

APRIL 30, 2014
SPECIAL 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

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

RESOLUTION NO. 91:

Councilman Lang offered the following:

**RESOLUTION TO APPROVE AN AGREEMENT FOR
BATAVIA SPORTS PARK**

WHEREAS, the Town Board has previously provided financial support and in kind services to CY Properties, LLC and Hawley Properties, LLC (hereinafter jointly referred to as “Developers”), to develop and maintain recreational facilities referred to as Batavia Sports Park, and

WHEREAS, the Town Board believes that it would be in the best interests of Town residents to continue such support on a limited basis in order to provide recreational opportunities, enhance the quality of life and promote economic development benefits for Town residents and the surrounding communities in Genesee County.

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

BE IT FURTHER RESOLVED that the Town Supervisor and employees of the Town are hereby authorized and directed to take all steps necessary to implement the terms and conditions of this Agreement, including, but not limited to, the payment of \$60,000.00 to the Developers this year on or before September 1, 2014; as well as subsequent payments of \$40,000.00 in 2015 and \$20,000.00 in 2016, with the last two payments subject to full compliance by the Developers with their duties and responsibilities as set forth in this Agreement.

Second by: Councilman Zambito

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

**AGREEMENT FOR DEVELOPMENT, OPERATION
AND MAINTENANCE OF RECREATIONAL FACILITIES**

THIS AGREEMENT, made the _____ day of _____, 2014, 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 jointly referred to as "Developers").

WITNESSETH:

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

WHEREAS, the Town Board has determined that entering into this Agreement would be in the best interest of the Town in order to relieve the Town, except upon the limited basis as set forth herein, of the financial responsibilities and the use of Town employees for the purposes of land acquisition, constructing and maintaining the recreational facilities as contemplated by this Agreement, operating these facilities and promoting athletic events, and

WHEREAS, the Town has determined that the continued operation of these recreational facilities, along with the events and tournaments to be scheduled using these facilities, will continue the efforts of the Town to promote the public purposes of enhancing the quality of life and promoting economic development and benefits for the Town and the surrounding communities in Genesee County, and

WHEREAS, the Town and the Developers previously entered into an Amended Agreement that ended on December 31, 2013, and

WHEREAS, the parties desire to continue the prior working relationship and shared services for three (3) more years, with some additional terms and conditions, in order to assess the benefits and financial viability of the Batavia Sports Park.

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

1. The Developers will construct and maintain recreational fields and facilities located within the boundaries of the Town of Batavia, referred to as the Batavia Sports Park, 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.

2. The Developers will provide services to the Town to coordinate and schedule the use and operation of the recreational facilities. The Developers agree to schedule a minimum of four (4) major tournaments for the 2014 season. The Developers will coordinate these tournaments and promote use of the local hotels with the visiting teams. The Developers will work with the Genesee County Chamber of Commerce to track the hotel nights that are booked for each tournament.

3. On or before September 1, 2014, the Developers shall enter into a written contract with an appropriate individual, organization or legal entity, for a period of at least three (3) years, to assist the Developers in the operation and promotion of the Batavia Sports Park.

4. On or before December 31, 2014, the Developers will complete and provide to the Town a business/strategic plan for the continued operation of the Batavia Sports Park. This plan may be modified as circumstances warrant thereafter and all revisions will also be provided to the Town.

5. In consideration for the duties and responsibilities of the Developers as set forth herein, on or before September 1, 2014, the Town will pay to the Developers the sum of Sixty Thousand Dollars (\$60,000.00). In the event that the Developers have fully complied with all of the terms and conditions set forth in this Agreement by the time limitations thereof, the Town will pay to the Developers the sum of Forty Thousand Dollars (\$40,000.00) in 2015 and the sum of Twenty Thousand Dollars (\$20,000.00) in 2016, to be paid on or before September 1st of each of these respective years.

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6. Upon request of the Developers, the Town may satisfy parts of the cash contributions by providing in kind services to the Developers for the agreed upon value thereof.
7. The Town will also provide to the Developers the following services:
 - A. Stake out the athletic fields throughout the seasons.
 - B. Provide data and information as requested for the preparation of the business/strategic plan.
 - C. Assist with providing engineering services for future infrastructure developments.
 - D. Assist with obtaining grants and other funding opportunities.
 - E. Upon concurrence of the Town, the Town will complete the State Environmental Quality Review Act form that is necessary to implement the business/strategic plan and the future development of the Batavia Sports Park.
8. This Agreement is subject to the Developers obtaining approval from any other Governmental Agencies as needed and to obtain all required permits.
9. 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.
10. 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) million dollars, with the Developers and the Town being named as additional insureds on all such insurance policies.
11. The term of this Agreement shall be for a period commencing retroactively to January 1, 2014, and ending on December 31, 2016. The Town Engineering Department will prepare a report no later than ninety (90) days prior to the termination, which will review the benefits of the Sports Park and determine if the terms of this Agreement are being met by both parties.
12. Prior to 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 Agreement, and provide the same to the Town upon request.
13. The parties acknowledge that if all parties determine that a continuation beyond three (3) years of the terms and conditions of this Agreement, to include any required modifications thereof, will be mutually beneficial to all parties, a renewal period thereof not to exceed ten (10) years thereafter will be negotiated, however, the total contributions of the Town in cash and/or in kind services will not exceed the sum of Ten Thousand Dollars (\$10,000.00) annually.

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

TOWN OF BATAVIA, NEW YORK

CY PROPERTIES, LLC

By: _____
Print Name

Print Title

By: Gregory H. Post
Town of Batavia Supervisor

HAWLEY PROPERTIES, LLC

By: _____
Print Name

Print Title

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State of New York}
County of Genesee}ss.

On this _____ day of _____, 2014, 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.

Notary Public

State of New York}
County of Genesee}ss.

On this _____ day of _____, 2014, 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 _____, 2014, 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. 92:

Deputy Supervisor Underhill offered the following:

**RESOLUTION TO APPROVE A PERFORMANCE BOND AGREEMENT
REGARDING THE TIM HORTON'S PROJECT**

WHEREAS, Batavia Beach, LLC has submitted an Application to the Town of Batavia requesting a building permit for construction of a Tim Horton's building in the Town of Batavia, located at 8400 Lewiston Road, Batavia, New York, and

WHEREAS, this Limited Liability Company has requested that the Town issue this building permit in order to begin construction prior to receipt of a New York State Department of Transportation Highway Work Permit, and

WHEREAS, the Town Board has a policy to provide a business friendly climate by assisting developers when possible to expedite the paperwork process, and

WHEREAS, the Town Board wants to provide security that the required highway improvements

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will be completed and therefore is requiring the Limited Liability Company to obtain a Performance Bond.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Batavia, New York, that a proposed "Agreement for Performance Bond", a copy of which is to be made part of the Town Board Minutes, is hereby approved, and the Town Supervisor is hereby authorized and directed to execute this Agreement on behalf of the Town, subject to prior receipt of a fully executed Performance Bond in the amount of \$90,000.00, as required in this Agreement, to be approved as to form and content by the Town Attorney.

Second by: Councilman Lang

Ayes: Underhill, Lang, Michalak, Zambito, Post

APPROVED by unanimous vote (5-0)

AGREEMENT FOR PERFORMANCE BOND

THIS AGREEMENT, made the _____ day of _____, 2014, by and between the **TOWN OF BATAVIA**, a Municipal Corporation of the State of New York, with its offices located at 3833 West Main Street Road, Batavia New York 14020, (hereinafter referred to as the "Town"), and **BATAVIA BEACH, LLC**, a Domestic Limited Liability Company, with its offices located at 570 Delaware Avenue, Buffalo, New York 14202, (hereinafter referred to as the "LLC").

WITNESSETH:

WHEREAS, the LLC has submitted an Application to the Town for a permit to construct a Tim Horton's building in the Town of Batavia, located at 8400 Lewiston Road, Batavia, New York, (hereinafter referred to as the "Project"), and

WHEREAS, the LLC has submitted design plans to the New York State Department of Transportation, (hereinafter referred to as "DOT"), to perform certain road improvements upon Lewiston Road as part of the requirements of the Project, and

WHEREAS, the DOT Highway Work Permit has not yet been granted, and

WHEREAS, the LLC has requested that the Town issue a building permit prior to DOT approval, and

WHEREAS, in consideration for the Town allowing the building construction to move forward prior to receipt of a DOT Highway Work Permit, the Town is requesting that the LLC obtain a Performance Bond as additional security to guarantee completion of the road improvements.

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

1. The Town will issue a building permit for the Project upon approval and execution of this Agreement by both parties, and the LLC acknowledges that a Certificate of Occupancy will not be issued by the Town for the Project until all of the terms and conditions set forth herein have been satisfied; as well as all other building permit requirements.

2. The LLC will obtain a DOT Highway Work Permit as quickly as possible in order to perform the work set forth in the document entitled "Lewiston Road Restriping Plan", (see **EXHIBIT A**, annexed hereto and made a part hereof), consisting generally of completing 1.5 inches of milling and overlaying of approximately 650 feet upon a portion of Lewiston Road, located between Route 5 and Park Road, including re-striping and signage for this work area.

3. The LLC will complete all work as necessary pursuant to this Permit, and will obtain final approval from the DOT upon completion, no later than one (1) year from the date of this Agreement as set forth above.

4. The LLC will obtain a Performance Bond as approved by the Town for the amount of \$90,000.00 naming the Town as the Obligee in this Performance Bond to insure the completion of the highway work as referred to herein.

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5. In the event that the LLC defaults and fails to perform all of the terms and conditions of this Agreement within the time set forth herein, then the LLC specifically authorizes the insurance company issuing the Performance Bond to pay such sums as is necessary to the Town and/or its designee to complete all portions of the Lewiston Road improvements necessary to obtain final approval from the DOT.

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

TOWN OF BATAVIA

BATAVIA BEACH, LLC

By: Gregory H. Post, Supervisor

By: David H. Baldauf, Manager

State of New York}
County of Genesee}ss.

On this _____ day of _____, 2014, 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.

Notary Public

State of New York}
County of Genesee}ss.

On this _____ day of _____, 2014, before me, the undersigned, personally appeared David H. Baldauf, 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. 93:

Supervisor Post offered the following:

**MITEL/INTER-TEL 5000 TELECOMMUNICATION SYSTEM
MAINTENANCE AGREEMENT WITH REL COMM, INC.**

WHEREAS, Rel-Comm, Inc. installed the telecommunications systems upgrade in the Town Hall and Highway Facility in 2009; and

WHEREAS, a Maintenance Agreement was approved and executed between the Town of Batavia and Rel Comm, Inc. (agreement attached) to maintain the system at a cost of \$96.50 per month starting May 1, 2010; and

WHEREAS, Rel Comm has revised some of the fee schedules (updated agreement attached).

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to execute the updated Maintenance Agreement between the Town of Batavia and Rel Comm, Inc., which include the new fee

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schedule and a cost of \$96.50 per month, annual cost of \$1,158.00 starting May 1, 2014 to maintain the telecommunications system.

Second by: Councilman Lang

Ayes: Post, Lang, Underhill, Michalak, Zambito

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 94:

Councilwoman Michalak offered the following:

AMENDMENT TO RESOLUTION 75 of 2014
VILLAGER CONSTRUCTION INCORPORATED
APPROVAL OF CHANGE ORDER NO. 1
WEST MAIN SEWER IMPROVEMENTS
CONTRACT NO. 2

WHEREAS, Villager Construction, Incorporated is under contract with the Town of Batavia for the West Main Street Road Sewer Improvements; and

WHEREAS, resolution 75, dated March 19, 2014 to approve change order no. 1 in the amount of three thousand two hundred sixty nine dollars and twenty-five cents (\$3,269.25) for revisions to the original design of portions of the pump stations as requested by the Town; and

WHEREAS, an error in the allowable overhead and profit was discovered resulting in a revised amount of the Change Order of two-thousand nine hundred sixty-five dollars and eight cents (\$2,965.08).

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby amends resolution 75, dated March 2014 Change Order No.1 for Contract No.2 and authorizes the Supervisor to execute the attached Change Order No.1 in the amount of two-thousand nine hundred sixty-five dollars and eight cents (\$2,965.08). The approved change order is subject to approval by USDA-Rural Development.

Second by: Councilman Zambito

Ayes: Michalak, Zambito, Lang, Underhill, Post

APPROVED by unanimous vote (5-0)

ADJOURNMENT:

Motion Deputy Supervisor Underhill, second Councilwoman Michalak to adjourn the Special Town Board Meeting at 7:10 P.M.

Ayes: Underhill, Michalak, Zambito, Lang, Post

MOTION CARRIED by unanimous vote (5-0)

Respectfully submitted,

Teressa M. Morasco

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Town Clerk