

**DECEMBER 20, 2017
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
Councilwoman White
Councilwoman Michalak
Councilman Zambito

Others

Present: Town Clerk Morasco
Planning Board Chair Jasinski
Dan Coffey, Fire Chief
Mike Pettinella, The Batavian Reporter
Kimberly McCullough

The Supervisor called the meeting to order at 7:06 P.M.

The Supervisor called the Public Hearing to Order for the Town of Batavia Fire Contract at 7:07 P.M. - Minutes for public hearing entered separately.

November 15, 2017 Public Hearing-Local Law 6 New Subdivision Regulations and November 15, 2017 Regular Town Board Meeting: Motion Deputy Supervisor Underhill, second Councilwoman Michalak to approve the minutes as written.

Ayes: Underhill, Michalak, Zambito, White, Post

MOTION CARRIED by unanimous vote (5-0)

RESOLUTION NO. 201:

Councilwoman White offered the following:

**AUTHORIZING AGREEMENT FOR
FIRE PROTECTION SERVICES FOR FISCAL YEAR 2017**

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

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of Batavia, New York on the 20th day of December, 2017, at 7:00 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

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: Deputy Supervisor Underhill

Ayes: White, Underhill, Michalak, Zambito, Post

APPROVED by unanimous vote (5-0)

TOWN OF BATAVIA FIRE DEPARTMENT AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2017, 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 the Fire Department, and the Fire Department has provided to the Town certified copies of Resolutions of

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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.

3. Should any loss or damage whatsoever be sustained to the fire apparatus or other equipment, said loss

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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 nine hundred forty-two thousand, four hundred seventy-eight dollars (\$942,478.00).

B. The sums as stated in section A of this paragraph to be due and payable on the 1st day of February, 2018, 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 Batavia are reasonably free and clear of ice and snow and that men and machinery under his supervision

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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. **On or before April 1, 2018**, the Fire Department will provide an independent, certified audit of the financial affairs of the Fire Department.

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, 2018, and shall continue for a term of one (1) year which will expire at midnight on December 31, 2018.

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:

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TERESSA M. MORASCO, TOWN CLERK

TOWN OF BATAVIA FIRE DEPARTMENT, INC.

BY _____
MICHAEL JONES, PRESIDENT

(SEAL)

STATE OF NEW YORK)
COUNTY OF GENESEE) ss:

On the ____ day of _____, 2017, 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 Springs 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 _____, 2017, before me came Michael Jones, to me known, who, being by me duly sworn, did depose and say that, he resides at 17 Lincoln Avenue, 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.

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NOTARY PUBLIC

RESOLUTION NO. 202:

Deputy Supervisor Underhill offered the following:

**AUTHORIZATION TO EXECUTE
AGREEMENT BETWEEN THE NEW YORK STATE DEPARTMENT OF MOTOR
VEHICLES FOR HEARING ROOM AT TOWN HALL**

WHEREAS, the Town of Batavia and the New York State Department of Motor Vehicles have had an annual agreement since 2003 for the use of a room at the Town Hall for the purpose of Motor Vehicle Hearings; and

WHEREAS, the current agreement expires December 31, 2017; and

WHEREAS, the New York State Department of Motor Vehicles requested to enter into another one year agreement.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby authorizes the Supervisor to execute the Agreement between the New York State Department of Motor Vehicles and the Town of Batavia, a copy of which is annexed hereto and made part of the Town Board Minutes.

Second by: Councilman Zambito

Ayes: Underhill, Zambito, White, Michalak, Post

APPROVED by unanimous vote (5-0)

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”), with offices 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:

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1. **TERM & HOURS OF USE:** This Agreement shall take effect on January 1, 2018 and will remain in effect for a period of one (1) year, ending on December 31, 2018, 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 One Thousand, Two Hundred Dollars (\$1,200.00) in advance for the use of said Hearing Room, said sum representing a rental fee of One Hundred Dollars (\$100.00) 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 Agreement, the Town agrees to reimburse DMV One Hundred Dollars (\$100.00) 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 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:

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<p>TO DMV: Dennis Ciotuszynski Senior Administrative Law Judge 295 Main Street, Room 468 Buffalo, NY 14203</p>	<p>TO TOWN: Gregory H. Post Town Supervisor Town of Batavia 3383 West Main Street Road Batavia, NY 14020</p>
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In Witness Whereof, the Parties hereto have executed this agreement by their duly authorized officer or representative.

Dated: _____

<p>Town of Batavia By, _____ Gregory H. Post Town Supervisor</p>	<p>New York State Department of Motor Vehicles By, _____ Elizabeth Coalts Director, Procurement Services</p>
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RESOLUTION NO. 203:

Supervisor Post offered the following:

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

WHEREAS, the Town of Batavia and the Town of Pavilion entered into a Code Enforcement Officer Agreement in 2013; and

WHEREAS, both Towns desire to continue this relationship, allowing Batavia to provide Code Enforcement Services, and

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

NOW, THEREFORE, BE IT

RESOLVED, by the Town Board of the Town of Batavia, New York, that a proposed "Fourth Amended Town of Batavia and the Town of Pavilion Code Enforcement Services Agreement", a copy of which shall be annexed hereto and made part of the Town Board Minutes, is hereby approved; and be it

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

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the aforementioned agreement.

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

**FOURTH AMENDED
TOWN OF BATAVIA AND PAVILION
CODE ENFORCEMENT
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”),

WHEREAS, pursuant to article 5-G of the General Municipal Law, Pavilion and Batavia are authorized to enter into an inter-municipal 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, BE IT RESOLVED, 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 fifteen thousand dollars (\$15,000.00) per year of this agreement. The sum shall be paid during the 2018 budget year to provide services for the year of 2018.

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.

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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 2018 and expire on December 31st 2018 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.

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

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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. 204:

Councilwoman Michalak offered the following:

**RESOLUTION TO APPROVE A THIRD AMENDED
FINANCIAL CLERICAL SERVICES AGREEMENT
WITH THE TOWN OF STAFFORD**

WHEREAS, the Town of Batavia, (hereinafter “Batavia”) and the Town of Stafford, (hereinafter “Stafford”) entered into a contract entitled “Towns of Batavia and Stafford First Amended Financial Clerical Services Agreement”, dated May 9, 2016 (original agreement 2014); and

WHEREAS, Stafford wishes to continue this service with Batavia; and

WHEREAS, the Town of Batavia has determined that it has the ability to continue to provide the services by using the Batavia Town Financial Clerk and Secretary to the Supervisor, without reducing the level of service provided to the Town of Batavia.

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Batavia, New York, that the proposed “Town of Batavia and Town of Stafford Third Amended Financial Clerical Services Agreement”, a copy of which is annexed hereto and made part of the Town Board Minutes, is hereby approved and the Town Supervisor is authorized and directed to sign this Agreement on behalf of the Town of Batavia.

Second by: Councilman Zambito

Ayes: Michalak, Zambito, White, Underhill, Post

APPROVED by unanimous vote (5-0)

**THIRD AMENDED
TOWN OF BATAVIA AND TOWN OF STAFFORD
FINANCIAL CLERICAL SERVICES AGREEMENT**

THIS AGREEMENT, made the _____ day of _____, 20____, by and between the **TOWN OF STAFFORD**, a municipal corporation organized and existing under the Laws of the State of New York, having its principal office located at 8903 Route 237, Stafford, New York 14143, (hereinafter referred to as “Stafford”), and the **TOWN OF BATAVIA**, a municipal corporation organized and existing under the Laws of the State of New York, having its principal office located at 3833 West Main Street Road, Batavia, New York 14020, (hereinafter referred to as “Batavia”).

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WHEREAS, pursuant to Article 5-G of the General Municipal Law, Stafford and Batavia are authorized to enter into an inter-municipal cooperative agreement for the provision of financial clerical services, and

WHEREAS, Batavia currently is employing a Financial Clerk fully qualified to provide the financial services as required by law, and

WHEREAS, Stafford has identified a need to have financial clerical work to be provided by Batavia, and

WHEREAS, Batavia intends to continue to maintain the position of Financial Clerk and to provide financial clerical duties in both the Towns of Batavia and Stafford.

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

1. Batavia agrees to provide financial clerical services to Stafford.
2. The services that will be provided will be to complete financial work as needed.
3. In consideration for compensation for the services set forth herein, Stafford shall pay Batavia twenty thousand dollars (\$20,000) per year of this agreement. The sum shall be paid during the 2018 budget year to provide services for the year of 2018.
4. The Financial Clerk shall for all purposes be deemed an employee of Batavia. The Financial Clerk shall not in any way be construed as an employee of Stafford. Batavia shall pay the Financial Clerk's salary and make employer's contributions for retirement, social security, health insurance, worker's compensation, unemployment and other similar benefits.
5. Each Town shall indemnify the other against any negligent act and shall name the other as an additional insured on any and all liability insurance policies. Each Town shall be responsible for the acts of the Financial Clerk when working in its Town and the other shall not be so responsible.
6. This Agreement shall become effective January 1, 2018 and shall expire on December 31st, 2018, with an option for either municipality to terminate this agreement upon a ninety (90) day written notice to the other municipality.
7. 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.
8. **IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals the day and year first above written.

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TOWN OF STAFFORD

TOWN OF BATAVIA

Robert S. Clement, Supervisor

Gregory H. Post, Supervisor

State of New York }
County of Genesee }ss.

On this _____ day of _____, 20____, before me, the undersigned, personally appeared Robert S. Clement, 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 _____, 20__, 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/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. 205:

Councilman Zambito offered the following:

**FIRST AMENDED CODE ENFORCEMENT OFFICER AGREEMENT BETWEEN
THE TOWN OF BATAVIA AND THE TOWN OF ALEXANDER**

WHEREAS, the Town of Batavia and the Town of Alexander entered into a Code Enforcement Officer Agreement in December 2016; and

WHEREAS, the agreement addresses the need for the Town of Alexander to have its Codes enforced by the Town of Batavia Code Officials and both Towns desire to continue this relationship.

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NOW, THEREFORE, BE IT

RESOLVED, by the Town Board of the Town of Batavia, New York, that a proposed "Town of Batavia and the Town of Alexander First Amended Code Enforcement Services Agreement", a copy of which shall be annexed hereto and made part of the Town Board Minutes, is hereby approved; and be it

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

Second by: Councilwoman Michalak

Ayes: Zambito, Michalak, White, Underhill, Post

APPROVED by unanimous vote (5-0)

FIRST AMENDED

CODE ENFORCEMENT

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, _____ by and between the **Town of Alexander**, a municipal corporation with offices at 3350 Church Street, Alexander, New York 14005 ("Alexander"), and the **Town of Batavia**, a municipal corporation with office at 3833 West Main Road, Batavia, NY 14020 ("Batavia"),

WHEREAS, pursuant to article 5-G of the General Municipal Law, Alexander and Batavia are authorized to enter into an inter-municipal 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, Alexander 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 Alexander.

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

First: That Alexander 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, Alexander shall pay Batavia \$10,500.00 per year of this agreement. The sum shall be paid during the 2018 budget

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year to provide services for the year of 2018.

Third: The services that will be provided will be to administer the adopted NYS Building Codes, Town of Alexander Zoning Code.

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 Alexander. 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 Alexander shall provide and pay for all attorney services and expenses in its jurisdiction.

Seventh: This agreement shall become effective on January 1st 2018 and expire on December 31st 2018 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.

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 ALEXANDER

TOWN OF BATAVIA

Joseph Higley, 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 **Joseph Higley**, 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.

**DECEMBER 20, 2017
REGULAR TOWN BOARD MEETING**

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. 206:

Councilwoman White offered the following:

GENESEE COUNTY VISITORS GUIDE ADVERTISEMENT

RESOLVED, the Batavia Town Board hereby authorizes a full-page advertisement in the 2018 Genesee County Visitors Guide at a cost not to exceed \$1,800.00; and be it further

RESOLVED, Chad Zambito, Councilman will serve as the Community Page Coordinator.

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

RESOLUTION NO. 207:

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

WHEREAS, the annual maintenance cost for this software is four thousand, one hundred, thirty-seven dollars (\$4,137.00) (agreement attached), the current agreement expires January 13, 2018.

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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 four thousand, one hundred, thirty-seven dollars (\$4,137.00) for one (1) year starting January 14, 2018, a copy of which is annexed hereto and made part of the Town Board Minutes.

Second by: Councilwoman White

Ayes: Underhill, White, Michalak, Zambito, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 208:

Supervisor Post offered the following:

APPOINTMENT TO PLANNING BOARD-SECRETARY

WHEREAS, Brittany Witkop has served as Planning Board Secretary since 2016; and

WHEREAS, Ms. Witkop submitted a letter of resignation as of December 31, 2017; and

WHEREAS, applications were accepted and reviewed for this position; and

WHEREAS, Kimberly McCullough meets the qualifications to serve as Secretary for the Planning Board.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby appoints of Kimberly McCullough, 8655 Read Road, East Pembroke, New York, as Secretary for the Planning Board; effective January 1, 2018; and be it

FURTHER RESOLVED, as per the Town of Batavia policy, Ms. McCullough is subject to a physical, background and driver's license check and drug and alcohol testing;

Second by: Councilman Zambito

Ayes: Post, Zambito, White, Underhill, Michalak

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 209 :

Councilwoman Michalak offered the following:

ADOPTION OF EMPLOYEE HANDBOOK

WHEREAS, the Batavia Town Board, with the assistance of Hodgson Russ, LLP have re-drafted an Employee Handbook and it is now in its final form (attached);

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NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby adopts the re-drafted Town of Batavia Employee Handbook, replacing and repealing the 2007 Town of Batavia Employee Handbook in its entirety.

Second by: Councilman Zambito

Ayes: Michalak, Zambito, White, Underhill, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 210:

Councilman Zambito offered the following:

LEADERSHIP GENESEE

RESOLVED, the Batavia Town Board hereby authorizes Sarah Sauka to participate in the 2018 Leadership Genesee program at a cost of \$2,100.00.

Second by: Councilman Deputy Supervisor

Ayes: Zambito, Michalak, Underhill, Post

Abstain: White

APPROVED (4-ayes, 1-abstain)

RESOLUTION NO. 211:

Councilwoman White offered the following:

RABIES CLINIC- HIGHWAY FACILITY

WHEREAS, the Genesee County Health Department would like to hold a rabies clinic at the Town of Batavia Highway Facility on Thursday, February 8, 2018 from 4:00 P.M. to 7:00 P.M.; and

WHEREAS, the Highway Superintendent has no objections to this.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby authorizes the Genesee County Health Department to hold a rabies clinic at the Town of Batavia Highway Facility on Thursday, February 8, 2018 from 4:00 P.M. to 7:00 P.M.; and be it

FURTHER RESOLVED, that Genesee County Health Department must provide the Town of Batavia a Certificate of Liability Insurance naming the Town as additional insured.

Second by: Councilman Zambito

Ayes: White, Zambito, Underhill, Michalak, Post

APPROVED by unanimous vote (5-0)

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RESOLUTION NO. 212:

Deputy Supervisor Underhill offered the following:

**FIRST AMENDED
SHARED SERVICES AGREEMENT
WITH EAST PEMROKE FIRE DEPARTMENT AND
EAST PEMBROKE FIRE DISTRICT**

WHEREAS, the Town of Batavia entered into a shared services agreement in December 2012 with the East Pembroke Fire Department for sharing equipment, materials and services for the mutual benefit of both parties; and

WHEREAS, East Pembroke Fire Department would like to continue this relationship, adding the East Pembroke Fire District.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Supervisor is hereby authorized and directed to execute the First Amended Shared Services Agreement between the East Pembroke Fire Department, East Pembroke Fire District and the Town of Batavia, a copy of which is annexed hereto and made a part of the minutes; and be it further

RESOLVED, the agreement shall be effective for five (5) years and shall expire five (5) years from the date of its signing.

Second by: Councilwoman Michalak

Ayes: Underhill, Michalak, Zambito, White, Post

APPROVED by unanimous vote (5-0)

**FIRST AMENDED
TOWN OF BATAVIA
SHARED SERVICES AGREEMENT
WITH THE
EAST PEMBROKE FIRE DISTRICT AND 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 (the "Town"), the **EAST PEMBROKE FIRE DISTRICT**, a Municipal Entity with an office located at 8655 Barrett Drive, Batavia NY 14020 and the **EAST PEMBROKE FIRE DEPARTMENT, INC.**, a Domestic Not-For-Profit Corporation, with an office located at 8655 Barrett Drive, Batavia NY 14020 (collectively known as the "District").

WITNESSETH:

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; and

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WHEREAS, the District owns and maintains a certain fire hall facility located at 8655 Barrett Drive, Batavia NY 14020 (the “fire hall”), and

WHEREAS, the Town and District each own of various pieces of equipment and machinery to fulfil their respective functions which each wish to share between them in the interests of economy and efficiency,

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 District and East Pembroke Fire Department”.

b. “Party” or “Parties” shall mean either the Town, the District, or the Department, or all of them, as the context implies.

c. “Superintendent” shall mean the Town of Batavia Highway Superintendent.

d. “District Representative(s)” shall mean the individual or individuals designated by the District or Department to arrange shared services on behalf of the District with the Town.

g. “Shared Service” shall mean any service provided by the Town or the District 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. The Town covenants to provide snowplowing services for the parking and driveway area to the Fire Hall owned by the District, as well as routine maintenance of said parking lot and driveway area, both only to the extent that the Superintendent determines that said services can be provided. The District 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 parties acknowledge that said snowplowing services shall be provided only after the Superintendent is satisfied that the highways of the Town are reasonably free and clear of ice and snow and that workers and

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machinery under his supervision and control are available to provide said services.

3. Within ten (10) days of the execution of this Agreement, the District 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 District Representative(s), to effectuate the terms and conditions set forth herein; provided further that the District shall immediately notify the Superintendent in writing of any changes in one or both of these Representatives.

4. The Town of Batavia by this Agreement grants unto the Superintendent, and the District by this Agreement grants unto the District Representative(s), the authority to enter into any shared service arrangements with each other, subject to the following terms and conditions:

a. The Town and the District 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 District 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 District Representative(s), based upon what will be in the best interests of the Town or District. The value of the materials or supplies loaned to each other under this Agreement may be returned to the Town or District 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 District Representative(s).

b. The Town and the District agree to repair or maintain their respective machinery or equipment under terms that may be agreed upon by the Superintendent and the District 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 District, shall be subject to the direction and control of the Superintendent or District 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 District 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 District owning the machinery and equipment.

e. The lending Town or District 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.

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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 District shall remain fully financially responsible for its own employees, including, but not limited to, salary, benefits and worker's compensation.

5. In the event machinery or equipment being operated by an employee of the owning Town or District is damaged or otherwise in need of repair while working for the other Party, the Town or the District 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.

6. Either the Town or the District 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.

7. 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.

8. Each party agrees to indemnify and hold harmless the other of and from any claims, losses, or liability accruing to either party by reason of the acts or omissions of the other party.

9. 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 District 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.

9. 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 6 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

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Attest: _____
Highway Superintendent

EAST PEMBROKE FIRE DISTRICT

By: _____
President of the District

Attest: _____
Fire District Commissioner

EAST PEMBROKE FIRE DEPARTMENT

By: _____
President of the Department

Attest: _____
Fire Chief

RESOLUTION NO. 213:

Supervisor Post offered the following:

**RESOLUTION TO APPROVE AN OPERATION AND MAINTENANCE INTERMUNICIPAL
AGREEMENT WITH
TOWN OF ELBA FOR WATER DISTRICT 2**

WHEREAS, the Town of Elba has established Water District No. 2, and

WHEREAS, Town of Elba determined that currently it would be in the best interest of the residents of their Water District to enter into an Intermunicipal Agreement with the Town of Batavia in order to arrange for Batavia to operate and maintain the water facilities, as well as for the billing and collection of the costs to provide and pay for the water service, and

WHEREAS, the Town of Batavia has the competency and capacity to operate and maintain the water facilities and provide billing and collection services pursuant to the terms and conditions of the proposed Intermunicipal Agreement; and

WHEREAS, the Town of Elba 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.

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NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Batavia, New York, that a proposed “Intermunicipal Agreement for Operation and Maintenance of Water Facilities for the Town of Elba Water District No. 2 Project”, between the Town of Elba on behalf of Water District No. 2, and the Town of Batavia, a copy of which is annexed hereto and made a part of the Town Board Minutes, is hereby approved, and

BE IT FURTHER RESOLVED that the Batavia Town Supervisor is hereby authorized and directed to execute this Intermunicipal Agreement on behalf of the Town of Batavia.

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

INTERMUNICIPAL AGREEMENT FOR OPERATION AND MAINTENANCE
OF WATER FACILITIES FOR
TOWN OF ELBA WATER DISTRICT No. 2

THIS AGREEMENT, made the _____ day of _____, 20____, by and among the **TOWN OF BATAVIA**, a Municipal Corporation of the State of New York, with offices located at 3833 West Main Street Road, Batavia New York 14020, (hereinafter “Batavia”); and the **TOWN OF ELBA**, a Municipal Corporation of the State of New York, with offices located at 7 Maple Avenue, Elba, New York 14058, (hereinafter “Elba”); (hereinafter referred to collectively as the “Towns”).

WITNESSETH:

WHEREAS, Batavia has previously entered into a Water Supply Agreement with the County of Genesee, whereby the County supplies an adequate quantity of water for use by Batavia’s residents who are obtaining water services, and

WHEREAS, Elba has previously entered into a Water Supply Agreement with the County of Genesee, whereby the County supplies an adequate quantity of water for use by Elba’s residents who are obtaining water services, and

WHEREAS, a townwide water distribution system will be constructed consisting of approximately 250,000 linear feet of new 8- and 12-inch diameter water main, together with all related hydrants, valves, apparatus, conduits, pipes, casings, meters and manholes, to also include all interests in real property of any kind or nature to the extent assignable, to be installed within Water District No. 2 as more fully described on the Boundary Map for said Water District No. 2 attached hereto as Exhibit A (hereinafter referred to collectively as the “Facilities” or the “Project”), and

WHEREAS, Elba, in furtherance of this Project, has established Water District No. 2 (hereafter “Water District”), and

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WHEREAS, Elba desires to contract for the operation and maintenance of the Facilities, as well as for the billing and collection of the costs to provide and pay for the water service, and

WHEREAS, Batavia will lease the Facilities from Elba in order to perform the services and responsibilities as set forth herein, pursuant to the terms and conditions of this Agreement.

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

1. Elba does hereby lease the Facilities to the Town of Batavia for the term as hereinafter set forth in this Agreement.

2. The leased Facilities include replacements, additions, betterments and improvements, which may hereinafter during the term of this Agreement be furnished and installed within or on behalf of the Water District by the Water District.

3. Batavia agrees to operate, maintain and repair the entire Facilities and to distribute water on behalf of Elba to the Water District.

4. The cost for these services shall be determined in accordance with Batavia's current Rate Schedule in effect, and as amended from time to time by Batavia. Batavia's Rate Schedule currently requires payment by each customer for water service to be charged at the rate of \$5.10 per 1,000 gallons of water used for regular customer, and \$3.73 per 1,000 gallons of water used for Agricultural customer, with this cost determined as follows:

	<u>User Rate</u>	<u>Agriculture Rate</u>
A. Billed Purchased Water	\$2.21	\$2.21
B. Unbilled Purchased Water	\$0.34	\$0.34
C. Genesee County Surcharge	\$0.60	\$0.60
D. Outside Batavia ⁽¹⁾	\$0.43	\$0.43
E. Operation and Maintenance	<u>\$1.52</u>	<u>\$0.15</u>
	\$5.10	\$3.73

(1) Outside Batavia rate shall not exceed Batavia customers capital reserve rate.

5. On at least forty-five (45) days advance notice, Batavia will provide to Elba any proposed amendments to the Rate Schedule, which shall break out the various costs for water supply, operation, maintenance and capital improvement reserve. During this forty-five (45) day period, the Supervisors of Batavia and Elba shall meet at least once to discuss any proposed rate change. During the term of this Agreement, users in the Town of Batavia Service Area will pay the same water rate as users within Elba Water District No. 2.

6. Elba hereby retains the right to add any additional charges for the delivery of water service within the Water District, and shall be entitled to collect and remit any such charges from the Water District users to Elba.

7. Maintenance and repair by the Town of Batavia as referred to in this Agreement shall be defined as a project which costs the sum of \$20,000.00 or less. Any project or improvements costing more than \$20,000.00 shall be considered as a capital expense, and Elba shall be responsible to pay for or to reimburse Batavia for the full capital expenses. Notwithstanding the foregoing, any costs for maintenance and/or repair resulting from the use by Elba or the Water District of materials or equipment that do not meet the minimum specifications of the Town of Batavia shall be borne solely by the Water District.

8. All performance of services that will be provided by Batavia shall be pursuant to Subpart 5-1, Public Water Supplies of the New York State Sanitary Code and Batavia's Water Ordinance, (hereinafter the "Ordinance"). The Ordinance may be amended from time to time by Batavia. However,

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Batavia agrees to provide Elba at least forty-five (45) days advance written notice before implementing any such amendments. During this forty-five (45) day period, the Supervisors from Batavia and Elba shall meet at least once to discuss the proposed Ordinance changes.

9. Upon request, Batavia shall supply to Elba copies of any test reports required by the New York State Department of Health.

10. Batavia shall read all meters and invoice the customers of the Water District.

11. All Batavia invoices to the Water District customers included in this Agreement, shall be due and paid according to the terms of the Ordinance, including penalties for late payments, in effect as of the date of the invoice for such water. In the event that any such customer is delinquent for more than ninety (90) days, Elba shall have in effect and shall maintain throughout this agreement rules and regulations to enforce collection of such charges and to make payment to Batavia, including but not limited to relieving of delinquent charges on tax bills and procedures regarding shut off of delinquent accounts.

12. Elba, within 60 days after request by Batavia, shall make payments to Batavia for any water bills of customers within the Water District that are more than ninety (90) days in arrears.

13. Batavia shall make any and all payments related to water supply to Genesee County on behalf of Elba, according to the terms set forth in the Water Supply Agreement in effect between Genesee County and Elba.

14. Customers within the Water District shall purchase water to serve present and future needs of this Water District pursuant to the Water Supply Agreements by and between the County of Genesee and Elba.

15. This Water District and any and all extensions or additions thereto, and any new Water Districts or appurtenances, shall be constructed in accordance with all of Batavia's standards and specifications for design and construction of water improvements in place at the time of design, unless a deviation from such standards is authorized in writing by the Batavia Town Engineer or Supervisor. Approval may occur prior to or after the effective date of this agreement.

16. A map of the proposed Water District service areas to be served by Elba is annexed hereto and made a part of this Agreement as **EXHIBIT A**. This map shall be amended as necessary from time to time to reflect any customers added by the Water District. Any such amendment that expands or extends the Water District, shall be approved by Batavia and shall not negatively affect supply or service to existing Town of Batavia service area customers.

17. Batavia agrees that service to other areas outside of the initial boundaries of the Water District shall comply with the requirements of any and all existing Water Supply Agreements with Genesee County and the Towns of Batavia and Elba, and any amendments thereto.

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

A. At the request of the extending Water District, Batavia may provide the services of its Engineering Department to assist the extending District in the preparation and formation of necessary plans, drawings and specifications of the proposed distribution system construction. Said services may be provided to the extending District so long as Batavia is given reasonable notice of the need for, and the scope of such services, and Batavia and the extending District establishes mutually agreeable terms for the completion of services.

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B. Said distribution system shall service the entire area of said extension and shall be installed without cost to Batavia.

C. Elba shall have the exclusive right to determine the amount of any fee to be charged to any such extension and to be paid to it by the customers in the extension for the right to connect to the existing Facilities of the Water District. The fee shall belong exclusively to Elba, and Batavia shall have no right or interest to this fee or any other charges related thereto.

D. The extension to the Water District shall comply with all applicable Laws, Rules and Regulations, including Batavia's Ordinance, and shall obtain all necessary governmental approvals with respect to the formation of any extensions and the construction of the distribution system therein.

19. Elba, on behalf of the Water District, as well as any other water district now existing or developed in the future within Elba, shall bear the full costs related to the formation of any such Water District and installation of facilities, including meters, except as specifically agreed herein.

20. This Agreement is subject to the consent and approval of the Genesee County Legislature; as well as consent and approval by the joint owners of the Townline Water Project facilities, namely, the Towns of Batavia, Elba and Oakfield.

21. It is understood and agreed that Batavia makes no guarantee as to the 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, extensions, connections or repairs or for any other cause of any kind or nature.

22. In the event of an emergency or other necessity, Batavia shall have the right to shut off or reduce the flow of water for such periods that it deems necessary.

23. In the event that Batavia deems it necessary to shut off or reduce the flow of water supply, Batavia shall provide Elba with reasonable advance notice when possible. Batavia shall restore water supply as soon as practicable. In such cases, Elba shall have the right to request that Batavia temporarily turn off its transmission main and Elba shall be able to temporarily obtain water from another source, but only until such time as the restorative measures taken by Batavia have been inspected and approved by Batavia's Water Department.

24. If Batavia deems that there is a condition in the Water District that could contaminate the water supply, Batavia will notify Elba, and Elba will correct the condition as soon as practicable. Batavia may temporarily discontinue water service to the Water District until the necessary corrections have been made.

25. In the event that a water emergency is declared by Batavia, Batavia shall notify the Elba Supervisor, and the Elba Town Board shall declare a similar emergency with respect to all water supplied to customers within the Water District. Elba shall duplicate any emergency measures taken by Batavia during such water emergency.

26. Elba shall immediately notify Batavia of any information or complaints that it receives from customers within the Water District; as well as any problems or difficulties relating to the Facilities and the water distribution system.

27. There are no other Agreements or understandings, either oral or written, by and among the parties effecting this Agreement. No changes, addition 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.

28. This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of both parties.

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29. This Agreement shall be binding upon and shall inure to the benefit of both of the parties hereto and their respective successors and permitted assigns.

30. This Agreement and any transactions by and between the parties hereunder shall be governed by, construed and interpreted in accordance with the Laws of the State of New York.

31. 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.

32. No waiver of compliance with any provision or condition of this Agreement, and no consent provided for herein, shall be effective, unless evidenced by instrument in writing, duly executed by the parties sought to be charged therewith.

33. No failure on the part of either party to exercise and/or any delay in exercising any of its rights hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise by either party of any right preclude any other or future exercise thereof or the exercise of any other right.

34. All the rights and duties of the parties created by this Agreement shall survive with respect to the services performed prior to such terminations.

35. This Agreement may be executed in several counterparts, each of which shall be an original and all which shall constitute the same instrument herein.

36. The term of this Agreement shall be for a period of forty (40) years, with the following provisions:

A. This Agreement may be terminated or extended upon a written instrument executed by both Towns.

B. This Agreement shall terminate on the effective date of any contract with any entity assuming operation of the Town of Batavia Water Supply System.

C. Elba may terminate this Agreement upon at least 120 days prior written notice to Batavia. In the event that Batavia provides operation and maintenance services to Elba water districts beyond the Water District, then Elba must also terminate the services of Batavia for these additional areas in order to eliminate the possibility that there are any "gaps" in areas of water facilities for which Batavia is providing operation and maintenance.

D. Batavia may terminate this Agreement upon at least 120 days prior written notice to Elba.

E. Upon termination of this agreement, master meters must be installed (if not already installed) by the Water District at no cost to the Town Batavia.

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

TOWN OF BATAVIA

(SEAL)

Gregory H. Post, Supervisor

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TOWN OF ELBA

(SEAL)

Donna Hynes, Supervisor

State of New York }
County of Genesee }ss.

On this _____ day of _____, 20____, 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 _____, 20____, before me, the undersigned, personally appeared Donna Hynes, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

RESOLUTION NO. 214:

Councilwoman Michalak offered the following:

**RESOLUTION TO ESTABLISH POSITION
REPRODUCTION SERVICES OPERATOR**

RESOLVED, the Batavia Town Board hereby establishes the position of Reproduction Services Operator (MSD222 duties statement attached).

Second by: Councilwoman White

Ayes: Michalak, White, Underhill, Zambito, Post

APPROVED by unanimous vote (5-0)

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RESOLUTION NO. 215:

Councilman Zambito offered the following:

**RESOLUTION TO SCHEDULE A PUBLIC HEARING
TO CONSIDER AWARD OF CABLE TELEVISION FRANCHISE
RENEWAL TO TIME WARNER CABLE NORTHEAST LLC d/b/a CHARTER**

WHEREAS, Time Warner Cable Northeast, LLC d/b/a Charter is currently providing cable service to residents of the Town of Batavia, and

WHEREAS, Time Warner Cable Northeast, LLC d/b/a Charter has submitted an application and request asking the Town of Batavia to award a Franchise Agreement to continue to service the Town of Batavia, and

WHEREAS, Cohen Law Group negotiated the Franchise Agreement on behalf of the Town of Batavia.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Batavia, New York, that a public hearing will be held before this Town Board on January 3, 2018, at 7:00 p.m., at the Batavia Town Hall, 3833 West Main Street Road, Batavia, New York for the purpose of considering the award of a renewing Cable Franchise to Time Warner Cable Northeast, LLC d/b/a Charter, and

BE IT FURTHER RESOLVED, The Town Clerk shall cause Notice of said public hearing to be published once in The Daily News, at least five (5) days prior to the date of said public hearing, which Notice shall contain the time and place of said hearing, the title and purpose thereof, as well as a statement that a copy of the proposed Cable Franchise is on file at the Town Clerk's Office.

Second by: Deputy Supervisor Underhill

Ayes: Zambito, Underhill, Michalak, White, Post

APPROVED by unanimous vote (5-0)

NOTICE OF PUBLIC HEARING

**For the approval of a Cable Television Agreement between Time Warner Cable Northeast LLC
d/b/a Charter and the Town of Batavia**

PLEASE TAKE NOTICE that the Town of Batavia will hold a Public Hearing on January 3, 2018 at 7:00 p.m. at the Town Hall, 3833 West Main Street Road, Batavia, New York 14020 regarding granting a cable television franchise agreement by and between the Town of Batavia and Time Warner Cable Northeast, LLC d/b/a Charter.

A copy of the agreement is available for public inspection during normal business hours at the Town of Batavia Clerk's office, 3833 West Main Street Road, Batavia, New York 14020. At such public

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hearing, all persons will be given an opportunity to be heard. Written and oral statements will be taken at that time. Time limitations may be imposed for each oral statement, if necessary.

Dated: December 20, 2017

By Order of Town Board
Town of Batavia

RESOLUTION NO. 216:

Councilwoman White offered the following:

SURPLUS EQUIPMENT

WHEREAS, the Town of Batavia has determined that the following items are no longer needed for Town use and that they should be sold at auction and deleted from inventory:

1. Twose 4 ft. wide boom flail mower model no. Q460RI
2. Berema FB60 gas powered jack hammer
3. OTC hydraulic Transmission Jack

NOW THEREFORE BE IT,

RESOLVED, the Batavia Town Board hereby declares the aforementioned equipment as surplus and authorizes the Highway Superintendent to sell them at auction.

Second by: Deputy Supervisor Underhill

Ayes: White, Underhill, Michalak, Zambito, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 217:

Deputy Supervisor Underhill offered the following:

AUTHORIZING BUDGET TRANSFERS FOR 2017

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

General Fund:

From	Amount	To
A1110.107 Personal Svc – PT	2,000.00	A1110.120 Pers Svc - OT
A1220.200 Supervisor - Equipment	1,500.00	A1220.400 Supervisor - Contractual
A1220.402 Supervisor - Contractual	500.00	A1220.400 Supervisor - Contractual
A1355.200 Assessor –Equipment	250.00	A1355.400 Assessor - Contractual
A1420.400 Attorney – Contractual	17,075.00	A1355.402 Assessor – Attorney
A1420.400 Attorney – Contractual	26.00	A1420.402 Attorney - Contractual
A1989.400 Miscellaneous Expense	954.00	A1940.400 Land Acquisition
A1989.400 Miscellaneous Expense	54.00	A1940.401 Legal Fee
A1989.400 Miscellaneous Expense	816.00	A1950.400 Taxes on Property
A1989.400 Miscellaneous Expense	40.00	A1989.401 Fixed Assets
A6326.400 Economic Opportunity	5342.00	A3620.402 Bldg & Safety Engineering

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A6326.400 Economic Opportunity	15,784.00	A5182.400 Street Lighting Contractual
A5132.400 Garage – Utilities	4,343.00	A5132.402 Garage Operating Expenses
A7110.401 Parks Galloway	801.00	A7110.400 Parks Contractual
A8020.403 Planning Board Ordinances	49.00	A8020.400 Planning Board Supplies
A8020.403 Planning Board Ordinances	419.00	A8020.404 PI Board Code Update
A8102.200 Sewer Imp - Equipment	746.00	A8120.400 Sewer Imp Contractual
A8164.402 Landfill Engineering	600.00	A8164.102 Landfill pers svc pt

Sewer District #1 Fund:

From	Amount	To
SS1-8120.406 San Sewers Replacement	1,556.00	SS1-8120.402 San Sewers Engineering

Second by: Councilman Zambito

Ayes: Underhill, Zambito, White, Michalak, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 218:

Supervisor Post offered the following:

**RESOLUTION INCREASING BUDGETARY LINE ITEMS
INSURANCE RECOVERY FUNDS**

RESOLVED, the Batavia Town Board hereby authorizes the following budget line item increases to account for insurance recovery funds – Wind Storm Damage
March 8, 2017:

Revenue Line Item:

A2680 \$ 6,486.84

Expenditure Line Item:

A1620.402	\$ 340.00
A5132.402	\$ 1,866.84
A7110.401	\$ 280.00
A8164.406	\$ 2,000.00
A8165.406	\$ 2,000.00

Second by: Deputy Supervisor Underhill

Ayes: Post, Underhill, Michalak, Zambito, White

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 219:

Councilwoman Michalak offered the following:

**PURCHASE OF PARCEL OF LAND LOCATED ON HARVESTER AVENUE FOR ELLICOTT
TRAIL PROJECT
ELMWOOD CEMETERY ASSOCIATION**

WHEREAS, the Town of Batavia is seeking to purchase a parcel of land on Harvester Avenue, as set forth hereinafter from Elmwood Cemetery Association for the purpose of the Ellicott Trail Project,

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and

WHEREAS, an agreement to purchase said property has been prepared and executed by Elmwood Cemetery Association at a cost of \$25,600.00; and

WHEREAS, an independent appraisal to determine that the Town is paying a fair amount for this parcel was conducted by R K Hite & Company, Incorporated, and

WHEREAS, the Attorney for the Town and the Assistant Town Engineer have reviewed the Purchase Agreement and recommends the Town Board approve said agreement.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby approves the Agreement to Purchase Real Property from Elmwood Cemetery Association, parcel # 85.20-1-4 at a cost of \$25,600.00, a copy of which is annexed hereto and made a part of the minutes, and be it further

RESOLVED, that the Town Supervisor is hereby authorized and directed to sign all documents necessary to secure the property for the Ellicott Trail Project and to record the deed in the Genesee County Clerk's Office.

Second by Deputy Supervisor Underhill

Ayes: Michalak, Underhill, Zambito, White, Post

APPROVED by unanimous vote (5-0)

RESOLUTION NO. 220:

Councilman Zambito offered the following:

**PURCHASE OF PARCEL OF LAND LOCATED ON EAST MAIN STREET FOR ELLICOTT
TRAIL PROJECT
SIKES REALTY LLC**

WHEREAS, the Town of Batavia is seeking to purchase a parcel of land on East Main Street, as set forth hereinafter from Sikes Realty LLC for the purpose of the Ellicott Trail Project, and

WHEREAS, an agreement to purchase said property has been prepared and executed by Sikes Realty LLC at a cost of \$2,200.00; and

WHEREAS, an independent appraisal to determine that the Town is paying a fair amount for this parcel was conducted by R K Hite & Company, Incorporated, and

WHEREAS, the Attorney for the Town and the Assistant Town Engineer have reviewed the Purchase Agreement and recommends the Town Board approve said agreement.

NOW, THEREFORE, BE IT

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RESOLVED, the Batavia Town Board hereby approves the Agreement to Purchase Real Property from Sikes Realty LLC, parcel #85.013-1-31 at a cost of \$2,200.00, a copy of which is annexed hereto and made a part of the minutes, and be it further

RESOLVED, that the Town Supervisor is hereby authorized and directed to sign all documents necessary to secure the property for the Ellicott Trail Project and to record the deed in the Genesee County Clerk's Office.

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

RESOLUTION NO. 221:

Councilwoman White offered the following:

**PURCHASE OF PARCEL OF LAND LOCATED ON EAST MAIN STREET FOR ELLICOTT
TRAIL PROJECT
JEFFREY D. FREEMAN**

WHEREAS, the Town of Batavia is seeking to purchase a parcel of land on East Main Street, as set forth hereinafter from Jeffrey D. Freeman for the purpose of the Ellicott Trail Project, and

WHEREAS, an agreement to purchase said property has been prepared and executed by Jeffrey D. Freeman at a cost of \$5,700.00; and

WHEREAS, an independent appraisal to determine that the Town is paying a fair amount for this parcel was conducted by R K Hite & Company, Incorporated, and

WHEREAS, the Attorney for the Town and the Assistant Town Engineer have reviewed the Purchase Agreement and recommends the Town Board approve said agreement.

NOW, THEREFORE, BE IT

RESOLVED, the Batavia Town Board hereby approves the Agreement to Purchase Real Property from Jeffrey D. Freeman, parcel #13.-1-107.1 at a cost of \$5,700.00, a copy of which is annexed hereto and made a part of the minutes, and be it further

RESOLVED, that the Town Supervisor is hereby authorized and directed to sign all documents necessary to secure the property for the Ellicott Trail Project and to record the deed in the Genesee County Clerk's Office.

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

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SUSPEND THE RULES-Motion Deputy Supervisor Underhill, second Councilman Zambito to suspend the rules to introduce an additional resolution.

Ayes: Underhill, Zambito, White, Michalak, Post

MOTION CARRIED by unanimous vote (5-0)

RESOLUTION NO. 222:

Deputy Supervisor Underhill offered the following:

TRAINING WORKSHOP

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

Hiedi Librock- GFOA Procurement Policy Changes Webinar December 20, 2017 at a cost of \$55.00.

Second by: Councilwoman White

Ayes: Underhill, White, Michalak, Zambito, Post

APPROVED by unanimous vote (5-0)

Abstract No. 12-2017: Motion Deputy Supervisor Underhill, second Councilman Zambito to authorize the Supervisor to pay the following vouchers:

General	\$137,477.39
Highway	125,768.25
Sewer No. 1	6,950.72
Sewer No. 2	41,041.71
Water	43,243.89
Ellicott Trail	238.55
Sewer Cap	445.48
Southwest	195.00
Townline Joint	247.50
Total	\$355,608.49

Check numbers 20797 – 20866, 20871-20878, SM; 1106. ACH: \$48,559.37, Online: \$5,625.66

Ayes: Zambito, Underhill, Michalak, White, Post

MOTION CARRIED by unanimous vote (5-0)

DEPARTMENT REPORTS:

The Town Supervisor reported on the following departments:

Engineering -Working on Ellicott Trail Project, reviewing site plans and working with the Supervisor on the water agreement.

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Building Inspector -Supervisor read report.

Water/Sewer- Repairing hydrants, doing pump station maintenance, meter reading, and day to day operations.

Supervisor's Report:

Status Report on expenditures and revenues is available for the Board's review.

GAM- meeting is tomorrow evening at 7:00 p.m. hosted by the Town of Bergen at the Bergen Town Hall.

Special Town Board Meeting-There will be a Special Town Board Meeting on December 28, 2017 at 5:30 P.M.

Work Session- December 27, 2017 work session has been cancelled.

COMMUNICATIONS:

The Town Clerk reported on the following:

November Town Clerk monthly report collected a total of \$8,987.46, remitted \$1,945.84 to the Supervisor for the Local Share.

Town Clerk's Office will be closing at 4:30 p.m. on December 27, 2017 rather than 7:00 p.m.

2018 Town/County Taxes- The Tax bills are being printed and will be mailed out on Friday, December 29, 2017.

ADJOURNMENT:

Motion Councilman Zambito, second Councilwoman White to adjourn the Regular Town Board Meeting at 7:33 P.M.

Ayes: Zambito, White, Underhill, Michalak, Post

MOTION CARRIED by unanimous vote (5-0)

Respectfully submitted,

Teresa M. Morasco
Town Clerk