

**Town of Elba
Regular Meeting
April 9, 2020**

Supervisor Hynes called the meeting to order at 4:10 p.m.; followed by the Pledge to the Flag.

Those in attendance via Zoom included:

Supervisor Hynes
Councilman Augello
Councilman Coughlin
Councilwoman Marshall

ABSENT: Councilman Chamberlain

Others Present:

Town Clerk Werth

Minutes of March 12, 2020 Town Board Meeting

MOTION Councilman Coughlin, second by Councilman Augello to approve the minutes as written.

Ayes: Augello, Coughlin, Hynes, Marshall

MOTION CARRIED by unanimous vote (4-0)

RESOLUTION NO. 21-2020

Councilwoman Marshall offered the following:

**INTERMUNICIPAL AGREEMENT FOR COST
ALLOCATION AND PAYMENT OF WATER
SYSTEM FLUSHING AND UNBILLABLE WATER USAGE
FOR TOWN OF ELBA WATER DISTRICT NO. 2 AND THE VILLAGE OF ELBA**

THIS INTERMUNICIPAL AGREEMENT, made the 9th day of April, 2020 by and between the Town of Elba, a municipal corporation organized and existing under the Town Law of the State of New York, with offices at 7 Maple Avenue, Elba, New York 14058 (hereinafter “Town”) and the Village of Elba, a municipal corporation organized and existing under the Village Law of the State of New York, with offices at 4 South Main Street, Elba, New York 14058 (hereinafter “Village”); (hereinafter referred to collectively as the “Parties”).

WITNESSETH:

WHEREAS, the Town, pursuant to Town Law Article 12-A, caused Clark Patterson Lee, competent engineers duly licensed by the State of New York, to prepare a map, plan and report for the establishment of a town wide distribution system consisting of approximately 245,000 linear feet of new 8-inch and 12-inch diameter water main together with all related hydrants, valves, apparatus, conduits, pipes, casings, meters and vaults, a water storage tank, to also include all interests in real property of any kind or nature, to be installed within Water District No. 2 as more fully described on the Boundary Map for said Water District No. 2 (hereinafter “Town Project”), and

WHEREAS, the Town, in furtherance of this Town Project, has duly established Water District No. 2 (hereinafter “Water District”), and

WHEREAS, the Village has undertaken improvements to its village wide water system which includes the replacement of water mains, valves, hydrants, and water services appurtenances, (hereinafter “Village Project”), and

WHEREAS, the Town and Village are desirous of eliminating the necessity for the construction and installation of six (6) master meter vaults which were to be located around the corporate limits of the Village, and

WHEREAS, the Parties are also desirous to arrive at a cost allocation of the water flushing utilized during the construction phase of Town of Elba Water District No. 2 inasmuch as the Town will be flushing an abundance of water during the testing of the new water mains installed as a part of the Town Water District Project and to provide for payment of same, and

WHEREAS, the Parties are desirous of establishing a formulaic cost allocation methodology for payment of unbillable water usage (hereinafter “Lost Water”) subsequent to completion of the Town Water District Project realized as a result of flushing, broken mains or pipes, firefighting, leakage of an undiscernible nature, and other causes of a similar nature, and

WHEREAS, the Town and the Village have arrived at mutual understandings with respect to the foregoing, and the Parties enter into the within Intermunicipal Agreement to set forth in writing their mutual understandings as hereinafter set forth.

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

- (1) Main line valves will be installed as a part of the Town Project and the Village Project to enhance the operations of the respective Projects.
- (2) The supply master meter vaults located at the connections to the Town of Elba Water District No. 1 will be installed by the Town as part of the Water District No. 2 Project. These master meter vaults shall also contain a pressure reducing valve. Repair, maintenance and future replacement of these vaults shall be the responsibility of Town of Elba Water District No 2.
- (3) Three (3) master meter vaults, each located along the common boundary of the Towns of Oakfield and Elba, will be installed by the Town as a part of the Town Water District No. 2 Project. Repair, maintenance, and future replacement of these three (3) vaults shall be the responsibility of Town of Elba Water District No. 2.
- (4) Prior to the completion of all phases of the Town of Elba Water District No. 2 Water Main Installation project, the Town of Elba is responsible for all water that passes into the Village of Elba and Town of Elba through master water meters less the Village of Elba and the Town of Elba Water District No. 2 water customer usages.

The Village of Elba is responsible for all Village of Elba water customer usage.

The Town of Batavia, as the entity responsible, through agreement with the Town of Elba, for system operation and customer billing for the Town of Elba Water District No. 2, is responsible for the Town of Elba water customer usage.

See equations below:

Town of Elba Responsibility = Master Water Meter Usages – Town of Elba Water District No. 2 Customer Water Usage – Village of Elba Customer Water Usage

Village of Elba Responsibility = Village of Elba Customer Usage

Town of Batavia Responsibility = Town of Elba Water District No. 2 Customer Water Usage

(5) After the completion of all phases of the Town of Elba Water District No. 2 Water Main Installation project, the Town of Batavia, as the entity responsible, through agreement with the Town of Elba, for system operation and customer billing for the Town of Elba Water District No. 2, is responsible for a percentage of the water that passes into the Village of Elba and Town of Elba through master water meters. This percentage is determined by dividing the Town of Elba Water District No. 2 water customer usage by the total customer usage of the Town of Elba Water District No. 2 and the Village of Elba water customer usages.

The Village of Elba is responsible for a percentage of the water that passes into the Village of Elba and Town of Elba through the master water meters. This percentage is determined by dividing the Village of Elba water customer usage by the total customer usage of the Town of Elba Water District No. 2 and the Village of Elba water customer usages.

See equations below:

Town of Batavia Responsibility = Master Meter Usages x (Town of Elba Water District No. 2 Customer Water Usage ÷ (Town of Elba Water District No. 2 Customer Water Usage + Village of Elba Customer Water Usage))

Village of Elba Responsibility = Master Meter Usages x (Village of Elba Customer Usage ÷ (Town of Elba Water District No. 2 Customer Water Usage + Village of Elba Customer Usage))

(6) The Parties mutually agree that the Village's existing meter/PRV, vault bypass piping, electrical and related telemetry and control system are integral to the operation of the Town's new water storage tank erected as part of the Water District No. 2 Project. It is further mutually agreed by the Parties that ownership and operation of the vault and related components thereto and the water storage tank should be vested in the same municipal entity in order to ensure uniformity of operations and maintenance, and to mitigate against any malfunction or systemic failure. This will benefit the functionality of both the Village and the Town Water Projects. Accordingly, upon execution of the within Intermunicipal Agreement, the Village hereby agrees to dedicate the existing meter/PRV vault, bypass piping, electrical and related telemetry and control system to the Town. Subsequent to such dedication by the Village, the Town of Elba Water District No. 2 shall be responsible for the entire cost of any improvement and/or replacement of such dedicated items. The responsibility of the Village shall commence at a point twenty feet north of tee for the meter/PRV, vault bypass loop.

- (7) 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.
- (8) This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of both parties.
- (9) This Agreement shall be binding upon and shall insure to the benefit of both of the parties hereto and their respective successors and permitted assigns.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) All the rights and duties of the parties created by this Agreement shall survive with respect to the services performed prior to such terminations.
- (15) This Agreement may be executed in several counterparts, each of which shall be an original and all which shall constitute the same instrument herein.
- (16) The term of this Agreement shall be for a period of forty (40) years.

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

(SEAL)

TOWN OF ELBA

by _____
Donna Hynes, Supervisor

(SEAL)

VILLAGE OF ELBA

by _____
Norman Itjen, Mayor

STATE OF NEW YORK)
COUNTY OF GENESEE)

) ss.:
)

On the 9th day of April in the year 2020, 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.

 (Signature and office of individual taking acknowledgment)

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

On the _____ day of _____ in the year 2020, before me, the undersigned, personally appeared **NORMAN ITJEN**, 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.

 (Signature and office of individual taking acknowledgment)

Second by: Councilman Coughlin
Ayes: Augello, Coughlin, Hynes, Marshall
APPROVED by unanimous vote (4-0)

ABSTRACT 4-2020

MOTION, Councilwoman Marshall second by Councilman Coughlin to approve the following:

General Fund	75-94	\$10,847.13
Highway	50-59	\$8,269.52
Water District 1	3-5	\$7,197.64
Water District 2	13-19	\$1,137,770.55
	Total	\$1,164,084.84

Ayes: Augello, Coughlin, Hynes, Marshall
MOTION CARRIED by unanimous vote (4-0)

ADJOURNMENT

MOTION was offered from Councilman Coughlin second by Councilman Augello to adjourn the meeting at 4:17 p.m.

Ayes: Augello, Coughlin, Hynes, Marshall
MOTION CARRIED by unanimous vote (4-0)

Respectfully Submitted,

Trisha Werth
 Town Clerk