

**MARCH 6, 2013
SPECIAL TOWN BOARD MEETING**

Town Hall

5:00 P.M.

Greg Post, Supervisor led the pledge to the flag.

Roll Call

Present: Supervisor Post
Deputy Supervisor Underhill
Councilwoman Michalak
Councilman Zambito

Absent: Councilman Lang

Others

Present: Town Clerk Morasco

The Supervisor called the meeting to order at 5:10 P.M.

RESOLUTION NO. 70:

Deputy Supervisor Underhill offered the following:

**RESOLUTION AUTHORIZING APPLICATION TO U.S. DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT
FOR GRANT AND/OR LOAN ASSISTANCE – CREEK AND EAST ROADS
WATER DISTRICT**

RESOLVED, that the Supervisor of the Town of Batavia, Genesee County, New York, is hereby authorized as the official representative of the Town to execute and submit the application for loan and grant assistance to the United States Department of Agriculture-Rural Development for improvements to the Town of Batavia Creek Road Water District and is hereby directed and authorized to act in connection with the submission of the application and to provide such additional information and to execute such other documents as may be required in connection with obtaining said loan and grant funds.

Second by: Councilman Zambito

Ayes: Underhill, Zambito, Michalak, Post

APPROVED by unanimous vote (4-0)

RESOLUTION NO. 71:

Supervisor Post offered the following:

**RESOLUTION TO APPROVE AN OPERATION AND MAINTENANCE AGREEMENT-TOWN
OF ALEXANDER TO TOWN OF BATAVIA**

WHEREAS, the Town of Batavia has entered into agreements with Genesee County to be supplied with water and has developed a water distribution system of its own, and has authority to

MARCH 6, 2013
SPECIAL TOWN BOARD MEETING

distribute water from its distribution system to customers, on behalf of other municipalities outside of the Town of Batavia, and

WHEREAS, the Town of Alexander has formed and intends to construct the Town of Alexander Route 98 Water District No. 2 within its Town, and

WHEREAS, the Town of Alexander on behalf of this District desires to authorize the Town of Batavia to operate and maintain the water system for this District; and

WHEREAS, a proposed Operation and Maintenance Agreement has been drafted, reviewed and approved by the respective Attorneys for both Towns.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Batavia, New York, that the Supervisor is hereby authorized and directed on behalf of the Town of Batavia to execute a proposed "Agreement for Operation and Maintenance of Water Districts-Town of Alexander to Town of Batavia", a copy of which is annexed and made part of the minutes of the Town Board, and be it

FURTHER RESOLVED that the distribution of water to the residents of the Town of Alexander Route 98 Water District No. 2 in the Town of Alexander will not at this time reduce the supply of the Town of Batavia water so as to render the same insufficient to service all water districts within the Town of Batavia for the residents located therein, and be it

FURTHER RESOLVED that upon the completion of the execution of the aforesaid "Agreement for Operation and Maintenance of Water Districts-Town of Alexander to Town of Batavia", employees of the Town are hereby authorized and directed to take all steps necessary to effectuate all terms and conditions set forth in said Agreement.

Second by: Council Zambito

Ayes: Post, Zambito, Underhill, Michalak

APPROVED by unanimous vote (4-0)

AGREEMENT FOR OPERATION AND MAINTENANCE OF WATER DISTRICTS

TOWN OF ALEXANDER

TO

TOWN OF BATAVIA

THIS AGREEMENT made this _____ day of _____, 20____, between the Town Board of the Town of Batavia, Genesee County, New York, acting on behalf of the TOWN OF BATAVIA, a municipal corporation organized and existing under the laws of the State of New York (the "TOWN") and the Town Board of the Town of Alexander, Genesee County, New York, acting for and on

MARCH 6, 2013
SPECIAL TOWN BOARD MEETING

behalf of the TOWN OF ALEXANDER, a municipal corporation organized and existing under the laws of the State of New York, acting on behalf of all of its Water Districts, and extensions thereto, whether now existing (excepting Town of Alexander Water District No. 3) or hereinafter formed (collectively, the "District").

WHEREAS, the Town of Alexander has entered into a Water Supply Agreement with Genesee County for the wholesale purchase of water to supply its districts, whether existing now or in the future; and

WHEREAS, the District and the Town of Alexander, desires to relieve itself of the day-to-day responsibilities of providing, maintaining, and billing for water service and the Town is willing to lease the facilities of the District necessary for the performance of those responsibilities as detailed herein under the terms and conditions of this Lease Agreement; and

WHEREAS, the parties desire to enter into an Agreement pursuant to Section 198, paragraph 12(b) of the Town Law of the State of New York, whereby the Town will lease, maintain, repair and operate the facilities of the District, supply water service directly to customers therein and will collect the revenues therefrom under the terms and conditions hereinafter specified;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the sum of One Dollar (\$1.00) and other good and valuable consideration, the parties hereto agree as follows:

I. OPERATION AND MAINTENANCE

1.1. The District hereby leases to the Town, for the term hereinafter specified, the entire operating plant, hydrants, water storage and distribution system of the District (including, but not limited to, any and all conduits, pipes, valves, casings, meters and manholes owned by the District) together with all of the District's interests in real property of any kind or nature to the extent assignable (including, but not limited to, any and all easements [whether temporary or permanent and/or exclusive or non-exclusive], licenses and lease in favor of the District), and all extensions thereto, whether now existing (excepting Town of Alexander Water District No. 3, which is covered by an Agreement, dated April 13, 2001, entitled "Towns of Batavia and Alexander Retail Water Supply Agreement") or hereinafter formed, (collectively, the leased "Facilities"). The leased Facilities include replacements, additions, betterments and improvements which may hereinafter be furnished and installed in or by the District during the term of this Agreement.

1.2. The Town agrees to operate, maintain and repair the Facilities of the District, and to distribute water only on behalf of the Town of Alexander, to the customers of the District. The cost for these services shall be determined in accordance with the Town's current rate schedule in effect and as amended from time to time by the Town in its sole discretion (the "Current Rate Schedule") during the term of this Agreement. The Town will provide to the District the Current Rate Schedule, or any amendments thereto; which shall break out the various costs of water supply, operation and maintenance, and capital improvement reserve. The Town of Alexander hereby retains the right to add any additional charges for

MARCH 6, 2013
SPECIAL TOWN BOARD MEETING

the delivery of water, and the Town shall collect and remit any such charges to the Town of Alexander.

1.3. Maintenance and repair by the Town as referred to in this Agreement shall be defined as a project which costs the sum of \$20,000.00, or less. Any project costing more than \$20,000.00 shall be considered a capital expenses and shall be the sole financial responsibility of the District.

1.4. All performance of services by the Town shall be according to Subpart 5-1, Public Water Supplies of the New York State Sanitary Code and the Town's Water Ordinance (the "Ordinance"). The Ordinance may be amended from time to time by the Town at its sole discretion. However, the Town agrees to inform the District at least thirty (30) days prior to applying any such amendment which could adversely affect the District and the cost of water or supply thereof.

1.5. The Town shall supply copies of any test reports required by the New York State Department of Health to the District as requested.

1.6. The Town shall read all meters and invoice the customers of the District for water used. Such invoices shall be due and paid according to the terms of the Ordinance including penalties for late payment, in effect as of the date of the invoice for such water. In the event any customer is delinquent for more than ninety (90) days, the District shall have in places rules to enforce collection of such charges and make payments to the Town including, but not limited to, shutting off water service to the delinquent customer. The District, upon a request by the Town, shall make payments to the Town for any water bills of customers that are more than 90 days in arrears.

1.7. The Town shall make any and all payments related to water supply to Genesee County on the District's behalf according to the terms set forth in the Water Supply Agreement between the Town of Alexander and Genesee County.

II. DISTRICT REQUIREMENTS

2.1. Customers of the District shall purchase from the Town water to serve present and future needs within the District.

2.2. Any and all extension of existing water districts or construction and addition of new water districts or facilities shall be in accordance with all of the Town's standards.

2.3. A map of the present retail service area of the District to be served by the Town is attached as Exhibit A to this Agreement. The same shall be amended as necessary from time to time to reflect any customer added by the District. Any such amendment that expands or extends said District shall be approved by the Town and shall not negatively affect supply or service to existing customers of the Town.

2.4. The District agrees that the Town may use the Facilities of the District or its extensions, without the imposition of any rentals or other charges of whatever kind, to serve water to areas located outside of, or beyond the limits of, the District or the Town of Alexander. The Town agrees that such use

MARCH 6, 2013
SPECIAL TOWN BOARD MEETING

by it of the Facilities shall not reduce below accepted standards (as established by applicable Federal and State Laws, Rule and Regulation and the Town's Ordinance) the supply or pressure of water then being furnished by the Town to residents and inhabitants with the District and Town. Further, the Town agrees that service to other areas outside of the District shall comply with the requirements of the Water Supply Agreement between the Town of Alexander and Genesee County.

2.5. All extensions to the existing District after the execution of this Agreement shall be made under the exclusive control and jurisdiction of the District, subject to the provisions of the Town Law and any amendments thereof. In the event the District shall form one or more extensions, said extensions shall be subject to the following terms and conditions:

a. At the request of the District, the Town may provide the services of its Engineering Department to assist the District in the preparation and formulation of necessary plans, drawings and specifications for the proposed distribution system construction. Such services may be provided to the District so long as the Town is given reasonable prior notice of the need for, and scope of, such services and the Town and the District establish mutually agreeable terms for the completion of services.

b. Distribution systems within the extensions shall be installed without cost to the Town; said distribution systems to service the entire area of the said extension.

c. Upon completion of the said distribution systems within the said extensions, the said distribution systems and extensions shall become subject to this Agreement.

d. The District shall have the exclusive right to determine the amount of any fee to be charged to any such extension and paid by it to the District for the privilege for connecting to the Facilities of the District. The fee shall belong to the District exclusively, and the Town shall have no right or interest therein whatsoever.

e. The District shall comply with all applicable laws, rules and regulations, including the Town's Ordinance, and obtain all necessary governmental approvals with respect to the formation of any extensions and the construction of the distribution systems therein.

2.6. The Town of Alexander on behalf of the District and other water districts, now existing or developed in the future, shall bear the full cost related to the formation of any such water district, or installation or maintenance of facilities, including meters, except as specifically agreed herein.

2.7. This Agreement is subject to and has been consented to and approved by the Genesee County Legislature, by resolution duly adopted (a copy of which is appended hereto). As a condition to the approval granted by Genesee County, the District agrees to form any water districts as requested by the Genesee County associated with any future construction of water supply or distribution facilities described in the February 1999 Genesee County Water Supply System Final Environmental Impact Statement. Genesee County shall provide the necessary District Formation Reports at no cost to the District. Genesee County shall construct or cause to be constructed certain facilities in accordance with the February 1999 Genesee County Water Supply System Final Environmental Impact Statement. The

MARCH 6, 2013
SPECIAL TOWN BOARD MEETING

determination and schedule of the construction of such water supply facilities said be at the sole discretion of Genesee County.

III. SERVICE AND EMERGENCIES

3.1. It is understood and agreed that the Town makes no guarantee as to pressure, quantity, quality or continuity of service and shall not, under any circumstances, be held liable for loss or damage from a deficiency or failure in the supply of water whether caused by shutting off water in case of accident, or for alterations, extension, connections or repairs or for any other cause whatsoever.

3.2. In the event of an emergency or other necessity, the Town shall have the right to shut off or reduce the flow of water for such periods it deems necessary. The Town shall restore service and make water available as soon as reasonably possible.

a. Corrective Measures. In the event that the Town deems it necessary to shut off the water supply, the Town shall provide the District with reasonable advance notice, when possible. The Town will correct the situation as soon as practical. The District shall have the right to request that the Town temporarily turn off its transmission main and the District shall be able to temporarily obtain its entire water requirements from another source only until such time as the corrective measures taken by the Town have been inspected and approved by the Town's Water Department. Conversely, if the Town deems there is a condition in the District that could contaminate the supply, the Town will notify the District and the District will correct the situation as soon as practical. The Town may discontinue service to the District temporarily until these corrections are made.

b. Water Emergency. In the event that a water emergency is declared in the Town, the Town shall notify the Town Supervisor of the District and the District's Town Board shall declare a similar water emergency with respect to all water purchased from the Town by the residents. The District shall duplicate any emergency measures taken by the Town during such water emergency.

IV. MISCELLANEOUS

- A. Effect of Agreement. This Agreement incorporates the entire agreement between the parties hereto as the subject matter hereof and terminates and supersedes any prior agreement.
- B. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute the same instrument.
- C. Amendments. This Agreement may not be amended, changed, modified or altered except in writing executed by the parties.
- D. Future Cooperation. The parties shall execute such further instruments, documents or certificates as may be necessary or desirable to effectuate the purpose and intent of this Agreement.

MARCH 6, 2013
SPECIAL TOWN BOARD MEETING

- E. Waiver. No waiver of compliance with any provision or condition of this Agreement and no consent provided for herein shall be effective unless evidenced by an instrument in writing duly executed by the party sought to be charged therewith. No failure on the part of any party to exercise, and or delay in exercising any of its rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by any party of any right preclude any other or future exercise thereof or the exercise of any other right.
- F. Assignment. No party shall assign or attempt to assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto.
- G. Binding Effect. Subject to the provisions of Section V, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement creates no rights of any nature for any person not a party hereto.
- H. Survival of Representations. All the rights and duties of the parties created by this Agreement shall survive with respect to the services performed prior to such terminations.

V. TERM

The term of this Agreement for Water Supply shall be for an initial term of forty (40) years; provided further that either party may terminate this Agreement upon at least two (2) years prior written notice to the other party. This Agreement shall terminate on the effective date of any agreement with any entity assuming operation of Batavia system.

IN WITNESS WHEREOF, the parties hereto have caused their corporate seals to be hereunto affixed and this Agreement to be signed by its duly authorized officers the day and year fist above written.

TOWN OF BATAVIA

TOWN OF ALEXANDER

on behalf of the Town of Alexander Water District(s)

By: _____
Gregory H. Post, Supervisor

By: _____
Joseph Higley, Supervisor

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

On this ____ day of _____ 2013 before me, the subscriber, personally appeared **JOSEPH HIGLEY** who, being by me duly sworn, deposes and says: That he is the Supervisor of the Town of Alexander, the municipal subdivision of the State of New York named in and which executed the above and within Instrument; that he knows the seal of said Town and that the seal affixed to said Instrument is the seal of the Town of Alexander; that it was so affixed by the order of the Town Board of the Town of Alexander, and that he signed his name thereto by like order.

MARCH 6, 2013
SPECIAL TOWN BOARD MEETING

Notary Public
Genesee County, New York
My Commission Expires ____-____-____

STATE OF NEW YORK :
COUNTY OF GENESEE : ss.:

On this ____ day of _____ 2013 before me, the subscriber, personally appeared **GREGORY H. POST** who, being by me duly sworn, deposes and says: That he is the Supervisor of the Town of Batavia, the municipal subdivision of the State of New York named in and which executed the above and within Instrument; that he knows the seal of said Town and that the seal affixed to said Instrument is the seal of the Town of Batavia; that it was so affixed by the order of the Town Board of the Town of Batavia, and that he signed his name thereto by like order.

Notary Public
Genesee County, New York
My Commission Expires ____-____-____

ADJOURNMENT:

Motion Deputy Supervisor Underhill, second Councilman Zambito to adjourn the Regular Town Board Meeting at 5:15 P.M.
Ayes: Underhill, Zambito, Michalak, Post
MOTION CARRIED by unanimous vote (4-0)

Respectfully submitted,

Teresa M. Morasco
Town Clerk