

**Town of Elba
Regular Meeting
May 26, 2021**

Supervisor Hynes called the meeting to order at 4:00 p.m.; followed by the Pledge to the Flag.

Those in attendance included:

Supervisor Hynes
Councilman Augello
Councilman Chamberlain
Councilman Coughlin

Others Present:

Town Clerk Werth
Superintendent of Highways Yungfleisch

Absent:

Councilwoman Marshall

RESOLUTION NO. 34-2021:

Councilman Coughlin offered the following, pending final approval from the Town of Byron Attorney:

**INTERMUNICIPAL AGREEMENT FOR OPERATION AND MAINTENANCE OF WATER
FACILITIES FOR THE TOWN OF ELBA WATER DISTRICT NO. 2 WITH RESPECT TO OUT OF
DISTRICT CUSTOMERS**

THIS AGREEMENT, made the ___ day of _____, 2021, 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”); 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”); and the Town of Byron, a municipal corporation of the State of New York, with offices at 7028 Byron Holley Road, Byron , New York 14422 (hereinafter “Byron”); (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, Elba has established Town of Elba Water District No. 2 (hereinafter “Water District”),
and

WHEREAS, Elba and Batavia entered into an Intermunicipal Agreement For Operation and Maintenance of Water Facilities For Town of Elba Water District No. 2 dated the 21st day of December, 2017,
and,

WHEREAS, the aforesaid Intermunicipal Agreement between Batavia and Elba provides that service to other areas outside of the initial boundaries of the Water District may be provided upon certain terms and conditions as more particularly set forth therein, and

WHEREAS, Byron has requested permission that certain parcels of property in Byron which parcels are in close proximity to Town of Elba Water District No. 2 become out-of-district customers of Town of Elba Water District No. 2 and to purchase water from Elba, and

WHEREAS, the Town of Elba has determined that the sale of water to the out-of-district customers in Byron will not at this time reduce the supply of its water so as to render the same insufficient to service all water districts within the Town of Elba or their inhabitants, and

WHEREAS, Elba and Byron agree that Elba contract with Batavia for the operation and maintenance of the Water District Facilities serving the Byron parcels of property, as well as for the billing and collection of the costs to provide and pay for the water services, and

WHEREAS, Batavia will lease the Facilities serving the Byron parcels 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) Batavia shall install a water meter and pit at a location to be selected by Batavia on each of the parcels in Byron, and the out-of-district customers shall pay for the installation cost.

- (2) Elba does hereby lease the Facilities serving the Byron customers to Batavia for the term as hereinafter set forth in this Agreement.
- (3) The leased Facilities include the water meter pit, replacements, additions, betterments and improvements, which may hereinafter during the term of this Agreement be furnished and installed for the out-of-district Byron customers on behalf of the Water District by the Water District.
- (4) Batavia agrees to operate, maintain and repair the entire Facilities and to distribute water on behalf of Elba to the out-of-district customers.
- (5) 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.
- (6) On at least forty-five (45) days advance notice, Batavia will provide to Elba and Byron 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, Elba and Byron 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 and out-of- district customers of Elba Water District No. 2.
- (7) Elba hereby retains the right to add any additional charges for the delivery of water service to out-of-district customers of the Water District, and shall be entitled to collect and remit any such charges from the out-of-district customers of the Water District to Elba. Any such additions shall only be imposed if an equal additional charge is imposed to the users within the Water District.
- (8) 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.
- (9) 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, Batavia agrees to provide Elba and Byron 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, Elba and Byron shall meet at least once to discuss the proposed Ordinance changes.

- (10) Upon request, Batavia shall supply to Elba and Byron copies of any test reports required by the New York State Department of Health.
- (11) Batavia shall read all meters and invoice the out-of-district customers of the Water District.
- (12) All Batavia invoices to the out-of-district customers of the Water District located in Byron 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 will have in effect rules and regulations to enforce collection of such charges and to make payment to Batavia including shut-off of delinquent accounts. Elba shall be entitled to remit a statement to Byron of delinquent charges for each parcel so delinquent, and Byron agrees that it will relevel such charges upon the respective real property tax bills of each parcel. Upon receipt of such relevelled amounts, Byron will remit same to Elba. Byron agrees to cooperate with Elba in the collection of delinquent charges from Byron customers as may be reasonably requested by Elba.
- (13) Elba, within 60 days after request by Batavia, shall make payments to Batavia for any water bills of out-of-district customers of the Water District situate in Byron that are more than ninety (90) days in arrears.
- (14) 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.
- (15) Customers of 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.
- (16) Any and all additions of the Water District, and any new 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.
- (17) A map of the Water District service areas showing out-of-district customers 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.

- (18) Batavia agrees that service to other additional parcels 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.
- (19) All further out-of-district customers 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 add any additional customers, said additions shall be subject to the following terms and conditions:
 - A. At the request of the Water District, Batavia may provide the services of its Engineering Department to assist the 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 District so long as Batavia is given reasonable notice of the need for, and the scope of such services, and Batavia and the District establishes mutually agreeable terms for the completion of services.
 - B. Said distribution system shall service the additional out-of-district customers 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 additions and to be paid to it by the out-of-district customers 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 addition of out-of-district customers 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 same and the construction of the distribution system therein.
- (20) 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.

- (21) This Agreement is subject to the consent and approval of the Genesee County Legislature.
- (22) 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, however the quantity and quality must comply with the New York State Sanitary Code.
- (23) 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.
- (24) 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.
- (25) If Batavia deems that there is a condition in the Water District on the out-of-district customers 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.
- (26) 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 the water supplied to customers within the Water District and out-of-district customers. Elba shall duplicate any emergency measures taken by Batavia during such water emergency.
- (27) Elba shall immediately notify Batavia of any information or complaints that it receives from customers within the Water District and out-of-district customers; as well as any problems or difficulties relating to the Facilities and the water distribution system.
- (28) 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.

- (29) This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of both parties.
- (30) This Agreement shall be binding upon and shall inure to the benefit of all of the parties hereto and their respective successors and permitted assigns.
- (31) 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.
- (32) 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.
- (33) 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.
- (34) 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.
- (35) This Agreement is made and entered into by the Towns in order to establish procedures policies, and protocols solely with respect to customers located outside of the Water District, and it is not intended to modify, revise or supplant Intermunicipal Agreement for Operation and Maintenance of Water Facilities For Town of Elba Water District No. 2 made the 21st day of December, 2017 by and between Elba and Batavia.
- (36) All the rights and duties of the parties created by this Agreement shall survive with respect to the services performed prior to such terminations.
- (37) This Agreement may be executed in several counterparts, each of which shall be an original and all which shall constitute the same instrument herein.
- (38) 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 the 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 of Batavia.

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

TOWN OF ELBA (SEAL)

Donna Hynes, Supervisor

TOWN OF BYRON (SEAL)

Peter N. Yasses, Supervisor

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

On the _____ day of _____ in the year 2021, 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.

(signature and office of individual taking acknowledgment)

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

On the _____ day of _____ in the year 2021, 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 2021, before me, the undersigned, personally appeared **PETER N. YASSES**, 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)

WATER CUSTOMER AGREEMENT

THIS AGREEMENT, made this ___ day of _____, 2021, by and between the Town of Elba, New York, a municipal corporation duly organized and existing pursuant to the laws of the State of New York, having its offices at 7 Maple Avenue, in the Village of Elba, County of Genesee and State of New York (hereinafter referred to as “Elba”) and

_____, owners of real property located at _____ Transit Road in the Town of Byron, County of Genesee, State of New York, Tax Account no. _____, (hereinafter referred to as “Customer”) and the Town of Byron, a municipal corporation duly organized and existing pursuant to the laws of the State of New York, having its office at 7028 Byron Holley Road in the Town of Byron, County of Genesee and State of New York, (hereinafter referred to as “Byron”).

WHEREAS, Elba is the owner of the Town of Elba Water District No. 2 in the Town of Elba, New York, which Water District provides water service to residents in a portion of the said Town of Elba; and

WHEREAS, the Customer owns ___ Transit Road in the Town of Byron, New York which parcel of property is in close proximity to Elba’s Water District No. 2 facilities; and

WHEREAS, the Customer has requested permission to become a customer of and to purchase water from Elba; and

WHEREAS, the Town of Elba has determined that the sale of water to the Customer will not at this time reduce the supply of its water so as to render the same insufficient to service all Water Districts within the Town of Elba or their inhabitants;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties pursuant to Section 198(3)(b) of the New York State Town Law covenant and agree as follows:

1. Elba through the Town of Batavia will install a water service meter pit and metering device at a location to be selected by Elba through the Town of Batavia, and the Customer shall pay for the installation cost. Customer shall, at their own expense, extend a water line from a new curb box to their residence at _____ Transit Road, Byron, New York. Customer shall maintain the line from the said curb box to their residence, as well as all internal plumbing.
2. Elba shall provide water service to the Customer upon the same terms and conditions as property owners located within the Town of Elba Water District No. 2 including the obligation of the Customer to pay the same amount of debt service cost related to the Town of Elba Water District No. 2, and to pay user charges for water based on water consumption at the same rates as property owners within the Town of Elba Water District No. 2, as billed by Elba. Customer acknowledges that failure to pay user charges for water based upon water consumption may result in such charges being levied on the Customer's real property tax bill by the Town of Byron.
3. Customer further covenant and agree as follows:
 - A. To use said water only for domestic and non-business purposes for the residence which will be serviced by this water line.
 - B. Not to permit any tap-in to any of the water lines installed by them for the benefit to any other person.
 - C. To abide by and obey all presently existing and future enacted rules, regulations and ordinances of the Town pertaining to the use of and payment for water sold to residents of the Town of Elba water districts as if said Customers were located within the Town of Elba Water District No. 2.

- D. To become a part of any water district or extension which geographically encompasses the property serviced by this water line and shall affirmatively sign any petition that seeks to establish such water district; as well as refraining from any acts in opposition to such a water district, such as voting against the same in any referendum. Upon becoming part of the new water district, Customers will be responsible to pay all costs and expenses of the newly formed district, including its debt service, which may or may not result in payments greater than those paid pursuant to this Agreement.
 - E. Not to assign this Agreement without the prior written consent of the Town any assignment in violation of the foregoing shall be deemed void.
4. The Agreement shall automatically terminate upon the happening of any of the following events:
- A. As soon as water is available through a new water district geographically encompassing the property herein serviced by this water line.
 - B. A determination by Elba, in its sole judgment, that the sale of water hereunder will reduce the supply of water to a level insufficient to meet the needs of any water district within the Town of Elba or the inhabitants thereof and/or for any other reason that continuing to supply the Customers will not be in the best interest of other Town residents.
 - C. Any breach of this Agreement by the Customer.
 - D. A determination by appropriate State, County or Local officials that the supplying of water pursuant to this Agreement either alone or in conjunction with the supplying of water pursuant to others inside or outside of the territorial limits of the Town of Elba or of any of its districts constitutes a community water supply system.
 - E. The County of Genesee or the Town of Batavia objecting to this Agreement.
5. The Town of Byron does hereby approve the terms and conditions as set forth in this Agreement, and allows and authorizes Elba to provide the water service as set forth herein to the Customer who is located within the boundaries of the Town of Byron.
6. There are no other Agreements or understandings, either orally or written, between the parties affecting this Agreement. No changes or additions, or deletions of any portion of this Agreement shall be valid or binding upon the parties hereto, unless the same is approved in writing by the parties.

7. This Agreement shall be binding upon and shall ensure to the benefit of each of the parties hereto and their heirs, successors and permitted assigns.

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

TOWN OF ELBA

Donna Hynes, Town Supervisor

TOWN OF BYRON

Peter N. Yasses, Town Supervisor

, Customer

, Customer

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

On the _____ day of _____ in the year 2021, 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 2021, before me, the undersigned, personally appeared **PETER N. YASSES**, 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.

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) ss.:
COUNTY OF GENESEE)

On the _____ day of _____ in the year 2021, before me, the undersigned,

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(signature and office of individual taking acknowledgment)

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

ADJOURNMENT

MOTION was offered from Councilman Chamberlain second by Councilman Augello to adjourn the meeting at 4:03 p.m.

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

Respectfully Submitted,

Trisha Werth
Town Clerk