

**MARCH 20, 2013  
REGULAR TOWN BOARD MEETING**

**Town Hall**

**7:00 P.M.**

Greg Post, Supervisor, 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  
Roger Muehlig, Daily News Reporter

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

**February 20, 2013 Regular Town Board Meeting:** Motion Councilman Zambito, second Deputy Supervisor Underhill to approve the minutes as written.

**Ayes:** Zambito, Underhill, Michalak, Lang

**Abstain:** Post

**MOTION CARRIED vote** (4-ayes, 1-abstain)

**March 6, 2013 Special Town Board Meeting:** Motion Deputy Supervisor Underhill, second Councilwoman Michalak to approve the minutes as written.

**Ayes:** Underhill, Michalak, Zambito, Post

**Abstain:** Lang

**MOTION CARRIED vote** (4-ayes, 1-abstain)

**RESOLUTION NO. 72:**

Councilman Lang offered the following:

**AUTHORIZATION OF PETTY CASH-JUSTICE CLERKS**

**RESOLVED**, pursuant to Section 64-1a of the Town Law the Batavia Town Board hereby authorizes a petty cash fund for the Justice Clerks not to exceed two hundred (\$200.00) dollars.

**Second by:** Deputy Supervisor Underhill

**Ayes:** Lang, Underhill, Michalak, Post, Zambito

**APPROVED by unanimous vote** (5-0)

**RESOLUTION NO. 73:**

Deputy Supervisor Underhill offered the following:

**RESOLUTION OF THE TOWN OF BATAVIA TOWN BOARD  
OPPOSING THE PROCESS OF THE ENACTMENT AND CERTAIN PROVISIONS**

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**CONTAINED WITHIN THE NEW YORK SECURE AMMUNITION & FIREARMS  
ENFORCEMENT ACT (NY SAFE ACT)**

**WHEREAS**, the right of the people to keep and bear arms is guaranteed as an individual right under the Second Amendment to the United States Constitution; and

**WHEREAS**, the right of the people to keep and bear arms for defense of life, liberty and property is regarded as an inalienable right by the people of the Town of Batavia and State of New York; and

**WHEREAS**, the lawful ownership of firearms is and has been, a valued tradition in the Town of Batavia and the State of New York and the rights protected by the Second Amendment to the United States Constitution are exercised by many of our residents; and

**WHEREAS**, the people of the Town of Batavia and State of New York derive economic and environmental benefits from all safe forms of recreation involving firearms, including but not limited to, hunting and target shooting while utilizing all types of firearms available under the Constitution of the United States; and

**WHEREAS**, members of the Town of Batavia Town Board, being elected to represent the people of the Town of Batavia, are duly sworn by their oath of office to uphold the Constitution of the United States; and

**WHEREAS**, members of the New York State Assembly and the New York State Senate, being elected by the people of New York State, are duly sworn by their oath of office to uphold the Constitution of the United States; and

**WHEREAS**, the enactment of the NY SAFE Act (Chapter 1 of the Laws of 2013) has engendered significant controversy over both the process by which it was enacted and certain provisions contained within it; and

**WHEREAS**, it is our understanding that many State Legislators had less than an hour to read the legislation which contained approximately twenty-five thousand words, before being forced to vote on it; and

**WHEREAS**, having reviewed the legislation and time constraints, it is our conclusion that there is no possible way any individual could have read the entire bill and understood its full implications prior to voting on it; and

**WHEREAS**, our State Legislators most certainly could not have had the time to request and receive the input of their constituents regarding this matter; and

**WHEREAS**, seeking and considering such public input is a standard to which we hold ourselves to on the Town of Batavia Town Board; and

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**WHEREAS**, this legislation has 60 sections of which only three take effect immediately; and

**WHEREAS**, in our opinion, there was no reason for the Governor to use a message of necessity to bring this bill to vote immediately and bypass the three day maturing process for all legislation; and

**WHEREAS**, the mishandling of the process in crafting the NY SAFE Act resulted in complex policy changes, many of which have been left up to interpretation and are confusing even to the State Legislators who voted on them and the law enforcement officials who are required to enforce and explain them; and

**WHEREAS**, requiring law-abiding gun owners to verify ownership of certain types of firearms every five years, in addition to registering them on their permits, which now also must be renewed every five years does not increase the safety of the public and is unnecessarily burdensome to the residents of New York State; and

**WHEREAS**, there will be a significant financial impact due to the permits that will have to be renewed requiring additional manpower and computer systems; and

**WHEREAS**, this legislation prohibits the sale of firearm magazines with a capacity larger than seven rounds; and

**WHEREAS**, those firearm magazines with a capacity larger than seven rounds which are authorized to be retained by existing owners, may only be loaded with seven rounds and eventually must be permanently altered to only accept seven rounds or be disposed of, thus constituting a seizure of legally owned personal property with no provision for compensation; and

**WHEREAS**, few or no low capacity (seven rounds or less) magazines currently exist for many of the firearms commonly possessed by law-abiding residents of New York State; and

**WHEREAS**, limiting the number of rounds to seven versus ten is arbitrary and capricious, has no correlation to public safety, unfairly burdens law abiding gun owners and puts an undue burden on gun manufacturers to retool their manufacturing plants; and

**WHEREAS**, the only persons who will comply with the new high-capacity magazine ban are law abiding citizens, leaving the same high capacity magazines in the hands of those who choose not to obey the law; and

**WHEREAS**, requiring documentation of all ammunition sales in New York State as provided for in this legislation, is a significant unfunded mandate in business; and

**WHEREAS**, the New York State Combined Ballistic Identification System which wasted \$44 million in taxpayer money and resulted in zero convictions, illustrates the propensity of government to waste taxpayer resources when legislation is not properly reviewed; and

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**WHEREAS**, Governor Cuomo has proposed spending \$36 million dollars in his 2013-2014 Executive Budget for the implementation of the NY SAFE Act at a time when New York State residents are crying out for tax relief; and

**WHEREAS**, this legislation severely impacts the possession and use of firearms now employed for safe forms of recreation including but not limited to, hunting and target shooting; and

**WHEREAS**, while there are some areas of the legislation that the Town of Batavia Town Board finds encouraging such as addressing glaring shortcomings in the mental health system, as well as privacy protections for certain pistol permit holders, by –and –large, we find the legislation does little more than negatively impact lawful gun ownership; and

**WHEREAS**, this legislation fails to offer any meaningful solutions to gun violence and places increased burdens where they do not belong, squarely on the backs of laws-abiding citizens; and

**WHEREAS**, this legislation effectively turns countless New York State law-abiding gun owners into criminals; and

**WHEREAS**, the manner in which this legislation was brought forward for vote in the State Legislature is deeply disturbing to the Town of Batavia Town Board.

**NOW, THEREFORE BE IT**

**RESOLVED**, that the Town Board of the Town of Batavia does hereby oppose and request the repeal of any legislation including the sections within the NY SAFE Act (Chapter 1 of the Laws of 2013) which infringe upon the right of the people to keep and bear arms; and be it

**FURTHER RESOLVED**, that the Town of Batavia Town Board considers such laws to be unnecessary and beyond lawful legislative authority granted to our State representatives; and be it

**FURTHER RESOLVED**, that the Town of Batavia Town Board strongly encourages members of the New York State Legislature to hold public hearings to address the issue of gun violence in a way that will produce meaningful results; and be it

**FURTHER RESOLVED**, that the Town of Batavia Town Board requests the members of the New York State Senate and Assembly who represent all or part of Genesee County to reply in writing with their views on and actions taken in support of or in opposition to the NY SAFE Act; and be it

**FURTHER RESOLVED**, that the Town Clerk is hereby directed to send a certified copy of this Resolution to President Barack Obama, Vice President Joseph Biden, Governor Andrew Cuomo, Senator Charles Schumer, Senator Kirsten Gillibrand, Congressman Chris Collins, New York State Senator Michael Ranzenhofer, and New York State Assemblyman Steven Hawley.

**Second by:** Councilman Lang

**Ayes:** Underhill, Lang, Michalak, Zambito, Post

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**APPROVED by unanimous vote (5-0)**

**Discussion-** The Town Board expressed that without the voice of the people, we cannot be heard. The Board stated that they strongly endorse this resolution.

**RESOLUTION NO. 74:**

Supervisor Post offered the following:

**OPPOSITION OF LEGISLATION A.689 SPEAKER SHELDON SILVER, ET AL**

**WHEREAS**, the Genesee County Board of Elections has expressed concern relative to the proposed Legislation A.689 offered by Speaker Sheldon Silver, et al that would require 5 polling sites throughout our County to be open 14 straight days from 8am until 7pm before each general election and 7 days before any primary election, and

**WHEREAS**, providing election inspectors for 14 straight days, including Saturdays and Sundays, and 7 days before each primary would put an additional cost burden to the Town taxpayers; and

**WHEREAS**, existing polling sites, which are extremely hard to acquire, would eliminate all schools, fireman's recreation halls and church halls because they are not available on Saturdays and Sundays, posing another added burden and expense; and

**WHEREAS**, the Genesee County Board of Elections has upgraded the polling sites to provide ample room for all voters to have adequate space to complete and cast their ballot within a reasonable period of time even during the recent Presidential Election with 70% voter turnout.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board opposes this "Early Voting Proposal" which is completely unnecessary in the Town of Batavia, County of Genesee and adds one more unfunded mandate to our Town taxpayers.

**Second by:** Deputy Supervisor Underhill

**Ayes:** Post, Underhill, Michalak, Zambito, Lang

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 75:**

Councilwoman Michalak offered the following:

**TRAINING WORKSHOP**

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

Joseph Neth- Water Distribution Rehabilitation Web/CD training (was) March 14, 2013 at a cost

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of \$288.00

Marcy Crandall, Sandra Baubie, Joseph Neth, Doug Smart, and Murray Morrow- GCC Best Center Supervisory Skills Training, March 20, 2013 at a total cost of \$240.00

Hiedi Librock and Tom Lichtenthal- Funding for Municipal Projects March 21, 2013

Marcy Crandall- NYS GFOA Annual Conference April 10 and April 11 at an approximate cost of \$353.00

John Della Penna- GFLRPC Spring Government Workshop, May 16, 2013 at a cost of \$60.00

Marcy Crandall, Doug Smart, Jason Armbrewster, Tom Lichtenthal, Sandra Baubie, Teresa Morasco and Murray Morrow- GCC Best Center Organizational & Time Management, May 23, 2013 at a total cost of \$90.00

**Second by:** Councilman Zambito

**Ayes:** Michalak, Zambito, Lang, Underhill, Post

**APPROVED by unanimous vote (5-0)**

**Discussion-** Supervisor Post expressed his satisfaction with the employees participation in the training opportunities available to them.

**RESOLUTION NO. 76:**

Councilman Zambito offered the following:

**AUTHORIZING LINE ITEM ESTABLISHMENT & BUDGET TRANSFERS FOR 2013**

**RESOLVED**, the Batavia Town Board hereby establishes line item A7510.200-Historian Equipment; and be it further

**RESOLVED**, the Batavia Town Board hereby authorizes the following Budget Transfers:

**General Fund:**

From	Amount	To
A1220.400 Supervisor - Contractual	\$200.00	A1220.200 Supervisor - Equipment
A5132.400 Highway - Utilities	\$2,604.00	A5132.200 Highway – Equipment
A7510.400 Historian - Contractual	\$2,576.00	A7510.200 Historian-Equipment
A1990.400 Contingency	\$1,500.00	A1410.201 Records Management Equip

**Second by:** Councilman Lang

**Ayes:** Zambito, Lang, Underhill, Michalak, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 77:**

Councilman Lang offered the following:

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**UNITED WAY DAY OF CARING**

**RESOLVED**, the Batavia Town Board hereby authorizes a team of five employees (Hiedi Librock, Teresa Morasco, Steve Mountain, Dan Lang and Bruce Gerould) from the Town of Batavia to participate in the United Way Day of Caring, Wednesday, May 8, 2013.

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

**Discussion-** The Supervisor applauds the employees for their participation.

**RESOLUTION NO. 78:**

Deputy Supervisor Underhill offered the following:

**PURCHASE NEW WHEEL LOADER FOR  
HIGHWAY DEPARTMENT**

**WHEREAS**, the 2013 Town Budget reflects appropriations to purchase a new wheel loader for the Highway Department.

**WHEREAS**, the Highway Superintendent recommends purchasing a 2013 Hyundai Loader HL 757-9 on State Bid, Award #22063, Contract #PC65308 from George and Swede, Sales and Service, 7155 Big Tree Road, Pavilion, NY 14525 at a price of \$108,981.00.

**WHEREAS**, the current 2012 Hyundai HL 757-9 wheel loader will be purchased back by George and Swede through their "buy back" plan at a cost of \$103,981.00. Therefore, the net cost to the Town for the new 2013 Hyundai wheel loader will be \$5000.00.

**RESOLVED**, the Batavia Town Board hereby authorizes the purchase of a new 2013 Hyundai Loader HL 757-9 on State Bid from George and Swede, Sales and Service, 7155 Big Tree Road, Pavilion, NY 14525 at a price of \$108,981.00 and sell the 2012 Hyundai wheel loader back to them at a cost of \$103,981.00, and be it

**FURTHER RESOLVED**, the expenditure will be appropriated from line item DA 5130.200.

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

**RESOLUTION NO. 79:**

Supervisor Post offered the following:

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**RESOLUTION TO AUTHORIZE PURCHASE OF  
DESKTOP COMPUTERS & PRINTERS**

**RESOLVED**, the Batavia Town Board hereby authorizes the purchase of five (5) Dell Desktop Computers for the Bookkeeper, Water/Sewer Clerk, Secretary to the Supervisor, Building Inspector and Records Management offices at a cost of \$5,178.82 (4 @ \$993.89, 1 @ \$1,203.26), New York State Contract #PT65340 (quote attached); and be it further

**RESOLVED**, the Batavia Town Board hereby authorizes the purchase of two (2) Hewitt Packard Printers, one for the Records Management Office at a cost not to exceed \$2,100.00 and one for the Water/Sewer Billing Office at a cost not to exceed \$1,600.00 (quotes attached); and be it further

**RESOLVED**, the expenditures will be appropriated from line items:

A1220.200	\$2,092.47
A1410.201	\$3,093.89
A3620.200	\$ 993.89
SW8310.200	\$1,945.42
SS18110.200	\$ 259.39
SS28110.200	\$ 389.09

**Second by:** Councilman Zambito

**Ayes:** Post, Zambito, Lang, Underhill, Michalak

**APPROVED by unanimous vote (5-0)**

**SUSPEND THE RULES**-Motion Councilwoman Michalak, second Deputy Supervisor Underhill to suspend the rules to introduce an additional resolution.

**Ayes:** Michalak, Underhill, Zambito, Lang, Post

**MOTION CARRIED by unanimous vote (5-0)**

**RESOLUTION NO. 80:**

Councilwoman Michalak offered the following:

**AUDIT SERVICES AGREEMENT –AUD DOCUMENT  
BETWEEN THE TOWN OF BATAVIA AND FREED MAXICK & BATTAGLIA, PC**

**RESOLVED**, the Batavia Town Board hereby authorizes the Supervisor to retain Freed Maxick & Battaglia, PC to compile and provide the Annual financial Report Update Document (the AUD) for the year ending December 31, 2012 for the Town and to execute the agreement between the Town of Batavia and Freed Maxick & Battaglia, PC (agreement attached).

**Second by:** Deputy Supervisor Underhill

**Ayes:** Michalak, Underhill, Zambito, Lang, Post

**APPROVED by unanimous vote (5-0)**

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**RESOLUTION NO. 81:**

Councilman Zambito offered the following:

**RESOLUTION TO APPROVE AN AMENDED OPERATION AND MAINTENANCE  
AGREEMENT WITH THE TOWN OF ALEXANDER**

**WHEREAS**, the Town of Batavia Board approved a Resolution on March 6, 2013, to enter into an Operation and Maintenance Agreement with the Town of Alexander, and

**WHEREAS**, after this approval, the County of Genesee requested that certain language be added to Paragraph 2.1 of this Agreement, and

**WHEREAS**, the Town Board finds this additional proposed language acceptable.

**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 "Amended Agreement for Operation and Maintenance of Water Districts Town of Alexander to Town of Batavia", a copy of which is annexed hereto and made a part of the Minutes of the Town Board; which does add the following language to Paragraph 2.1 of the prior Agreement: "...in accordance with the water supply agreement between the County of Genesee and the Town of Alexander..."; and deletes the following language: "from the Town"; and be it

**FURTHER RESOLVED** that all other terms and conditions of the prior Agreement shall remain the same, and be in full force and effect with the addition set forth above.

**Second by:** Councilman Lang

**Ayes:** Zambito, Lang, Underhill, Michalak, Post

**APPROVED by unanimous vote (5-0)**

**AMENDED  
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 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

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

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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, in accordance with the water supply agreement between the County of Genesee and the Town of Alexander, purchase 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 by it of the Facilities shall not reduce below accepted standards (as established by applicable Federal and

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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 determination and schedule of the construction of such water supply facilities shall be at the sole discretion

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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.
- 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

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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.

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**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.

\_\_\_\_\_  
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 \_\_\_\_-\_\_\_\_-\_\_\_\_

**RESOLUTION NO. 82:**

Councilman Lang offered the following:

**AMENDMENT TO RESOLUTION 2 OF 2013**

**ADOPTION OF SALARIES FOR 2013**

**RESOLVED**, the Batavia Town Board hereby amends resolution number 2 of 2013, entitled "Adoption of Salaries for 2013", Co-Historian at a salary of one dollar (\$1.00).

**MARCH 20, 2013**  
**REGULAR TOWN BOARD MEETING**

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

**RESOLUTION NO. 83:**

Deputy Supervisor Underhill offered the following:

**RESOLUTION TO AUTHORIZE PURCHASE OF  
CUSTOM DISPLAY CABINET**

**RESOLVED**, the Batavia Town Board hereby authorizes the historian to purchase a Custom Display Cabinet from Sea Jay's Custom Creations at a cost of \$2,575.85; and be it further

**RESOLVED**, the expenditure will be appropriated from line item A7510.200.

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

**Abstract No. 3-2013:** Motion Councilman Zambito, second Deputy Supervisor Underhill to authorize the Supervisor to pay the following vouchers:

General	\$74,017.06
Highway	24,980.94
Sewer No. 1	2,143.61
Sewer No. 2	1,839.58
Water	41,865.50
Creek	98.20
W Main Sewer	123.79
<b>Total</b>	<b>\$145,068.68</b>

Check numbers 1772 - 17726, 17729-17743, 17745-17789, 17791-17815, ACH \$31,753.75, Online: \$111,399.46

**Ayes:** Zambito, Underhill, Michalak, Lang, Post  
**MOTION CARRIED by unanimous vote (5-0)**

**DEPARTMENT REPORTS:**

**The Supervisor reported for the following departments:**

**Building/Zoning:** Busy processing building/zoning applications and they are gearing up for a strong year.

**Water/Sewer-**

**West Main Sewer** -The bid opening for the West Main Sewer Project has been postponed from March 21 to March 28, 2013.

**MARCH 20, 2013**  
**REGULAR TOWN BOARD MEETING**

**Creek/East Road Water**-Continuing to move forward with the Creek/East Road Water Project  
**Batavia North Water**- Continuing to solicit for funding

**Highway:** Initiating repair work and maintaining equipment.

**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%.

**GAM-** The GAM meeting is tomorrow evening. Hosted by the Emergency Management and will be held at the Emergency Management Facility at 6:30 P.M.

**Co-Historian Appointment-** Appointed Barbara Toal as Co-Historian

**COMMUNICATIONS:**

**The Town Clerk reported on the following:**

**February Town Clerk monthly report collected** a total of \$2,182.12, remitted \$2,042.50 to the Supervisor for the Local Share.

**February Tax Collection report collected** a total of \$161,571.61, remitted \$1,435.56 to the Supervisor for Penalties Collected and the remainder to the County Treasurer

**Dog Control Officer Inspection Report-** Received a Dog Control Officer Inspection Report from NYS Ag and Market for the Genesee County's Animal Control Officer Services. It received a Satisfactory 365 rating

**Municipal Shelter Inspection Report-** Received a Municipal Shelter Inspection Report from NYS Ag and Market for the Genesee County Animal Shelter. It received a Satisfactory 365 rating.

**Supporting Legislation-** Received letter from Assemblyman Hawley, acknowledging receiving the Town's resolution in support of the Mortgage Foreclosure Actions.

**Genesee County Office for the Aging-** Received a thank you letter from the Genesee County Office for the Aging for the Town's contribution for the Senior Center Recreation Program.

**GFLRPC Government Workshop** -will be held May 16, 2013 at the Burgundy Basin Inn. Town Personnel have been advised of this training.

**COMMITTEE REPORTS:**

**Parks-**Councilwoman Michalak reported that the equipment for the "Inclusive Interplay Community Park Project" is being ordered. The ARC has received just under \$50,000 in donations. Ms. Michalak reiterated that anyone can make a donation. The goal is to reach \$125,000. May 8, "United Way Day of Caring" will be the main install date for this project.

The Supervisor thanked the community for the support for this project.

**ADJOURNMENT:**

Motion Councilman Zambito, second Councilwoman Michalak to adjourn the Regular Town Board Meeting at 7:32 P.M.

**Ayes:** Zambito, Michalak, Lang, Underhill, Post

**MARCH 20, 2013**  
**REGULAR TOWN BOARD MEETING**

**MOTION CARRIED** by unanimous vote (5-0)

Respectfully submitted,

Teressa M. Morasco  
Town Clerk