

Q:144/Hermon/Diss. Study/What Exists/Village Docs/IMAs/Hermon DeKalb
water supply Agreement
06/21/99

INTERMUNICIPAL AGREEMENT
WATER SUPPLY AGREEMENT
VILLAGE OF HERMON AND TOWN OF DEKALB

This Agreement, made this ^{21st RL NLD} 18th day of June, 1999 between the VILLAGE OF HERMON, a municipal corporation, organized and existing under the laws of the State of New York with its offices and place of business located at 105 Church Street, Hermon, New York, (hereinafter referred to as "Village"), and the TOWN OF DEKALB, a municipal corporation existing under the laws of the State of New York with its offices and place of business located at P.O. Box 133, DeKalb Junction, New York (hereinafter referred to as the "Town").

WITNESSETH

WHEREAS, the Town is under a New York State Department of Health mandate to upgrade and provide a potable water system for its residents and

WHEREAS, the Town has created the DeKalb Junction Water District (hereinafter called the "District"), and

WHEREAS the Town desires to have Village produce and deliver treated freshwater from its springs and storage facility through a water line and, if necessary, a holding tank and one or more pumping stations to be owned by the Village, and

WHEREAS, this Agreement is authorized by the New York State Village Law Article 11 §§ 11-1120 to 11-1124, and

WHEREAS, the Town has agreed to pay for the Village's reasonable engineering costs, disbursements and legal fees.

NOW, THEREFORE, in consideration of the mutual promises and covenants expressed herein, the Village and Town agree as follows:

ARTICLE I

DEFINITIONS

As used or referred to in this Agreement, the following definitions shall apply.

1. "Cost" means expenses incurred by the Village in connection with the construction and operation of its expanded water treatment system necessary to provide the water services herein contemplated, including but not limited to the expense of administration, legal, engineering, inspection, construction, contingencies, interest on temporary and permanent financing, and operation and maintenance, including the treatment charges.

2. "Fiscal Year:" means the period of twelve calendar months beginning with June 1st of any year and ending May 31st of the next year.

3. "Fresh Water" shall mean water suitable for consumption in accordance with New York State Department of Health and other applicable governmental requirements.

4. "Treatment Plant" means all reasonably necessary conduits, pipelines, mains, pumping stations, water treatment systems, plants and works, connections and intakes, and all

other plants, structures, equipment, conveyances and other real and tangible personal property, all renewals or replacements of any of the foregoing, acquired, constructed, reconstructed or operated by the Village required for the purposes of this Agreement.

5. "Capital Expense" will mean the charges for repayment of principal and interest on that principal for any funds borrowed for construction of facilities under this Agreement. It shall also include engineering, Legal Bond Counsel, Fiscal Advisor fees and Development Authority of the North Country fees if applicable.

6. "Operation and Maintenance Expense" shall mean those recurring charges incurred for day-to-day operation of the facilities. It shall include such things as labor, materials, costs for utilities, cost of repairs to the facilities, administrative personnel for billing, budgeting and other day-to-day expenses associated with the normal operation of the water system.

7. "Hookup" shall mean the point of connection at the "curb stop" where the water system is delivered to a user.

ARTICLE II

FACILITIES

Section 1. Facilities. The Village will provide the service facility as follows:

- 1) a connection at or near the Village's boundary line

and the Town's water line.

- 2) existing or expanded capacity to treat and deliver fresh water to the Town in accordance with Schedule "A" attached hereto and made a part hereof equal to a daily average quantity of 50,000 gallons of water during any calendar month, such supply to be recorded and measured by a meter installed by the Village at the Town's expense. In the event that in any single day the quantity of water treated and delivered to the Town exceeds 55,000 gallons, the Town shall pay for each thousand gallons in excess of 55,000 gallons \$1.10 per thousand gallons.
- 3) a treatment process meeting all applicable Federal and New York State standards as presently mandated or as may be amended during the term of this Agreement.
- 4) To operate, maintain and keep in good repair the waterworks facilities of the Village in accordance with good practice and in accordance with the rules and regulations as established by the Village.

Section 2. Point of Delivery. Village's water will be delivered to the Town and in connection with the present pipeline system of the Village at the 8-inch water main located at the Village's sewer plant. The Town will install a flow control valve in accordance with the plans and

specifications prepared on behalf of the Town and as approved by the Village, copies of which are attached hereto and made a part hereof as if incorporated herein as Schedule "B". The Town agrees that it is at this point that a meter to measure the water as furnished to the Town shall be installed at the Town's expense but that all metering equipment shall be the property of the Village.

Section 3. Alternate Point of Delivery. Town and Village agree to examine the economic and technical feasibility of providing a point of connection directly at the Village chlorination station, which may include a new contact tank, pumps, pipes and associated controls.

ARTICLE III

TOWN'S RESPONSIBILITIES

The Town Board agrees:

1. to obtain necessary right-of-way easements and all other Agreements for the connection to the Village's system and for the proper maintenance, function and extension of the water lines.

2. to provide for the proper construction of any and all facilities to provide water to the Town in accordance with the plans and specifications set forth at Schedule "B".

3. to secure the written permission of the New York State Department of Health and the Village for any construction or reconstruction or any extension, alteration or

change of the facilities to be used to deliver water to the Town, which permission shall not be unreasonably withheld by the Village.

4. to pay all costs associated with the plans at Schedule "B", including but not limited to the pumping, furnishing and supplying delivered from the Village's municipal water works system, water for the Town including but not limited to repairs, spring repairs, replacement, regulator, test service, cost of operation and maintenance, administrative, engineering, Development Authority of the North Country, fees and any legal fees and disbursements. The Town shall pay such charges within ten days of the imposition of the charge.

5. that it will not use any water whatsoever except for the extinguishing of fires from fire hydrants without the prior written permission of the Village. In that connection, the Village acknowledges that the Town may require the use of water from hydrants for the purpose of testing fire fighting equipment. In such case, the Village, upon proper notification, and in accordance with the Village's procedure, shall permit the use of said water for the testing of fire fighting equipment upon conditions as shall be set forth by the Village.

6. to provide notice acceptable to the Village when Town officials approve any construction or reconstruction within the Town which would result in initial use of water from a

connection to the water supply system; or any modification of a system or of water with any facility which could possibly threaten the water quality of the public water supply system.

7. to assess an adequate use charge for Town users and to collect sufficient funds for the prompt payment of the charges and expenses necessary to run the system. Said amount will not include any repairs, maintenance or capital assessment.

8. not to assess any taxes against the Village for any hydrants, pipe, meters or other equipment installed or purchased to solely serve the Town, including hydrants, pipes, meters, facilities, land or other equipment which may subsequently be installed or purchased by the Village to serve the Town.

9. to comply with Federal and New York State regulations governing the plans at Schedule "B" and for the proper testing of water facilities and adequate inspection of construction and reconstruction activities for the water facilities.

10. The Town shall, on or before June 1st each year, list the number and address of each hookup in the water district which list will be certified and promptly delivered to the Village Clerk.

ARTICLE IV

TERM

The term of this Agreement shall be for twenty (20) years from the date hereof.

ARTICLE V

OPERATION OF THE SYSTEM

1. Operation. The Village shall cause to operated and maintained all facilities required to treat and deliver the water to the Town hereunder and to measure the flow at the point of delivery. The Village shall use reasonable diligence to provide regular and uninterrupted water treatment and delivery service to the Town.

2. Meters and Measurements of Water and Records thereof. The Village will use the meters and other devices purchased and installed at the Town's expense for determining the volume of water directly or by differentials or otherwise, and from time to time, as necessary, make tests and use means for determining the quality and other characteristics, of all water which shall be deliver to the Town, and, in accordance with sound engineering practice, will determine such volume and, when necessary, such quality and characteristics. A copy of every such determination made by the Village as to the water delivered hereunder during any fiscal year shall be made available to the Town at the Village's usual place of business. The Village will make and keep permanent records of

the volume, and when ascertained, the quality and other characteristics of water so delivered.

The Village shall periodically inspect and test its meter at intervals of no longer than one (1) year. In the event that the meter fails to register or registers incorrectly, the quantity of service delivered through it during that period shall be determined and an equitable adjustment based thereon shall be made in the Town's bills for that period. Meter registration deviation by less than 5% shall be deemed correct.

ARTICLE VI

VILLAGE CHARGES AND PAYMENTS THEREFOR

1. Assessment. Town will make payments quarterly to the Village at the rate of (\$1.00) for every thousand gallons furnished (and the \$1.10 for every thousand gallons in excess of 55,000 gallons on any day). Town's obligation for charges shall commence on the date the Town receives delivery of water from the Village for transportation and delivery to its customers.

2. Increases. The \$1.00 per thousand gallon charged will be increased at the beginning of every new fiscal year of the Village by an amount of the percentage increase in the Village's operating expense over the preceding fiscal year based on the ratio that the number of hook ups in the Town bears to the total number of hook ups, including but not

limited to, administrative and overhead expenses. In addition to the operating expenses, the capital costs attributed to the joint water system including payments of the principal and interest on any indebtedness, financial and legal fees, costs and disbursements, and funds necessary to establish or maintain reserve accounts shall be paid for by the Town to the Village within thirty (30) days of their accrual on a pro rata basis based on the number of hookups in the Town as it bears to the total number of hookups. The parties agree that the Town shall have reasonable notice of any proposed capital expenditure.

3. Repairs. To contribute a pro rata share of the cost of repairs or maintenance to and for water facilities owned by the Village that impact water service to the Town. The pro rata share shall be based on the number of hook ups in the Town as it bears to the total number of hook ups.

4. Hookups. The Village of Hermon, on or before June 1st each year, shall list the number and address of each hookup in the Village which list will be certified to and delivered to the Town Clerk.

5. Capital Replacement Expansion Agreement. The Parties anticipate that the Town's demand for Village water may increase and that such demand may exceed the Village's capacity requiring the Village to add capacity. Any expansion shall be paid for by the Town, and if appropriate, on a pro

rata basis, including but not limited to the cost of engineering, inspection, construction, legal, temporary and permanent financing. Proportionment of future capital charges, as well as any other expenses and will be based on the ratio of the number of hook ups in the Town as it bears to the total hook ups in both municipalities. This section providing for future water demand is exclusive of the annual user charge defined at Article VI, Section 1.

ARTICLE VII

INSURANCE

1. The Town will at all times maintain with responsible insurers all such insurance as is customarily maintained with respect to water transmission systems of like character against loss or damage to the water transmission line and against public or other liability to the extent not less than that reasonably necessary to protect the interest of the Village and the Town. The Town will at all times maintain all insurance reasonably required to indemnify and save harmless the Village against all liabilities, judgments, costs, damages, expenses and attorney's fees for loss, damage or injury to third persons or property resulting directly or indirectly from the operation or failure of operation of the water transmission line caused by the negligence or act of the Town, its employees or agents. The Town shall provide the Village upon request with evidence of such insurance coverage,

satisfactory to the Village.

2. The Village will keep proper books of records in which complete and correct entries shall be made of its transactions relating to the Water Plant or any part thereof, and which, together with all other books and papers of the Village, shall at all reasonable times be subject to public inspection, as required by law. Within ninety (90) days after the close of each Village fiscal year, Village's book of Accounts shall be made available to the Town.

3. The Village shall use reasonable diligence to deliver the initial and regular uninterrupted flow of freshwater to the point of delivery, but shall not be liable to the Town for damages, breach of contract, or otherwise, for failure, suspension, diminution, or other variations of service occasioned by any cause beyond the control of the Village. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, riots, civil disturbance, quarantine, restrictions, inability to obtain equipment or supplies, strikes, or failure or breakdown of facilities. None of the above shall affect the Town's obligation for prompt payment of the charges set forth herein.

ARTICLE VIII

INDEMNIFICATION

1. The Town agrees to indemnify the Village from and against any and all loss, damage or expenses arising from any demand, claim, suit, proceeding or cause of action made or brought at any time as a result and during the period of this contract or as a result of the sale or furnishing of water pursuant thereto, by any person or persons or corporation, including reasonable attorneys fees. In case of the filing of such claim as above mentioned, against the Village, or in the case of the bringing of any suit, action or proceeding, by injunction or otherwise, against said Village, the Village shall forthwith give notice thereof to the Town and shall permit the Town to cooperate and assist, at its own expense, in the defense of any suit, action or proceeding.

ARTICLE IX

MISCELLANEOUS

1. Failure of the part of the Village or the Town in any instance or under any circumstances to observe or fully perform any obligation assumed by or imposed upon it by this Agreement or by law shall not relieve the Town from making any payment to the Village or fully performing any other obligation required of it under this Agreement, but the Town may have and pursue any and all other remedies provided by law for compelling performance by the Village of said obligation

assumed by or imposed upon the Village.

2. This Agreement shall be in full force and effect and be legally binding upon the Village and the Town and contains the entire Agreement between the parties. It may be modified or amended only by the written agreement thereto signed by the parties.

3. This Agreement may be executed in any number of counterparts each of which shall be executed by the Village and the Town and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

4. The Town will comply with all conservation measures imposed by the Village upon all users at a time of water shortage, and it will incorporate such provisions into any agreements with any municipalities to whom it supplies water.

5. The payment of water bills is a continuing obligation and the Town hereby waives any notice of claim that is imposed by statute.

6. Any and all snow removal from fire hydrants within or involving the Town should be the full responsibility of the Town.

7. Should it become necessary to relocate, raise or lower any fire hydrant or water main due to highway or street construction, or for any other reason, such alteration shall be at the expense of the Town.

8. In the event the Town fails to pay the Village in accordance with the provisions of this Agreement, or violates any of the terms and conditions of this Agreement, the Village, in addition to all other remedies available by law, may shut off the supply of water to the Town and to the fire hydrants therein for all purposes until unpaid bills duly rendered by the Village have been paid or the violation corrected providing the Village gives the Town 30 days written notice of its intention to shut off the water.

9. Upon completion of construction, any subsequent raising, lowering or otherwise altering water valve boxes because of street improvements shall be done by the Town at its own expense. The valve boxes shall be altered to render them flush with the finished surface of the pavement. Furthermore, the valve box alteration shall not hinder the valve operation. The Village takes no responsibility for the activities of the Town pursuant to this paragraph; and any activities of the Town in altering valve boxes are solely the responsibility of the Town.

10. The Town shall be fully responsible for all damage caused by leakage of water from Town-owned facilities, pumping or treatment stations within the water district and all such facilities including but not limited to the pipes up to the point of connection with the Village system except where said damage is caused by leakage of water as a result of negligence

on the part of the Village, its employees or agents.

ARTICLE X

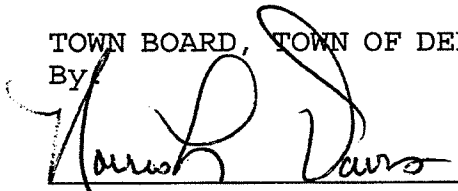
JOINT SUPERVISORY BOARD

1. The parties shall establish a Joint Supervisory Board for the purpose of planning for future improvements, capital expenditures and reconstruction. The Board shall be advisory in nature. The Board shall consist of four members; two each from the Village and Town. Additional members may be appointed by the Town and Village upon mutual agreement. Members may or may not be Councilmen or Trustees of their respective municipalities. Three members of the Board shall constitute a quorum. The respective communities may pay a fee to be determined by the respective municipality if a non-Councilman or Trustee is appointed. A Village representative shall act as Chairman of the first meeting of the Board.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized officers and their respective corporate seals to be hereunto affixed as of the day and year first above written.

TOWN BOARD, TOWN OF DEKALB, ST. LAWRENCE COUNTY, NEW YORK

By:


NORRIS DAVIS

TOWN SUPERVISOR

VILLAGE OF HERMON, ST. LAWRENCE COUNTY, NEW YORK

BY:


ROBERT LACLAIR

MAYOR