

**Town Board Meeting
Town of Bergen
VIA ZOOM due to COVID-19
June 22nd, 2020**

Agenda

I. Call to Order: 7 pm

Prayer Almighty God, as we meet today to conduct matters of Town business, grant us the wisdom to remember as we work that we are servants of our constituency. Assist us to be sure our decisions should be in the best interests of the Town and its citizens, entirely unblemished by any thoughts of personal benefit. Amen.

Pledge to the flag

II. Privilege of the Floor:

III. Approval of meeting Minutes for- Regular Meeting 6/9/2020 and Special Meeting 5/26/2020

III. Communications included with this agenda

1. Mercy EMS report for April. 2020
2. Retail Agreement for operations of Water Districts between the Town of Bergen and the Monroe County Water Authority.
3. 6/17/2020 Letter from TRC in regard to Visual Impact Survey Request-Excelsior Energy Center

IV. Board Members' items for addition to the agenda

V. Reports:

- Supervisor
- Clerk
- Board Members
- Zoning / Code Enforcement
- Highway

Committees

- Building, Grounds, Facilities and Cemeteries-
- Parks-
- Local History & Museum
- Policy and Personnel

VI. Old Business:

- Water Benefit Improvement Area #1
- Continued discussion of revised spending plan due to potential loss of state and county funding

VII. New Business:

- Resolution approving the Retail Agreement for operations of Water Districts between the Town of Bergen and the Monroe County Water Authority.

IX. Meeting and Other Upcoming Dates

- Next Town Board Meeting: July 14th 7 pm Audits of Bills at 6:45 pm.

X. Adjournment

DRAFT

JUNE 9, 2020

BERGEN TOWN BOARD

REGULAR MEETING

The Bergen Town Board convened in a regular session at 7:00 p.m. conducted via zoom due to COVID-19 Pandemic with Supervisor Haywood presiding.

PRESENT:

Supervisor Ernie Haywood
Councilwoman Belinda Grant
Councilwoman Anne Sapienza
Councilman Mark Anderson

ALSO PRESENT:

Mike Johnson, Highway Superintendent
Michele M. Smith, Town Clerk
Dave Mason, ZEO/CEO
Rob Swapceinski, Justice
Joe Nenni, Justice

ABSENT:

Councilman Jim Starowitz

PRAYER

PLEDGE OF ALLEGIANCE TO THE FLAG

MINUTES: *Councilwoman Sapienza made a motion to approve the minutes of Special Meeting on May 16, 2020; seconded by Councilman Grant and carried by a vote 4-0. With Councilman Anderson abstaining.*
Minutes of May 26, 2020 tabled for lack of quorum

COMMUNICATIONS:

Supervisors Report for May 2020
Summary Spreadsheets for May 2020
Town Clerk's Report for May 2020
ZEO/CEO May Report
Resignation letter from Cindy Burke, Bookkeeper
Proposed 2021 Budget Development Timeline
Request of USDA to trap and treat for the Cherry Fruit Fly on Town Property
Revised Resolution – Emergency Expenditure Reductions Due to Genesee County Legislature rescinded Sales Tax Revenue
Announcement of new State Archives – LGS -1 Retention Schedule
TE-9 Form - Request for Linear Speed limit – traffic Study Rt. 262 from Buffalo St. Ext. to Rt. 19

REPORTS:

SUPERVISOR: worked with Village on bookkeeping/payroll proposal and shared services agreement; weekly COVID meetings teleconferences with county and local officials; SAMS grant submitted; sewer line at library complete. Peaceful Protest request – and concerns should be sent to the Genesee County Sheriffs Dept there isn't a code for right to assembly. Assessment Equalization rate is at 100%. Installment payments for property tax collecting would cost the county more and collection would end in January for the local tax collector.

Town Clerk: Back to regular hours, waiting for the go ahead to open to the public possibly after office is shut down June 26-July 6th.

COURT: catching up after 2 months of shut down with full staff working alternate days; open to walk-in payments no court sessions.

ZEO/CEO: working on permits and subdivisions and variance request. Councilman Anderson expressed concerns about 7375 N. Bergen Rd. of activity questioning if a special use permit for a landscaping business and excess cars- there is not a code for that and a complaint would need to be filed. Planning Board is having there June 25th meeting in the parking lot.

Highway: CHIPS money is available in full 100%; paving Peachey and Bissell Roads, NYSDOT will be milling and paving Rt. 19 & Rt. 33; the County installed new signs at Robins Brook Park after the Mech's request.

TOWN CLERK'S REPORT: *Councilwoman Anderson made a motion to file the Town Clerk's May 2020 Report; seconded by Councilwoman Sapienza and it carried by a vote 4-0.*

SUPERVISOR REPORT: *Councilwoman Grant made a motion to file the Supervisors May 2020 Report; seconded by Councilman Anderson and it carried by a vote 4-0.*

COMMITTEES:

Building and Grounds: Air conditioner in the back of the library not working – Triple-O called

Parks: Nothing to report

Local History & Museum: Library is donating a surplus bookcase to the Historian; working on Plan for the State

Transfer Station: Nothing to report

Policy and Procedure: Union negotiations – Representative contacted to set up meetings

OLD BUSINESS:

Water improvement Benefit Area #1 Update: request for school Rd. out of water district user; MRB emailed an update; Bond closing tentatively set for August 19th.

COVID-19 Update: Re-entry plans discussed; State of Emergency will not be renewed on June 15th.

NEW BUSINESS:

NYSDOT Traffic Study on Rt. 262 between Buffalo St. Ext. and Rt. 19. *Councilwoman Sapienza made a motion to request a traffic study on Rt. 262 from Buffalo St. Ext. to Rt. 19; seconded by Councilman Grant and it carried by a vote 4-0.*

National Grid LED Conversion Program *Councilwoman Sapienza made a motion to accept the proposal from National Grid to convert 17 Town street lights to LED; seconded by Councilwoman Grant and carried by a vote 4-0.*

Bookkeeping/Payroll Shared services: Village of Bergen offering Bookkeeping and payroll service for \$7,500 *Councilwoman Sapienza made a motion to approve the Shared Services Agreement with the Village of Bergen for Bookkeeping and Payroll; seconded by Councilman Anderson and it carried by a vote 4-0.*

Board meeting date change: *Councilwoman Grant made a motion to change the June 23rd Town Board meeting to Monday, June 22 at 7:00 pm at the Town Hall due to the Primary Election; seconded by Councilwoman Sapienza and it carried by a vote 4-0.*

Library Board Appointment: Library Board of Trustees recommend appointing Robin Day as a Trustee. *Councilman Sapienza made a motion to appoint Robin Day as a Library Board of Trustee; seconded by Councilman Anderson and it carried by a vote 4-0.*

NYS Archives LGS-1 Retention Schedule: tabled until after August 1st

Revised Resolution – Emergency Expenditure Reductions Due to Genesee County Legislature Rescinded revenue distribution. *Councilman Anderson offered Resolution # 10-2020 Revision; seconded by Councilwoman Sapienza and it carried by a vote 4-0.*

**RESOLUTION #10-2020 REVISION
EMERGENCY EXPENDITURE REDUCTIONS DUE TO GENESEE
COUNTY LEGISLATURES RESCINDED REVENUE DISTRIBUTION**

WHEREAS, the resolution #10-2020 entitled Emergency Expenditure Reductions Due to Genesee County Legislatures Rescinded Revenue Distribution approved by the town board of the town of Bergen at their meeting of May 26,2020 was inaccurate in the amount of the salary reduction for the ZEO/CEO salary, and;

WHEREAS, it is necessary to correct this inaccuracy, the following revised resolution is offered to rescind the resolution #10-2020 and approve the following resolution and;

WHEREAS, the COVID-19 Pandemic has had a significant negative impact upon the economy, and;

WHEREAS, in May of 2020, the Genesee County Legislature rescinded the revenue distribution agreement with the Town of Bergen, and;

WHEREAS, the action by the Genesee County Legislature to rescind the revenue distribution agreement without any replacement agreement to share any future revenue with the Town of Bergen, and;

WHEREAS, the action by the Genesee County Legislature has left a potential revenue shortfall of \$551,355.93, in the approved 2020 Town of Bergen Budget for the remainder of 2020, and;

WHEREAS, the Town of Bergen has to take action to address the potential loss of revenue;

BE IT THEREFOR RESOLVED, that the Town Board of the Town of Bergen hereby authorizes the following emergency expenditure reductions actions as of 6/1/2020, and;

- Freeze on all expenditures except those necessary to maintain operations and address emergencies
- Freeze on the hiring of any personnel unless approved by the board.
- 20% pay reduction for all Town Board Councilpersons, Supervisor; Bookkeeper, Deputy Supervisor
- Reduction of hours of 2 hours per week for the Confidential Secretary to the Supervisor
- Reduction of salary of CEO/ZEO of 25 %
- Reduction of Deputy Clerk hours for the Town Clerk's office, to a maximum of 80 hours for the remainder of the year

BE IF FURTHER RESOLVED, that given the potential for additional losses of revenue from the State and Genesee County, the Town Board may be required to take additional emergency expenditure reduction actions and that if throughout the remainder of the 2020 budget year, Genesee County provides revenue that was previously provided through the revenue sharing agreement, the town board will re-evaluate the above expenditure reduction actions.

2020 Budget Amendments: Councilwoman Sapienza made a motion to offer Resolution # -2020 for 2020 Budget Modifications; seconded by Councilwoman Grant and it carried by a vote 4-0.

**RESOLUTION #11-2020
2020 BUDGET MODIFICATIONS**

NOW, THEREFORE, BE IT RESOLVED:

Sec. 1. That the Supervisor is hereby authorized to make the following modifications to the 2020 Town Budget:

\$600 from A1110.200 Justice Equipment to
A1990.4 Contingency

\$4,480 from A1110.4 Justice Contractual to
A1990.4 Contingency

\$3,412 from A1410.102 Deputy Town Clerk Personal Services to
A1990.4 Contingency

\$1,000 from A1410.4 Town Clerk Contractual to
A1990.4 Contingency

\$1,634 from A1420.401 Court Prosecutor to
A1990.4 Contingency

\$700 from A3120.1 Constables Personal Services to
A1990.4 Contingency

\$200 from A3120.4 Constables Contractual to
A1990.4 Contingency

\$7,800 from A5010.103 Supt. Of Highways, Pers. Svc, Clerk to
A1990.4 Contingency

\$360 from A5010.2 Supt. of Highways Equipment to
A1990.4 Contingency

\$240 from A5010.4 Supt. Of Highways Contractual to
A1990.4 Contingency

\$45,000 from A5132.4 Garage Contractual to
A1990.4 Contingency

\$1,850 from A5182.4 Street Lighting to
A1990.4 Contingency

\$1,000 from A7510.2 Historian Equipment to
A1990.4 Contingency

\$250 from A7510.4 Historian Contractual to
A1990.4 Contingency

\$2,300 from A7550.4 Celebrations Contractual to
A1990.4 Contingency

Decrease DB5110.4 Highway Repairs Contractual	\$40,000
Decrease DB5130.4 Machinery Contractual	\$10,000
Decrease DB5140.4 Brush & Weeds Contractual	\$750
Decrease DB5142.4 Snow & Ice Contractual	\$30,000
Decrease DB5999.0 Unexpended Balance	\$80,750

Sec. 2 That this resolution shall take effect immediately.

VOTE BY ROLL CALL AND RECORD:

Councilman Anderson - Aye
Councilwoman Grant - Aye
Councilwoman Sapienza - Aye
Councilman Starowitz - Absent
Supervisor Haywood - Aye

BILLS: The bills were presented for audit and totaled General A Fund \$46,291.80; General B Fund \$1412.59; Highway DB \$9,547.69; Water District \$38,189.97; Library \$300.00; PA-A \$3,848.32 and PA-DB \$4,617.64. *Councilwoman Sapienza made a motion to pay the May bills; seconded by Councilwoman Grant and it carried by a vote 4-0.*

EXECUTIVE SESSION: *Councilwoman Grant made a motion to enter into Executive Session at 8:09 pm to discuss the Emergency Expenditure Resolution; seconded by Councilman Anderson and it carried by a vote 4-0. Councilman Anderson made a motion to exit Executive Session at 8:24 pm; seconded by Councilwoman Sapienza and it carried by a vote 4-0.*

REGULAR MEETING – Monday, June 22, 2020 at 7:00 pm at the Town Hall

ADJOURNMENT was at 8:28 pm on a motion by Councilman Anderson; seconded by Councilman Grant and carried by a vote 4-0.

Respectfully submitted

Michele M. Smith
Michele M. Smith,
Town Clerk

DRAFT

May 26, 2020 BERGEN TOWN BOARD REGULAR 2nd MEETING-TELECONFERENCE

The Bergen Town Board convened in a regular session at 7:00 p.m. in the Town Hall with Supervisor Haywood presiding.

PRESENT:

Supervisor Ernest Haywood
Councilman James Starowitz
Councilman Mark Anderson

ALSO PRESENT:

Michele M. Smith, Town Clerk
Mike Johnson, Highway Superintendent

ABSENT:

Councilwoman Belinda Grant
Councilwoman Anne Sapienza

OTHER ATTENDEES:

Nancy Bailey

PLEDGE OF ALLEGIANCE TO THE FLAG

PRAYER

MINUTES: *Councilman Anderson made a motion to approve the May 12, 2020 minutes; seconded by Councilman Starowitz and it carried by a vote 3-0. May 16th Special meeting minutes – no quorum*

COMMUNICATIONS:

Town of Bergen State of Emergency Declaration

Mercy EMS report for April 2020

COVID-19 Re-Entry Safety Plan for Town Hall, Town Clerk, Highway, CEO /ZEO and Assessor Office

Letter from Joe and Sally Mech regarding signage at Robin Brook Park and Transfer Station

County Snow & Ice Agreement

REPORTS:

SUPERVISOR: Gillam Grant Cancelled Youth summer recreation; Genesee County Planning Board opening – contact Christian Yunker; 2020 Budget cuts; Library board has 2 Trustee vacancies; Zoom meetings will continue until further notice.

CLERK: request for window replacement with pass through and speaker hole \$320. Councilman Starowitz made a motion to approve the \$320 expense to replace the Town Clerk customer window with passthrough and speaker hole; seconded by Councilman Anderson and it carried by a vote 3-0.

HIGHWAY/SOLID WASTE: County Snow and Ice Contract 2020/21 and mowing \$135,110.08; suggested to not open the Transfer Station on Wednesdays in July and August due to budget constraints- town board agreed; Pot hole damage complaint on Rt. 33 and Apple Tree Ave. from Tim Lana for \$457 the town agreed to pay half \$228.69 *Councilman Starowitz made a motion to pay Tim Lana \$228.69 for damage from a pot hole on Rt. 33 and Apple Tree Ave.; seconded by Councilman Anderson and it carried by a vote 3-0.*

Snow and Ice Agreement Resolution *Councilman Anderson offered Resolution #9-2020 to approve the County Snow and Ice Agreement; seconded by Councilman Starowitz and it carried by a vote 3-0.*

***RESOLUTION #9-2020
INTERMUNICIPAL AGREEMENT FOR SNOW AND ICE CONTROL
SERVICES AND ROADSIDE MOWING***

WHEREAS, the County owns, operates, and maintains a highway system in the towns and villages of the County; and

WHEREAS, the County Superintendent Highways has a general charge and supervision of the work of constructing, improving, repairing and maintaining all County roads; and

WHEREAS, County funds may be expended for the control and removal of snow and ice from County roads; and

WHEREAS, County fund maybe expended for roadside mowing and removal of noxious weeds along County roads; and

WHEREAS, the County desires to enter into an agreement with the Town of Bergen for snow removal and for salting and treating County roads for the purpose of removing the danger of ice and snow and the mowing along the side of County roads for \$135,110.08; and

WHEREAS, the Town has appropriate snow and ice removal and mowing equipment and sufficient snow and ice control and mowing personnel to contract with the County for snow and ice control services and roadside mowing services; and

WHEREAS, the Bergen Town Board has authorized the Agreement

COMMITTEES:

BUILDINGS AND CEMETERIES: Nothing to report

PARKS: Will look into signage for the Transfer Station/Robins Brook Park as requested by the Mechs.

LOCAL HISTORY AND MUSEUM: Nothing to report

POLICY AND PERSONNEL: Nothing to report

OLD BUSINESS:

Water Benefit Improvement area #1 – gathering paperwork for funding reimbursement

Potential Loss of State and County funding department heads have made reductions to their 2020 budget lines.

**RESOLUTION #10-2020
EMERGENCY EXPENDITURE REDUCTIONS DUE TO GENESEE
COUNTY LEGISLATURE RESCINDED REVENUE DISTRIBUTION**

Whereas, the COVID-19 Pandemic has had a significant negative impact upon the economy, and;

Whereas, in May of 2020, the Genesee County Legislature rescinded the revenue distribution agreement with the Town of Bergen, and;

Whereas, the action by the Genesee County Legislature to rescind the revenue distribution agreement without any replacement agreement to share any future revenue with the Town of Bergen, and;

Whereas, the action by the Genesee County Legislature has left a potential revenue shortfall of \$551,355.93, in the approved 2020 Town of Bergen Budget for the remainder of 2020, and:

Whereas, the Town of Bergen has to take action to address the potential loss of revenue;

Be it Therefor Resolved, that the Town Board of the Town of Bergen hereby authorizes the following emergency expenditure reductions actions as of 6/1/2020, and;

- Freeze on all expenditures except those necessary to maintain operations and address emergencies
- Freeze on the hiring of any personnel.
- 20% pay reduction for all Town Board Councilpersons, Supervisor; Bookkeeper, Deputy Supervisor
- Reduction of hours of 2 hours per week for the Confidential Secretary to the Supervisor
- Reduction of salary of CEO/ZEO of 50%
- Reduction of Deputy Clerks for the Town Clerk's office - only 80 hours for the remainder of the year

Be if Further Resolved that given the potential for additional losses of revenue from the State and Genesee County, the Town Board may be required to take additional emergency expenditure reduction actions and that if throughout the remainder of the 2020 budget year, Genesee County provides revenue that was previously provided through the revenue sharing agreement, the town board will re-evaluate the above expenditure reduction actions.

NEW BUSINESS:

COVID 19 Re-entry Plan Councilman Anderson made a motion to approve the COVID-19 amended Re-entry Plan for Town Hall, Town Clerk, CEO/ZEO and Assessors Offices; seconded by Councilman Starowitz and it carried by a vote 3-0.

NEXT MEETING:

Regular – Tuesday, June 9, 2020 at 7:00 pm as Teleconference with the audit of the bills emailed on the 8th.

ADJOURNMENT was at 7:43 pm on a motion by Councilwoman Starowitz; seconded by Councilman Anderson and carried by a vote 3-0.

Respectfully submitted,

Michele M. Smith

Michele M. Smith,
Town Clerk

FD GEN BERGEN

Trip Date IS BETWEEN 05/01/2020 AND 05/31/2020; AND Call Types IS A-MEMS 911 Response 1st Unit OR A-MEMS Squad Resp 1st Unit; AND Initial Priorities IS 911 EMERGENCY

Response Time Minutes	Call Count	Cumulative Call Count	Percentage of Total Calls	Cumulative Percentage
FD GEN BERGEN				
Response Zone:GEN BERG 17				
14:00 - 14:59	1	1	10%	10%
15:00 - 15:59	1	2	10%	20%
16:00 - 16:59	1	3	10%	30%
17:00 - 17:59	3	6	30%	60%
19:00 - 19:59	1	7	10%	70%
20:00 - 20:59	1	8	10%	80%
22:00 - 22:59	1	9	10%	90%
23:00 - 23:59	1	10	10%	100%
Total Calls:	10	10	100%	

Response Zone:GEN BERG 22				
18:00 - 18:59	1	1	20%	20%
19:00 - 19:59	1	2	20%	40%
20:00 - 20:59	1	3	20%	60%
21:00 - 21:59	1	4	20%	80%
23:00 - 23:59	1	5	20%	100%
Total Calls:	5	5	100%	

Call Source Total Calls: 15

TOWN OF BERGEN

* ESTABLISHED APRIL 2, 1813 *

P.O. BOX 249
10 HUNTER STREET
BERGEN, NY 14416

PHONE: (585) 494-1121 * FAX: (585) 494-1372 * NYS TDD 1-800-662-1220



SUPERVISOR
ERNEST HAYWOOD

COUNCILMEN
JAMES STAROWITZ
MARK ANDERSON

COUNCILWOMEN
BELINDA GRANT, DEPUTY SUPERVISOR
ANNE SAPIENZA

SUPERINTENDENT OF HIGHWAYS
MIKE JOHNSON

TOWN CLERK/TAX COLLECTOR
MICHELE M. SMITH

JUSTICES
JOSEPH NENNI
ROBERT SWAPCEINSKI

ZONING & CODE ENFORCEMENT OFFICER
DAVID MASON

ASSESSOR
RHONDA SAULSBURY

June 22, 2020

TOWN OF BERGEN

RESOLUTION #12-2020

APPROVING THE RETAIL LEASE AGREEMENT FOR THE OPERATION OF WATER DISTRICTS - TOWN OF BERGEN TO MONROE COUNTY WATER AUTHORITY

WHEREAS, the Town of Bergen and the Monroe County Water Authority entered into a Retail Lease Agreement for Operation of Water districts dated December 13th, 1990 and its Amendment No.1, dated April 12, 2011 that is currently in effect; and

WHEREAS, the Town of Bergen is seeking United States Department of Agriculture Rural Development (USDA-RD) financing for the Water Improvement Benefit Area No. 1; and

WHEREAS, the Town of Bergen has requested and updated Agreement with the Monroe County Water Authority for the Operations of Water Districts to now include Water improvement Benefit Area No. 1, pursuant to Section 198, par. 12(b) of Town Law of the State of New York, to replace the Existing lease in its entirety; and

WHEREAS, the Town of Bergen acted as lead agency for the Water Improvement Benefit Area No. 1, in compliance with the State Environmental Quality Review Act and has duly notified the County of Genesee of the same; and

WHEREAS, The Genesee County legislature on June 11th, 2020, through resolution No. 233, and pursuant to Subdivision 7 of Section 1096 of the Public Authorities Law, approved the Retail Lease Agreement between the Town of Bergen and the Monroe County Water Authority; Now therefore, Be it

RESOLVED, the Town board of the Town of Bergen does hereby approve the Retail Lease Agreement for the Operation of Water Districts between the Town of Bergen and the Monroe County Water Authority, and Be it further

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RESOLVED; that the Supervisor of the Town of Bergen is hereby authorized and directed to execute the Retail Lease Agreement for the Operation of Water Districts between the Town of Bergen and the Monroe County Water Authority and any additional documents necessary to effectuate this resolution.

Role Call

_____ Ernest Haywood Supervisor

_____ Mark Anderson Councilman

_____ Belinda Grant, Councilwomen

_____ Anne Sapienza, Councilwomen

_____ James Starowitz, Councilman

CERTIFICATE OF CLERK

STATE OF NEW YORK}
COUNTY OF GENESEE} {ss

I, MICHELE M. SMITH, TOWN CLERK OF THE TOWN OF BERGEN, COUNTY OF GENESEE AND STATE OF NEW YORK, DO HEREBY CERTIFY THAT I HAVE COMPARED THE FOREGOING MOTION DULY ADOPTED BY THE TOWN BOARD OF THE TOWN OF BERGEN ON JUNE 22, 2020, WITH THE ORIGINAL THEREOF ON FILE IN MY OFFICE AND THE SAME IS CORRECT AND TRUE COPY OF SAID MOTION OF THE WHOLE THEREOF.

DATED: JUNE 22, 2020

MICHELE M. SMITH, TOWN CLERK

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**RETAIL LEASE AGREEMENT FOR OPERATION OF WATER DISTRICTS
TOWN OF BERGEN
TO
MONROE COUNTY WATER AUTHORITY**

AGREEMENT made this ___ day of _____, 2020, between MONROE COUNTY WATER AUTHORITY, a public benefit corporation having its principal office at 475 Norris Drive, in the City of Rochester, Monroe County, New York (the "Authority"), and the TOWN BOARD OF THE TOWN OF BERGEN, Genesee County, New York, a municipal corporation (the "Town"), acting on behalf of all of its water districts and, for avoidance of doubt, any and all of the Town's existing and former water districts, water benefited areas and extensions thereto, whether now existing or hereafter formed (collectively, the "District").

WHEREAS, the District and the Authority entered into a Retail Lease Agreement for Operation of Water Districts dated December 13, 1990 and its Amendment No. 1, dated April 12, 2011 that is currently in effect (the "Existing Agreement"); and

WHEREAS, the Town of Bergen is seeking United States Department of Agriculture Rural Development (USDA-RD) financing for the Water Improvement Benefit Area No. 1; and

WHEREAS, the Town of Bergen has requested an updated Agreement with the Authority to satisfy USDA-RD's requirements; and

WHEREAS, the parties are now making this Retail Lease Agreement for the Operation of Water Districts (this "Agreement") pursuant to Section 198, par. 12(b) of the Town Law of the State of New York, to replace and supersede the Existing Lease in its entirety; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

OPERATION AND MAINTENANCE

1.1 From and after the Effective Date, the Town hereby leases to the Authority the entire operating plant, hydrants, water pumping, storage and distribution system of the Town (including, but not limited to, any and all conduits, pipes, valves, casings, meters, pumps, tanks and vaults owned by the Town) together with all of the Town's interests in real property of any kind or nature to the extent assignable (including, but not limited to, any and all easements (whether temporary or permanent and/or exclusive or non-exclusive), licenses and leases in favor of the Town), and all extensions thereto, whether now existing or hereafter formed (collectively, the "Leased Facilities"). The Leased Facilities include any replacements, additions, betterments and improvements (collectively, the "Improvements") hereafter furnished and installed in or by the Town during the term of this Agreement. The Leased Facilities constitute all of the physical assets used by or useful in connection with the distribution and sale of water in the Town's water system on and as of the Effective Date.

1.2 All references to customers, property or facilities of the District include any extensions thereto, including extensions that may be outside the territorial boundaries of the Town.

1.3 From and after the Effective Date, the Authority agrees to (a) operate, maintain and repair the Leased Facilities at its own cost and expense, and (b) sell water to the customers of the Town in accordance with the Authority's Current Rate Schedule generally applicable to retail customers of the Authority, as the same may be amended from time to time by the Authority in its sole discretion (the "Current Rate Schedule"). Pursuant to the provisions of Section 1105 of the Public Authorities Law, the Authority is not required to pay taxes or assessments upon any properties or Improvements made or acquired by it or upon the Leased Facilities. From the date of, and during the term of this Agreement, the Town shall remedy or cure, to the Authority's satisfaction, any defects in the easements, licenses and leases in favor of the Districts that are part of the Leased Facilities, by exercising its powers or condemnation and eminent domain or otherwise, all at the cost and expense of the Town.

1.4 During the term of this Agreement, all sales of water and the performance of services by the Authority for the Town shall be made in accordance with and governed in all respects by the Authority's Rules for the Sale of Water and the Collection of Rents and Charges, as

amended from time to time by the Authority in its sole discretion (the "Authority's Rules"), and by subpart 5-1, Public Water Supplies, of the New York State Sanitary Code.

1.5 The Town shall not sell or resell water either inside or outside the Town of Bergen for any purpose whatsoever.

1.6 During the term of this Agreement, the Authority shall have the exclusive right to be the sole supplier of public water to all existing and future customers located within the Town.

II. REPLACEMENTS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS

2.1 The Town shall not at any time be obligated to make Improvements within the territorial limits of the Town or any extensions thereof at its own cost and expense, other than those resulting from the Town's decision to install new facilities without the approval of the Authority as described in 2.7.

2.2 The Authority may, in its sole discretion and at its own cost and expense, make Improvements within the territorial limits of the Town, when economically feasible, in order to provide an adequate supply of water at proper pressure to the Town, or to other areas outside of the Town where the Authority is authorized and empowered to sell water. The Town agrees that such Improvements may be installed at such locations, and may be connected and interconnected with the distribution systems of the Town in such manner, as the Authority may determine and shall not be subject fees, charges or other costs for Town approvals or easements on Town property. Legal title to such Improvements installed by the Authority at its own cost and expense or as agent for the County of Genesee (the "County") will be and remain in the Authority or the County, as appropriate.

2.3 Legal title to Improvements, when approved by the Authority and installed by the Town at its own cost and expense, will be and remain in the Town.

2.4 From time to time private developers will make Improvements pursuant to the terms of main extensions agreements ("Main Extension Agreements") entered into with the Authority. Legal title to any such Improvements will be and remain in the Authority.

2.5 The Town agrees that the Authority may use the Leased Facilities to supply water to areas located beyond the limits of the Town, and the Town shall not impose on the Authority in consequence of those activities any rentals or other charges or conditions. The Authority agrees that such use by it of the Leased Facilities will not reduce, below Department of Health accepted standards, the supply or pressure of water then being furnished by the Authority to customers within the Town.

2.6 All extensions to the existing District after the Effective Date will be made under the exclusive control and jurisdiction of the Town, subject to the provisions of the Town Law and any amendments thereof. Except as specifically provided in this Section 2.6, the Authority shall not have responsibility for any such extensions. In the event the Town forms one or more extensions, they will be subject to the following terms and conditions:

- a. Distribution systems within the extensions must be installed without cost to the Authority and must service the entire area of the said extension.
- b. Upon completion of the distribution systems within such extensions, the distribution systems and extensions will become subject to this Agreement and to the Authority's standard "Water District Agreement," a copy of which is attached hereto as Schedule A.
- c. The Town will have the exclusive right to determine the amount of any fee to be charged to any such extension and paid by it to the Town for the privilege for connecting to the facilities of the Town. The fee will belong exclusively to the Town, and the Authority will have no right or interest therein whatsoever.
- d. Extensions to the existing District or distribution systems installed within the Town by a developer or others, at no expense to the Town, will be owned by the Authority upon completion of the installation.
- e. The Town shall comply with all applicable laws, rules and regulations, including the Authority's Rules, and obtain all necessary governmental approvals with respect to the formation of any extensions and the construction of the distribution systems therein.

2.7 All extensions to existing water districts made by the Town in accordance with Section 2.6 above, and all Improvements installed by the Town at its own cost and expense, shall be performed in accordance with the Authority's Rules and its standards and specifications, the design of which must be approved by the Authority in advance, and will be the subject of a Water District Main Extension Agreement between the Authority and the Town in form and substance reasonably satisfactory to the Authority and the Town.

In the event that the Town desires to install a type or quality of pipe that meets AWWA and NSF Standards but is different than the Authority's specifications, the Authority is willing to allow the Town to bid alternatives for price comparison purposes. The parties agree to discuss different alternatives, quality concerns, and the costs thereof. If the cost difference is not significant, the Authority's specifications and standards will prevail. The Town may proceed without the Authority's approval of the pipe material; however, any such constructions will be subject to the Town being responsible for the full costs of any future repairs to or replacements of the facilities. The Authority may, at its option, choose to participate financially in the construction to resolve the cost differences.

III. SERVICE CONNECTIONS

3.1 During the term of this Agreement, all service connections will be made in accordance with the Authority's Rules.

IV. HYDRANTS

4.1 When replacing existing water mains and hydrants in accordance with Section 4.3, the Authority shall pay the costs thereof.

4.2 Upon the receipt of a certified copy of a resolution of the Town requesting installation of hydrants and specifying the locations where the same are to be placed upon the mains of the District, the Authority will, at its initial cost and expense, but subject to reimbursement by the Town as hereinafter provided, place and install the hydrants and hydrant connections in accordance with Section 4.3 hereof.

4.3 Hydrants will be installed only on six-inch or larger diameter water mains at a minimum spacing interval of 500 feet. When hydrants are installed as part of a water main replacement project, the Authority shall, to the extent practicable and desirable for the Town and the Authority, locate new hydrants reasonably close to the existing hydrant locations.

4.4 Hydrants installed at the sole request of the Town less than 500 feet apart will be considered "Additional Hydrants" installed for the purposes of private fire protection, as such term is defined in the Authority's Rules. Hydrants installed by the Authority in its sole discretion and for its water supply purposes less than 500 feet apart will not be considered as private fire protection.

4.5 The Authority shall bill the Town for hydrants and hydrant connections requested by the Town under Sections 4.2 or 4.4 at the actual installed cost thereof to the Authority, and the Town shall reimburse the Authority in the amount billed therefor within thirty (30) days of the invoice date. Legal title to such hydrants and hydrant connections will be and remain in the Authority.

4.6 Hydrants installed as part of main extensions for real estate developments will be installed by and at the expense of the real estate developer, and will be owned by the Authority.

V. WATER SUPPLY BY THE AUTHORITY

5.1 From and after the Effective Date, the Authority shall furnish and supply all water to those customers now being served by the Town, and to such other residents and inhabitants of the Town who apply to the Authority for water service during the term of this Agreement, in accordance with the Authority's Rules.

5.2 It is understood and agreed that the Authority makes no guarantees as to the quantity, quality or pressure of the water in the pipes or mains supplying the same, or the continuity of service, and shall not, under any circumstances, be held liable for loss or damage from a deficiency or failure or other defect in the supply of water, whether caused by shutting off of water in case of accident or for alterations, extensions, connections or repairs, or for any cause whatsoever. In the event of an emergency or other necessity, the Authority shall have the right to shut off or reduce the flow of water for such periods as are necessary, and the Authority shall restore service and make water available as soon as reasonably practicable.

VI. RESERVED

VII. WATER SYSTEM RECORDS

7.1 The Authority shall incorporate into the Authority's mapping and document management systems, maps and water system records and add thereon any additions, betterments or deletions to the system. The Authority shall provide the Town with up-to-date maps upon termination of this Agreement.

7.2 The Town shall not disclose any maps, drawings or other records relating to the water system's construction or operation without the prior written consent of the Authority.

VIII. EFFECTIVE DATE

8.1 The Authority shall lease and perform its obligations to operate and maintain the Leased Facilities and sell water to customers of the Town under this Agreement from and after the Effective Date. As used in this Agreement, the "Effective Date" is _____, __ 2020.

IX. TERM OF THIS AGREEMENT

9.1 The term of this Agreement will be for a period of forty (40) years from the Effective Date.

9.2 If this Agreement is not renewed at the end of such term or any renewal thereof, or is terminated for any cause whatsoever prior to the expiration of said term or any renewal thereof, the Town may, if it determines it to be in the public interest after a public hearing as provided in Section 202-b of the Town Law, or pursuant to other applicable law, acquire from the Authority any Improvements installed pursuant to Section 2.2 hereof, but excluding transmission booster station, or storage facilities. The value of such capital additions will be computed at original cost, or cost of reproduction, less depreciation, whichever is less, as determined by a panel of three qualified appraisers, one to be chosen by the Authority, one to be chosen by the Town, and the third to be the agreed choice of both parties hereto. In the event of failure to agree on such third appraiser, either party may apply to the Supreme Court of the State of New York for such appointment. If the Town elects not to acquire such capital additions upon termination as set forth in this Section, the Authority may, at its option, remove such capital additions from the distribution and storage

systems hereby leased, or lease said capital additions to the District under terms and conditions mutually agreeable to the parties hereto (which will include an agreement for the taking and purchase of a water supply by the Town from the Authority on a wholesale or other basis for a mutually agreeable term).

9.3 During the final year of this Agreement, or at any earlier date as requested by the Town in writing to the Authority, the Authority will have the option to purchase from the Town the entire operating plant and distribution facilities owned by the Town and leased to the Authority. The value of such assets will be determined to be the original cost as paid by the Town less depreciation based upon a 40-year life.

9.4 If this Agreement is not renewed at the end of the initial term or any renewal thereof, or is terminated for any cause whatsoever prior to the expiration of said term or any renewal thereof, the Authority retains the right, without limitations and without the imposition of any transmission fees or any other fees or charges, to the continued ownership of and use of any storage, transmission or booster pumping facilities as referenced in Section 9.2 above.

X. FORCE MAJEURE

10.1 Subject to the last sentence of this Section 10.1, failure of the Authority or the Town to perform any of its obligations under this Agreement resulting from any cause or causes beyond its control (including but not limited to strikes, labor disputes, fire, acts of God, or acts or orders of the government) will not constitute an actionable default or breach of this Agreement. The time for performance of any duty or obligation hereunder that cannot be performed as a result of an event of Force Majeure will be extended for a period equal to the duration of such inability to perform. Notwithstanding the preceding sentences, Force Majeure events will not extend the time for payment of any money which is due and payable or extend the current term of this Agreement.

XI. MISCELLANEOUS

11.1 From and after the Effective Date, this Agreement constitutes the entire understanding between the parties with respect to its subject, and supersedes any and all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof, including the Existing Agreement.

11.2 This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument.

11.3 The parties hereto agree to execute such further instruments, documents or certificates as may be necessary or desirable to effectuate the purposes and intent of this Agreement.

11.4 This Agreement may not be amended, changed, modified, or altered except in a writing executed by the parties hereto.

11.5 No waiver of compliance with any provision or condition hereof, and no consent provided for herein, will be effective unless evidenced by an instrument in writing duly executed by the party sought to be charged therewith. No failure on the part of any party to exercise, and no delay in exercising, any of its rights hereunder will operate as a waiver thereof, nor will any single or partial exercise by any party of any right preclude any other or future exercise thereof or the exercise of any other right.

11.6 No party shall assign or attempt to assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto.

11.7 This Agreement is binding upon and will inure to the benefit of the parties and their respective successors and assigns. This Agreement creates no rights of any nature in any person not a party hereto.

11.8 All the rights and duties of the parties created by this Agreement will survive with respect to the services performed prior to such termination.

11.9 The parties intend that any term or provision of this Agreement that is held to be invalid or unenforceable be interpreted by the courts such that it is valid and enforceable to the greatest extent possible and not render invalid or unenforceable, or otherwise affect, the remaining terms and provisions of this Agreement.

IN WITNESS WHEREOF, the respective parties hereto have set their hands and seals the day and year first above written.

MONROE COUNTY WATER AUTHORITY

By:

Nicholas Noce, Executive Director

TOWN BOARD OF THE TOWN OF BERGEN
(Acting on behalf of the Town of BERGEN water districts and any present and future extensions thereto)

By: _____
Ernie Haywood, Supervisor

By: _____
Belinda Grant, Councilwoman/Deputy
Supervisor

By: _____
Mark Anderson, Councilman

By: _____
Anne Sapienza, Councilwoman

By: _____
James Starowitz, Councilman

STATE OF NEW YORK)

COUNTY OF MONROE) :ss

On the ____ day of _____ in the year 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared **Nicholas Noce**, 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 _____) :ss

On the ____ day of _____ in the year 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared **Ernie Haywood**, 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 _____) :ss

On the _____ day of _____ in the year 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared **Belinda Grant**, 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

STATE OF NEW YORK)

COUNTY OF _____) :ss

On the _____ day of _____ in the year 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared **Mark Anderson**, 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 _____) :ss

On the ____ day of _____ in the year 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared **Anne Sapienza**, 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

STATE OF NEW YORK)

COUNTY OF _____) :ss

On the ____ day of _____ in the year 2020 before me, the undersigned, a Notary Public in and for said State, personally appeared **James Starowitz**, 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

SCHEDULE A
WATER DISTRICT AGREEMENT



650 Suffolk St., Suite 200
Lowell, MA 01854

T 978.970.5600
TRCcompanies.com

June 17, 2020

Mr. Ernie Haywood
Town of Bergen
10 Hunter Street
P.O. Box 249
Bergen, NY 14416

Subject: Visual Impact Survey Request – Excelsior Energy Center

Dear Mr. Haywood:

This letter serves as an information request concerning the development of a proposed 280 MW solar energy center, the Excelsior Energy Center (Project), in the Town of Byron, Genesee County, New York, by Excelsior Energy Center, LLC (the Applicant), a subsidiary of NextEra Energy Resources, LLC. The Applicant plans to submit an Application to construct a major electric generating facility under Article 10 of the New York Public Service Law (PSL) for the Project.

Specifically, this letter request is in regard to the requirements of Sections 1001.24 b(4) of the New York State Board on Electric Generation Siting and the Environment's (Siting Board) regulations. As required for Exhibit 24, a Visual Impact Assessment (VIA) shall be included in an Article 10 Application to determine the extent and assess the significance of facility visibility. The VIA will, in part, identify sensitive resource areas susceptible to visual changes from the proposed Project and present photographic simulations of the proposed Project's facilities in relation to selected, representative viewpoints. The VIA also supports Exhibit 20, which takes into account sites or structures listed in or eligible for listing in the National or State Register of Historic Places (NRHP/SRHP).

Enclosed with this letter is a progress report on the VIA. It provides an overview of the work that has been done to date on the VIA including the status of visualization studies, site visits, preliminary analyses, and background information on the VIA process. The engineering/project layout for specific solar array locations is still being developed and is not yet finalized. Areas preliminarily being considered for the placement of arrays have been depicted in the enclosed mapping.

In compliance with Article 10 regulations, we are herein requesting your input as part of the Applicant's consultations with local historic preservation groups and Visual Stakeholders (which includes Town of Byron municipal representatives, NYSDPS, NYSDEC, and OPRHP) in its selection of important or representative viewpoints that may be subject to Project visibility.

Preliminary visual analyses and site investigations are in progress. The purpose of this letter and the enclosed Progress Report are to:

- Provide the reader with the extent and findings of visibility studies thus far, and

- Request the timely input from local historic groups and Visual Stakeholders in identifying any additional sensitive visual resources important to the community within the Project study area over what is provided herein, and/or,
- Provide an opportunity for the Visual Stakeholders to suggest additional representative and reasonable candidate locations for photo-simulations (before and after depictions of the Project) in areas of their concern. It should be noted this request is confined to areas with public access.

Please review the inventory of visual resources in Tables 1a and 1b of the Progress Report for completeness.

Please also review the candidate viewpoints listed in Table 2 and shown in Figures 2 and 4 in Attachment 1 of the enclosed Progress Report.

If you feel that the identified visual resources and candidate viewpoints provide an adequate representation of the Project for the purposes of preparing the VIA, no further action on your part is necessary. However, if there are other public locations of concern currently not depicted, where you would like to suggest that additional representative photos be taken, or if there are any additional visual resources that are important to note, please provide your comments or feedback, with an explanation of why you feel that location/viewpoint should be included.

Any comments or feedback you may have are requested by July 8, 2020 and should be sent to the following:

- Via email to Judy Bartos: JBartos@trccompanies.com
- Via email to William Boer: William.Boer@nexteraenergy.com

Thank you for your attention to this request. We appreciate your input and assistance identifying significant sensitive visual areas.

Best regards,



Judy Bartos, Visualization Specialist
TRC Companies, Inc.