator of equipment borrowed or loaned to or by the other Party, when operating such equipment for the borrowing Town or Department, shall be subject to the direction and control of the Superintendent or Department Representative(s) of the borrowing Party, in relation to the manner in which the work is to be completed. However, the method by which the machine is to be operated shall be determined by the operator.

d. When receiving the services of an operator with a machine or equipment, the receiving Superintendent or Department Representative(s) shall make no request of any operator which would be inconsistent with any labor agreement. All machinery and the operator, for purposes of worker's compensation, liability and any other relationship with third parties, shall be considered the machinery of, and the employee of, the Town or the Department owning the machinery and equipment.

e. The lending Town or Department shall be liable for any negligent or otherwise wrongful acts resulting from the conduct or acts of its employees; including, but not limited to, those resulting from the operation of its machinery or equipment by its own operator.

f. The lending Party agrees to defend, indemnify and hold harmless the borrowing Party for all claims, damages, suits, penalties, fines and liabilities for injury or death to persons, or loss or damage to property, arising out of the use and operation of equipment by the lending Party's operator.

g. The borrowing Party agrees to defend, indemnify and hold harmless the lending Party for all claims, damages, suits, penalties, fines and liabilities for injury or death to persons, or loss or damage to property, arising out of the use and operation of equipment by the borrowing Party's operator.

h. The Town or the Department shall remain fully financially responsible for its own employees, including, but not limited to, salary, benefits and worker's compensation.

4. In the event machinery or equipment being operated by an employee of the owning Town or

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Department is damaged or otherwise in need of repair while working for the other Party, the Town or the Department owning the machinery or equipment shall be responsible to make or pay for such repairs. In the event machinery or equipment is damaged while being operated by an employee of the borrowing, receiving or renting Party, such Party shall be responsible for such repairs.

5. Either the Town or the Department may end this Agreement by filing a notice of such revocation. Upon the revocation of the Agreement, any outstanding obligations shall be submitted within thirty days of such revocation.

6. Any action taken by the Superintendent pursuant to the provisions of this Agreement shall be consistent with the duties of such official and expenditures incurred shall not exceed the amounts set forth in the Town budget for highway purposes.

7. If any provision of this Agreement is deemed to be invalid or inoperative for any reason, that part may be modified by the Town or the Department to the extent necessary to make it valid and operative, or if it cannot be modified, then severed, and the remainder of the Agreement shall continue in full force and effect as if the Agreement had been signed with the invalid portion so modified or eliminated.

8. This Agreement shall be reviewed each year by the Town Board and shall expire five years from the date of its signing by the Town Supervisor, unless it is terminated prior thereto pursuant to Paragraph 5 herein.

IN WITNESS THEREOF, the Parties have signed this Agreement the day and year first written above.

TOWN OF BATAVIA

By: _____
Town Supervisor

Attest: _____
Town Clerk

Attest: _____
Highway Superintendent

EAST PEMBROKE FIRE DEPARTMENT

By: _____
President of the Department

Attest: _____
Fire Chief

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RESOLUTION NO. 199:

Supervisor Post offered the following:

**RESOLUTION TO APPROVE A LICENSE AGREEMENT
WITH NIAGARA MOHAWK POWER CORPORATION**

WHEREAS, the Town of Batavia, (hereinafter referred to as “Town”), is constructing a roadway in the Genesee Valley Agri-Business Park, which has been designated as the Ellicott Street Connection Project, and

WHEREAS, to continue with the building of this roadway, it is necessary for the Town to obtain legal permission from the Niagara Mohawk Power Corporation d/b/a National Grid, (hereinafter referred to as “Niagara Mohawk”) to conduct activities upon a portion of its property located within the Business Park, and

WHEREAS, Niagara Mohawk has proposed a License Agreement to allow the Town to use the portion of its property as set forth therein for the proposed consideration of Five Hundred Dollars (\$500.00).

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 and Niagara Mohawk, a copy of which is made a part of the Minutes, is hereby accepted, and the Town Supervisor is hereby authorized and directed to execute this License Agreement on behalf of the Town, and

BE IT FURTHER RESOLVED that the Town Board hereby authorizes payment of Five Hundred Dollars (\$500.00) to Niagara Mohawk, in return for permission to use a portion of the Niagara Mohawk property, as set forth in the License Agreement for the purposes set forth therein.

Second by: Councilman Lang

Ayes: Post, Lang, Underhill, Michalak, Zambito

APPROVED by unanimous vote (5-0)

Discussion- The Supervisor informed that the Insurance Counsel is reviewing the insurance portion of the agreement.

RESOLUTION NO. 200:

Councilwoman Michalak offered the following:

ENGINEERING DEPARTMENT-HIRE TEMPORARY EMPLOYEE

WHEREAS, the Town Engineer has requested the hiring of Zachary Jacobs as a temporary employee (as an Intern/Co-op position), to assist in the Engineering Department with Energy Evaluations and Alternative/Renewable/Sustainable Energy grant opportunities.

NOW, THEREFORE, BE IT

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RESOLVED, the Batavia Town Board hereby authorizes the hiring of Zachary Jacobs, to assist in the Engineering Department at an hourly rate of eleven dollars (\$11.00) per hour, not to exceed 40 hours per week for 4 weeks at a maximum cost of \$2,000.00, appropriated from budget line item A1440.102.

Second by: Deputy Supervisor Underhill
Ayes: Michalak, Underhill, Zambito, Lang, Post
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 201:

Councilman Zambito offered the following:

GENESEE COMMUNITY COLLEGE-THE BEST CENTER
GRANT APPLICATION LETTER OF SUPPORT

RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to send a letter of support for Genesee Community College-The BEST Center's submission of a grant application, such support benefits the Town of Batavia employees continued education.

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

RESOLUTION NO. 202:

Councilman Lang offered the following:

TRAINING WORKSHOP

RESOLVED, the Batavia Town Board hereby authorizes the following personnel to attend training workshops:

Bruce Gerould and Clinton Worthington- Finger Lakes Building Officials Annual Conference (FLBOA) March 18 through March 21, 2013 in Henrietta at a cost of \$390.00 each. Expenditure will be from the 2013 budget. A Town vehicle will be used.

Second by: Deputy Supervisor Underhill
Ayes: Lang, Underhill, Michalak, Zambito, Post
APPROVED by unanimous vote (5-0)

Abstract No. 12-2012: Motion Councilwoman Michalak, second Deputy Supervisor Underhill to authorize the Supervisor to pay the following vouchers:

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General	\$91,416.23
Highway	8,569.93
Sewer No. 1	3,946.44
Sewer No. 2	5,893.55
Water	21,671.81
Saile Sewer	2,589.40
Creek Road Water	1,481.11
W. Main Sewer	35.65
Total	\$135,604.12

Check numbers 17459 thru 17483, 17485 thru 17531 , online \$5,306.26

Ayes: Michalak, Underhill, Zambito, Lang, Post

MOTION CARRIED by unanimous vote (5-0)

DEPARTMENT REPORTS:

The Supervisor reported on the following :

Water/Wasterwater

Working on land acquisition for Park Road project

Doing flow testing at the Project Wave sight and working on routine maintenance

The Supervisor commended the Water Department staff on a great job tending to the water breaks.

Supervisor's Report:

Status Report on expenditures and revenues is available for the Board's review. The investment sheets will be entered into the minute book. The General and Reserve Funds are invested in a CD's paying a rate of .15% and .40%.

Organizational and Special Meeting- The Town Board Organizational Meeting will be January 2, 2013 at 7:00 P.M., with a Special Town Board Meeting to follow.

Batavia North Informational Meeting- There will be an informational meeting on January 30, 2013 at 6:30 P.M. for the proposed Batavia North Water District and boundaries for Oakfield, Elba and Stafford.

COMMUNICATIONS:

The Town Clerk reported on the following:

November Town Clerk monthly report collected a total of \$5,282.25, remitted \$3,728.35 to the Supervisor for the Local Share.

2013 Town/County Tax Bills- Received the Tax Bills and they will be mailed to owners December 31.

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COMMITTEE REPORTS:

Parks -Councilwoman Michalak reported that the committee will be meeting on January 8 for the Kiwanis Park Project. They are continuing to work on donations for the project. United Way Day of Care committee has agreed to the Town Park as one of the sites for the day.

ADJOURNMENT:

Motion Deputy Supervisor Underhill, second Councilwoman Michalak to adjourn the Regular Town Board Meeting at 7:29 P.M.

Ayes: Underhill, Michalak, Lang, Zambito, Post

MOTION CARRIED by unanimous vote (5-0)

MERRY CHRISTMAS AND HAPPY NEW YEAR!!!!

Respectfully submitted,

Teresa M. Morasco
Town Clerk