

**PUBLIC HEARING
November 17, 2015**

The public hearing was called to order at 5:15 PM by Councilman-at-large Rosas.

Present: Councilmen Rivera, Gonzalez, Councilwoman Szukala and Councilman-at-large Rosas

Also present: Mayor Dolce, City Attorney Szot, City Treasurer Woods, Fiscal Affairs Officer Halas, Public Works Director Gugino, Clerk, Board of Assessors Mleczko, Fire Captain Katta, CDBG Administrator Gawronski, Youth and Recreation Coordinator Gornikiewicz and Police Chief Ortolano.

Notice of Public Hearing was read by Councilman-at-large Rosas.

The public hearing was held for the purpose of giving interested persons an opportunity to comment on Local Law #3-2015 amending Chapter 31, Article III, Water Rate Schedule Section 31-19 of the Dunkirk City Code entitled "Rate Structure."

PUBLIC COMMENTS:

Greg Sek, 14 Armadillo Street, inquired if any profit from this district would reduce the rates after it is set.

Mayor Dolce advised that the purpose of this district is to help stabilize the rates going forward.

James Schnarrs, 3713 Middle Road, expressed his displeasure with the rate increase as he is on a fixed income and any increase in fees makes it much more difficult to afford.

Councilwoman Szukala advised that raising the water rates is to pay for the 2009 Consent Order, decades passed where upgrades were not done, these upgrades are no longer an option but set from the Department of Health, is hoping shared costs moving forward will help lessen the burden and this is not something the is taken lightly.

Public Hearing closed at 5:22 PM

Nicole Joiner, City Clerk

**COMMON COUNCIL PROCEEDINGS
November 17, 2015**

The meeting was called to order at 5:30 PM by Councilman-at-large Rosas followed by the Pledge of Allegiance.

Present: Councilmen Rivera, Gonzalez, Councilwoman Szukala and Councilman-at-large Rosas.

Also present: Mayor Dolce, City Attorney Szot, City Treasurer Woods, Fiscal Affairs Officer Halas, Public Works Director Gugino, Clerk, Building Inspector Zurawski, Board of Assessors Mleczko, Fire Captain Katta, CDBG Administrator Gawronski, Youth and Recreation Coordinator Gornikiewicz and Police Chief Ortolano.

Excused: Councilman Michalski, Fire Chief Edwards and Personnel Administrator Heyden.

Councilman-at-large Rosas advised that there was a typo on page 212 of the November 2nd Common Council Minutes. The phrase "one individual" should be changed to "Mark Riedesel".

Certification of Monday, November 2, 2015 meeting and Thursday, November 12, 2015 Public Hearing was read by City Clerk Joiner.

RESOLVED: That the reading of the minutes of Monday, November 2, 2015 and the Public Hearing of Thursday, November 12, 2015 be dispensed with.

Motion by Councilman Gonzalez to accept the minutes as presented. Seconded by Councilman Rivera.

Carried, all voting aye.

PUBLIC COMMENTS:

Don Williams, 106 Webster Street, inquired as to the status of curbside collection for recyclables.

Public Works Director Gugino advised that after the fire last week at the previous storage facility, he was sent a letter from the Fire Chief and the Building Inspector stating it is no longer usable. He explained that recyclables are currently being deposited at the transfer station while he is in active negotiations to establish an alternate site.

Greg Sek, 14 Armadillo Street, inquired if all of the work has been complete at the Colburn Block as there are a few dangerous areas around it.

Building Inspector Zurawski advised that this is still in process and that the dangerous section of the building is currently fenced off.

COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:

Mayor Dolce advised that there is a DLDC Meeting tomorrow at 11:00 AM which will have a presentation from the Chautauqua County Health Network followed by an Economic Development Meeting that will discuss a possible tenant for the Boardwalk

Mayor Dolce thanked everyone for their work in getting the Water District to where it will be presented tonight as it has been a long four years to get to this point.

COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:

No Communications from the Public or Petitions.

REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS:

Councilman Rivera congratulated everyone for their work with the Water District.

Councilman Gonzalez inquired to Public Works Director Gugino for an answer in regards to leaf pick-up around the Washington Park area and inquired to City Treasurer Woods for his opinion on the Water Agency that would be voted on later.

Public Works Director Gugino advised that he had returned Councilman Gonzalez's voicemail and the Streets Department should be in his area tomorrow morning.

City Treasurer Woods advised that he has made his opinions known and very clear over the past year, believes many items are not in the best interest of the City and that the uniqueness of the City's current rate schedule which helps attract/accommodate industry would be changed with the Water District.

Councilwoman Szukala advised that there will be a Public Hearing on the Mayor's 2016 Budget as amended by the Common Council on Tuesday, December 1st at 5:15 PM in the Mayor's Conference Room.

Councilwoman Szukala inquired to Public Works Director Gugino for an update on the loose leaf collection and to Mayor Dolce for an update on the overspending with the Seawall.

Public Works Director Gugino advised that crews worked until dark today in the 2nd Ward and will be heading east tomorrow.

Mayor Dolce advised that he has not heard from the Engineers to schedule a meeting.

Councilman-at-large Rosas inquired to Mayor Dolce for an update on the Consent Order Work and if he has had any progress with Union negotiations.

Mayor Dolce advised that he will be sending Paul Snyder a letter as he was on a conference call about a week ago going over information, has been in ongoing discussions with 2 of the 3 Unions and has a meeting scheduled with the 3rd.

Councilman-at-large Rosas asked Fiscal Affairs Officer Halas for an update on Troy & Banks.

Discussion was held between Mayor Dolce, City Attorney Szot, Fiscal Affairs Officer Halas and Council.

Councilwoman Szukala suggested City Attorney Szot and Fiscal Affairs Director Halas meet to figure out how to move forward.

UNFINISHED BUSINESS:

RESOLUTION #77-2015
NOVEMBER 2, 2015

BY: THE ENTIRE COUNCIL

LOCAL LAW #3-2015
CITY OF DUNKIRK, NEW YORK

**A LOCAL LAW TO AMEND THE DUNKIRK CITY CODE, CHAPTER 31, ARTICLE III,
SECTION 31-19 ENTITLED "RATE STRUCTURE"**

BE IT ENACTED by the City Council of the City of Dunkirk, New York, as follows:

Section 1 Intent.

It is the intent of this Local Law to amend Dunkirk City Code Chapter 31, Article III, Section 31-19 "Rate Structure", to amend the Quarterly and Monthly Water Rates, in order to generate additional required income necessary to retire the capital debt incurred as a result of the construction and improvements necessitated by compliance with certain regulatory agency mandates arising out of a Consent Order (October 2009) between the City of Dunkirk and the Chautauqua County Department of Health.

Section 2 Amendment of City Code.

Dunkirk City Code Chapter 31, Article III, Section 31-19 is hereby amended as follows:

ARTICLE III

**Water Rate Schedule
[Adopted 6-18-1992 as L.L. #6-1992]**

§ 31-19. Rate structure. [Amended 10-27-1993 as L.L. #11 (Intro No.15) 1993; Amended 6-6-1995 as L.L. #16-1995; Amended 10-28-1996 as L.L. #17 (Intro No. 17) 1996; Amended 12-3-2002 as L.L. #4-2002; Amended 12-12-2006 as L.L. #12-2006; Amended 12-14-2009 as L.L. #3 (Intro No. 4) 2009; Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012; Amended 12-16-2014 as L.L. #3 (Intro No. 1) 2014; Amended _____ as L.L. #3 (Intro No. 3) 2015]

The following constitutes the rate structure for water services provided by the City of Dunkirk.

DELETE

EFFECTIVE JANUARY 1, 2015

FOR ACCOUNTS BILLED QUARTERLY (fully-reflected in the three-month billing cycle ending March 31, 2015: [Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012; Amended 12-16-2014 as L.L. #3 (Intro No. 1) 2014]

QUARTERLY

	<u>CITY RATE</u>	<u>SUBURBAN RATE</u>
Minimum up to 5,000 gallons	\$57.00	\$99.75
Next 15,000 gallons	\$ 3.14 per 1,000 gal.	\$ 5.50 per 1,000 gal.
Next 23,980,000 gallons	\$ 2.44 per 1,000 gal.	\$ 4.27 per 1,000 gal.
All over 24,000,000 gallons	\$ 1.27 per 1,000 gal.	\$ 2.22 per 1,000 gal.

METER RATES [Amended 12-3-2002 as L.L. #4-2002]

1"	\$ 25.00	\$ 43.75
1.5"	\$ 60.00	\$ 105.00

2"	\$ 125.00	\$ 218.75
3"	\$ 250.00	\$ 437.50
4"	\$ 375.00	\$ 656.25
6"	\$ 437.50	\$ 765.63
8"	\$ 500.00	\$ 875.00
10"	\$ 562.50	\$ 984.38

MAXIMUM METER CHARGE PER CUSTOMER	\$1,800.00	\$3,150.00
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FOR ACCOUNTS BILLED MONTHLY (fully-reflected in the one-month billing cycle ending January 31, 2015): [Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012; Amended 12-16-2014 as L.L. #3 (Intro No. 1) 2014]

MONTHLY

	<u>CITY RATE</u>	<u>SUBURBAN RATE</u>
Minimum up to 2,000 gallons	\$19.00	\$33.25
Next 5,000 gallons	\$ 3.14 per 1,000 gal.	\$ 5.50 per 1,000 gal.
Next 7,993,000 gallons	\$ 2.44 per 1,000 gal.	\$ 4.27 per 1,000 gal.
All over 8,000,000 gallons	\$ 1.27 per 1,000 gal.	\$ 2.22 per 1,000 gal.

METER RATES [Amended 12-3-2002 as L.L. #4-2002]

1"	\$ 25.00	\$ 43.75
1.5"	\$ 60.00	\$ 105.00
2"	\$ 125.00	\$ 218.75
3"	\$ 250.00	\$ 437.50
4"	\$ 375.00	\$ 656.25
6"	\$ 437.50	\$ 765.63
8"	\$ 500.00	\$ 875.00
10"	\$ 562.50	\$ 984.38

ADD

EFFECTIVE JANUARY 1, 2016

FOR ACCOUNTS BILLED QUARTERLY (fully-reflected in the three-month billing cycle ending March 31, 2016): [Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012; Amended 12-16-2014 as L.L. #3 (Intro No. 1) 2014; Amended _____ as L.L. #3 (Intro No. 1) 2015]

QUARTERLY

	<u>CITY RATE</u>	<u>SUBURBAN RATE</u>
Minimum up to 5,000 gallons	\$60.00	\$105.00

Next 15,000 gallons	\$ 3.30 per 1,000 gal.	\$ 5.78 per 1,000 gal.
Next 23,980,000 gallons	\$ 2.57 per 1,000 gal.	\$ 4.50 per 1,000 gal.
All over 24,000,000 gallons	\$ 1.34 per 1,000 gal.	\$ 2.35 per 1,000 gal.

METER RATES [Amended 12-3-2002 as L.L. #4-2002]

1"	\$ 25.00	\$ 43.75
1.5"	\$ 60.00	\$ 105.00
2"	\$ 125.00	\$ 218.75
3"	\$ 250.00	\$ 437.50
4"	\$ 375.00	\$ 656.25
6"	\$ 437.50	\$ 765.63
8"	\$ 500.00	\$ 875.00
10"	\$ 562.50	\$ 984.38

**MAXIMUM METER CHARGE
PER CUSTOMER**

\$1,800.00	\$3,150.00
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FOR ACCOUNTS BILLED MONTHLY (fully-reflected in the one-month billing cycle ending January 31, 2016): **[Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012; Amended 12-16-2014 as L.L. #3 (Intro No. 1) 2014; Amended _____ as L.L. #3 (Intro No. 1) 2015]**

MONTHLY**CITY RATE****SUBURBAN RATE**

Minimum up to 2,000 gallons	\$20.00	\$35.00
Next 5,000 gallons	\$ 3.30 per 1,000 gal.	\$ 5.78 per 1,000 gal.
Next 7,993,000 gallons	\$ 2.57 per 1,000 gal.	\$ 4.50 per 1,000 gal.
All over 8,000,000 gallons	\$ 1.34 per 1,000 gal.	\$ 2.35 per 1,000 gal.

METER RATES [Amended 12-3-2002 as L.L. #4-2002]

1"	\$ 25.00	\$ 43.75
1.5"	\$ 60.00	\$ 105.00
2"	\$ 125.00	\$ 218.75
3"	\$ 250.00	\$ 437.50
4"	\$ 375.00	\$ 656.25
6"	\$ 437.50	\$ 765.63
8"	\$ 500.00	\$ 875.00
10"	\$ 562.50	\$ 984.38

**MAXIMUM METER CHARGE
PER CUSTOMER**

\$ 600.00	\$1,050.00
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Section 3 Effective Date.

This Local Law shall take effect immediately upon filing with the Secretary of State.

Councilwoman Szukala made a motion to remove Resolution #77-2015 from the table. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Councilman-at-large Rosas asked City Treasurer Woods if this rate increase is enough to cover the Consent Order upgrades needed.

City Treasurer Woods advised that this increase is to cover the principal and interest payments on work already completed and another increase would be needed to complete the Consent Order work.

Vote on Local Law #3-2015:

Carried, all voting aye.

PRE-FILED RESOLUTIONS:

RESOLUTION #78-2015
NOVEMBER 17, 2015

BY: COUNCILMAN MICHALSKI

**AUTHORIZING LEASE AGREEMENT WITH
CHAUTAUQUA COUNTY FAIR ASSOCIATION**

WHEREAS, the CHAUTAUQUA COUNTY FAIR ASSOCIATION (the "Fair Association") is the owner of certain premises commonly known as the Chautauqua County Fair Association Agricultural and Commerce Building (the "Premises"), formerly known as the Roll Arena, which is located on the Fair Association's property on Central Avenue, Dunkirk, NY, at the Chautauqua County Fairgrounds; and

WHEREAS, the City wishes to lease the Premises from the Fair Association in order to utilize it for recreational programs and activities; and

WHEREAS, the Fair Association is ready, willing and able to lease the Premises to the City for such uses; now, therefore, be it

RESOLVED, that the Mayor be and hereby is authorized to execute a Lease Agreement with the Chautauqua County Fairgrounds Association, Central Avenue, Dunkirk, NY 14048, to lease the Roll Arena building at the Fairgrounds from December 15, 2015 through April 15, 2016, at a cost of Two Hundred Dollars and Zero Cents (\$200.00) per month, plus the cost of the ordinary and customary utilities for such building (e.g., natural gas, electricity, etc.); and, be it finally

RESOLVED, that the funds for such payments be made from

Rent:

Divided between Account No. 001-7140-4150 and Account No. 001-7310-4150

Electric:

Divided between Account No. 001-7140-4013 and Account No. 001-7310-4013

Gas:

Divided between Account No. 001-7140-4014 and Account No. 001-7310-4014

Carried, all voting aye.

RESOLUTION #79-2015
NOVEMBER 17, 2015

BY: COUNCILMAN MICHALSKI

AUTHORIZING BUDGET LINE MODIFICATIONS
(Youth & Recreation)

WHEREAS, there is a need to make timely adjustments to the 2015 Fiscal Year to address modifications in certain line items for the purchase of two (2) basketball hoops and two (2) indoor soccer nets for youth basketball and soccer leagues; now, therefore, be it

RESOLVED, that the Fiscal Affairs Officer is hereby authorized and directed to make the following line item budget modifications to properly reflect needed modifications in certain line items, in the Fiscal Year 2015 budget:

FUND 1 - GENERAL FUND

<u>Account No.</u>	<u>Line</u>	<u>Change</u>
001.0001.2770.7701	Misc Reimbursement	(\$1,090.61)
001.7140.4003	Supplies & Maintenance	\$1,091.61

Councilwoman Szukala inquired to Youth and Recreation Coordinator Gornikiewicz as to where the basketball hoops would be located.

Youth and Recreation Coordinator Gornikiewicz advised that the basketball hoops are going to be moved around as they are portable.

Carried, all voting aye.

RESOLUTION #80-2015
NOVEMBER 17, 2015

BY: THE ENTIRE COUNCIL

AUTHORIZING SHARED SERVICES AGREEMENT EXTENSION
(POLICE SERVICES – TOWN OF DUNKIRK)

WHEREAS, the City of Dunkirk (City), by Resolution No. 68-2012 (August 6, 2012), and the Town of Dunkirk (Town), entered into a shared services

agreement for certain police services, which was extended through December 31, 2015; and

WHEREAS, the City and Town desire to extend the mutually-beneficial agreement for calendar year 2016; now, therefore, be it

RESOLVED, that the Mayor is hereby authorized and directed to execute any and all documents necessary for a shared services agreement with the Town of Dunkirk, for police services, from January 1, 2016 through December 31, 2016, at a cost of One Thousand Seven Hundred Fifty Dollars and Zero Cents (\$1,750.00) per month for January, 2016 through December, 2016, with the City providing not less than twelve (12) hours per week of patrol in the Town.

Councilman Rivera inquired to Police Chief Ortolano for an update on how the shared services is going and advised that he would like to see this Agreement continue.

Police Chief Ortolano advised that he meets monthly with the Town Supervisor who is happy for the service provided and would like to see this develop further.

Carried, all voting aye.

RESOLUTION #81-2015
NOVEMBER 17, 2015

BY: THE ENTIRE COUNCIL

AUTHORIZE AGREEMENT FOR NORTH COUNTY WATER DISTRICT

WHEREAS, the Dunkirk Common Council, by Resolution No. 50-2013 (July 16, 2013), re-affirmed the City's support for regionalism, including the possible economic benefits of a regional Northern County water system, and supported the County of Chautauqua in seeking grant opportunities in order to explore the economic benefits of a regional water system to the ratepayers of the City; and

WHEREAS, a proposal has been made for a North County Water District ("District") with the City of Dunkirk being the primary supplier of water to such District, for subsequent re-distribution to various North County municipalities; and

WHEREAS, it is in the best interests of the taxpayers and rate-payers of the City for the City to enter into a long-term agreement with the to-be-formed North County Water District for the provision of water; now, therefore, be it

RESOLVED, that the Mayor is hereby authorized to enter into and to execute an Agreement, for the sale of water to the to-be-formed North County Water District, upon the terms and conditions of the Water Purchase/Supply Agreement provided to the City on Friday, October 30, 2015, and attached hereto and made a part hereof.

Water Purchase/Supply Agreement

THIS AGREEMENT is made this day of , 2015 by and among **County of Chautauqua**, on behalf of a county water district to be formed under County Law Article 5-A entitled *North Chautauqua County Water District*, Gerace Office Building, Mayville, New York 14757 (hereinafter referred to as *District*), the **City of Dunkirk**, 342 Central Avenue, Dunkirk, New York 14048 (hereinafter referred to as *City and Supplier*), the **Town of Portland**, 87 Main Street, Brocton, New York 14716 (hereinafter referred to as *Portland*), the **Village of Brocton**, 34 Main Street, P.O. Box B, Brocton, New York (hereinafter referred to as *Brocton*), the **Town of Pomfret**, 9 Day Street, Fredonia, New York 14063 (hereinafter referred to as *Pomfret*), the **Town of Dunkirk**, 4737 Willow Road, Dunkirk, New York 14048 (hereinafter referred to as *Dunkirk Town*), the **Town of Sheridan**, 2773 Route 20, P.O. Box 116, Sheridan, New York 14135 (hereinafter referred to as *Sheridan*), and **North County Industrial Water District No. 1**, a county water district organized and existing under County Law Article 5-A, Gerace Office Building, Mayville, New York 14757 (hereinafter referred to as *Industrial District*) [Portland, Brocton, Pomfret, Dunkirk Town, Sheridan and Industrial District are hereinafter referred to as *Purchasers*]

WITNESSETH:

Whereas, Clark Patterson Lee, engineers licensed by the State of New York, have prepared a Map and Plan dated May, 2015 entitled Northern Chautauqua County Regional Water Supply System (hereinafter referred to as *Map and Plan*) toward the formation of the District, and

Whereas, the purposes for which the District would be formed can be achieved only through the agreement of all the parties to this instrument, and

Whereas, the proposed boundaries of the District include the northeast portion of Sheridan, the Town of Hanover and the Villages of Silver Creek and Forestville which are anticipated to receive service through the District after the expiration of existing agreements with the Erie County Water Authority (hereinafter referred to as *ECWA*), and the construction of additional facilities by the District, and

Whereas, the proposed boundaries of the District include portions of Pomfret which currently receive water from the Village of Fredonia (hereinafter referred to as *Fredonia*) which are anticipated to receive water through the District after the conclusion of negotiations with Fredonia, and

Whereas, all costs of the District will be paid by receipts of the District under this agreement, and

Whereas, the provision of water under this agreement is contingent upon the completion of the formation of the District and the construction of facilities described in the Map and Plan,

NOW THEREFORE, the parties hereto agree as follows:

1. **PURCHASE OF WATER BY THE DISTRICT:** The District agrees to purchase from the Supplier and the Supplier agrees to sell to the District all water distributed by the Purchasers except the water distributed in the northeast part of Sheridan currently received from the ECWA and except the water distributed in Pomfret currently received from Fredonia. The City will be the only supplier of water to the District.

2. **SALE OF WATER BY THE DISTRICT:** The Purchasers agree to purchase and the District agrees to sell all water distributed by the Purchasers except water sold and distributed in Sheridan, Pomfret and Dunkirk under contracts with Fredonia and ECWA.

3. **PRICE OF WATER PURCHASED BY THE DISTRICT:** The District shall pay the Supplier for water received from the Supplier Three and 57/100 Dollars (\$3.57) per One Thousand (1,000) gallons (hereinafter referred to as *Year 1 Rate*) delivered during each calendar quarter within Thirty (30) days after the end of each quarter *provided, however*, that such rate shall be adjusted as set forth in paragraph 4 of this agreement. The District recognizes that the City and Fredonia have agreements with respect to the transfer of water between them and the payment therefor; this agreement has no effect with respect to such agreements.

4. **ANNUAL RATE ADJUSTMENT:** The Rate set forth in paragraph 3 of this agreement shall be adjusted annually for percentage changes in average City cost per thousand gallons of water output, averaged over the prior three years (once three years of District operation data are available). For example, if the average City cost per thousand gallons of water output increased by 2.20%, 3.50% and 2.70% in three succeeding years, the Rate would increase in the following year by 2.80% (the prior three-year average). The Rate adjustment is based on three-year averages (once three years of measurements are available) to foster greater stability in rates since water output volumes (and thus average City cost per thousand gallons because of large fixed costs) regularly vary year-to-year as consumer demand responds to weather and other factors.

Only after each of the first three years of operation, will the Rate adjustment vary from the above general rule for two reasons: 1) three years of operation data to calculate a prior three-year average will not be available until after Year 3, and 2) since the Year 1 Rate set forth in paragraph 3 of this agreement represents calculations that depend on estimates of water usage and distribution losses for Dunkirk Town and the additional treatment cost based on projected water usage for current Brocton-served customers (the area to be newly serviced by City water), the difference between the actual measurements with new master meters and the estimates used to generate the Year 1 Rate of \$3.57 per thousand gallons will be used for a Water Share Adjustment after each of the first three years to account for greater or less District water share volume than estimated.

The details of these adjustments with examples follows:

In general, the average cost of water output in any year equals the total cost divided by the total volume of water output. Herein, an annual Total Cost Adjustment Factor will be calculated to represent the annual percentage change in total costs and an annual Volume Adjustment Factor will be calculated equal to the annual percentage change in total water volume output. Dividing the Total Cost Adjustment Factor by the Volume Adjustment Factor for any year yields the Average Cost Adjustment Factor for that year which represents the annual percentage change in the average City cost per thousand gallons of water output.

The annual Total Cost Adjustment Factor will be based on the percentage change between the total of the following three elements of City water budget actual expenditures (hereinafter referred to as Core Cost Elements) as compared to the amount which was used as part of computing the Year 1 Rate set forth in paragraph 3 of this agreement. Appendix A details the budget lines from the City water department budget that comprise the three elements: 1) Water Purification and Laboratory, 2) Employee Benefits and 3) Capital Investment Interest and Amortization.

As part of the Year 1 Rate calculation, the estimated additional cost of treating water to supply current Brocton-served customers was added to the average annual City expenditures for the 2013 and 2014 fiscal years (the two most recent fiscal years) for Water Purification and Laboratory to establish a baseline for the first element. Similarly, average annual City expenditures on Employee Benefits for 2013 and 2014 fiscal years form the baseline for the second element. The baseline for the third element was estimated as the projected capital investment debt payment once all Department of Health consent order investments are completed and bond financed. See Appendix A for calculation details for the baseline and later years of each Core Cost Element.

<u>Core Cost Element</u>	<u>Baseline</u>
Water Purification and Laboratory	\$ 1,270,729.20
Employee Benefits	\$ 536,999.29
Capital Investment Interest and Amortization	\$ <u>948,958.22</u>
Total	\$ 2,756,686.71

The parties recognize that these elements represent less than all of the costs being shared. They represent a major portion of the costs, exclude discretionary elements and are a reliable basis for adjusting the Rate, which does include all costs being shared, using a percentage calculation.

The annual Volume Adjustment Factor will be based on the percentage change in City treatment plant total annual output (total metered water into distribution system at treatment plant serving all City customers including the District). The 2013-2014 average of reported annual treatment plant output is 1,040,368 thousand gallons per year and serving Brocton customers is projected to add an average of 113,150 thousand gallons per year (see also Appendix A).

The City shall notify the District of the actual expenditure amount for the three elements above and the total treatment plant annual output by January 31 of the succeeding year, revise the Rate and employ the revised Rate in quarterly billings to the District for such succeeding year as follows (with mathematical formulas of below verbal descriptions provided in Appendix B).

- a) Calculate the annual Average Cost Adjustment Factor in any year as follows:
 - i) Determine the annual Total Cost Adjustment Factor to four significant digits by dividing the just completed fiscal year Core Cost Elements by the prior fiscal year Core Cost Elements. For example, if Core Cost Elements in just completed fiscal year are \$2,800,000 and the Core Cost Elements of the prior fiscal year are \$2,700,000, then the annual Total Cost Adjustment Factor is 1.0370 (= \$2,800,000/\$2,700,000) or just completed fiscal year costs are 103.70% of prior fiscal year costs (i.e. a 3.70% increase). After completion of fiscal Year 1 only, use the baseline total of Core Cost Elements \$2,756,686.71

for the prior fiscal year in the above calculation.

- ii) Determine the annual Volume Adjustment Factor to four significant digits by dividing the just completed fiscal year City treatment plant total annual output by the prior fiscal year City treatment plant total annual output. For example, if City treatment plant output is 1,060,000 thousand gallons in just completed fiscal year and 1,070,000 thousand gallons in the prior fiscal year, then the annual Volume Adjustment Factor is 0.9907 ($= 1,060,000/1,070,000$) or just completed fiscal year output volume is 99.07% of prior fiscal year output volume (i.e. a 0.93% decrease in volume). After completion of fiscal Year 1 only, use the baseline total for treatment plant output with Brocton-served customers of 1,153,518 thousand gallons per year for the prior fiscal year in the above calculation.
 - iii) Determine the annual Average Cost Adjustment Factor to four significant digits by dividing the annual Total Cost Adjustment Factor by the annual Volume Adjustment Factor. For example, if the annual Total Cost Adjustment Factor is 1.0370 and the annual Volume Adjustment Factor is 0.9907, then the annual Average Cost Adjustment Factor is 1.0467 ($= 1.0370/0.9907$) or just completed fiscal year average cost of water output is 104.67% of prior fiscal year average cost of water output (i.e. a 4.67% increase).
- b) Determine the Rate for the subsequent year to the nearest whole cent.
- i) For the Rate calculation after Year 4 until the end of the agreement, the Rate for each subsequent year equals the Rate for the prior year times the three-year average of the three most recent annual Average Cost Adjustment Factors. For example, if the prior year Rate is \$3.60 per thousand gallons and the just completed fiscal year annual Average Cost Adjustment Factor is 1.0467 with the prior two years annual Average Cost Adjustment Factors being 1.0344 and 1.0265, then 1.0359 ($= [1.0467 + 1.0344 + 1.0265]/3$) is the three-year average of the three most recent annual Average Cost Adjustment Factors. Therefore, the subsequent year Rate will be \$3.73 per thousand gallons ($= \$3.60 \times 1.0359$).
 - ii) After Year 1, with only the Year 1 Average Cost Adjustment Factor calculated, the Rate for Year 2 will be $(\$3.57 + \text{Year 1 Share Adjustment Rate})$ times the Year 1 Average Cost Adjustment Factor (with the Year 1 Share Adjustment Rate defined in paragraph 4(c)(i)). For example, if the Year 1 Share Adjustment Rate is +\$0.04 and the Year 1 Average Cost Adjustment Factor is 1.0352, then the Year 2 Rate will be \$3.74 per 1000 gallons $= (\$3.57 + \$0.04) \times 1.0352$.
 - iii) After Year 2, Year 1 and 2 Average Cost Adjustment Factors are available, the Rate for Year 3 will be $(\$3.57 + \text{Year 2 Share Adjustment Rate})$ times the Year 1 Average Cost Adjustment Factor times the Year 2 Average Cost Adjustment Factor (with the Year 2 Share Adjustment Rate defined in paragraph 4(c)(ii)). For example, if the Year 2 Share Adjustment Rate is -\$0.05 and the Year 2

Average Cost Adjustment Factor is 1.0198 with the Year 1 Average Cost Adjustment Factor of 1.0352 above, then the Year 3 Rate will be \$3.72 per 1000 gallons = $(\$3.57 - \$0.05) \times 1.0352 \times 1.0198$.

iv) After Year 3, Year 1 through Year 3 Average Cost Adjustment Factors are available, the Rate for Year 4 will be $(\$3.57 + \text{Year 3 Share Adjustment Rate})$ times the Year 1 Average Cost Adjustment Factor times the Year 2 Average Cost Adjustment Factors times the average of the Year 1 through 3 Average Cost Adjustment Factors (with the Year 3 Share Adjustment Rate defined in paragraph 4(c)(iii)). For example, if the Year 3 Share Adjustment Rate is +\$0.02 and the Year 3 Average Cost Adjustment Factor is 1.0288 with the Year 1 and 2 Average Cost Adjustment Factors of 1.0352 and 1.0198 above, then the Year 3 Rate will be \$3.90 per 1000 gallons = $(\$3.57 + \$0.02) \times 1.0352 \times 1.0198 \times 1.0279$ with 1.0279 being the three-year average of the annual Average Cost Adjustment Factors.

c) Share Adjustment Rate: The Year 1 Rate set forth in paragraph 3 of this agreement represents calculations that depend on estimates of water usage and distribution losses for Dunkirk Town and the additional treatment cost based on projected water usage for current Brocton-served customers, the area to be newly serviced by City water. Under District operation master meters will measure water usage (prior to local distribution losses) for Dunkirk Town. Water usage will also be measured by the District for current Brocton-served areas. The difference between the actual measurements and the estimates used to generate the Year 1 Rate of \$3.57 per thousand gallons will be used to calculate the Share Adjustment Rates for Years 1 through 3 as follows to account for greater or less District volume than estimated. Since total volume regularly varies from year to year as consumer demand responds to weather and other factors, these adjustments will be based on the proportion of District water usage expressed as a percent of the total water output by the City treatment plant (total metered water into distribution system at treatment plant serving all City customers including the District) and be averaged over multiple years as measurements become available over the first three years of District operations to reduce the effects of annual variations. Greater (less) District volume generates both more (less) City revenues and more (less) City treatment costs. These adjustments take into account both the average revenue and treatment cost effects arising when the measured District water usage proportion differs from pre-agreement estimates (that depend on estimates for both Dunkirk Town and current Brocton-served water usage).

Projected District water usage is 23.54% of City treatment plant total annual output (total metered water into distribution system at treatment plant serving all City customers including the District - see Appendix A). This will be the common comparison point for the Share Adjustment Rate of \$0.06 per thousand gallons for each 1.00% that the average measured District water usage percent differs from this comparison point for the first three years of the agreement. The Share Adjustment Rate is then escalated along with the Year 1 Rate of \$3.57 per thousand gallons in paragraphs 4(b)(ii-iv).

Determine the District water usage percent to two significant digits by dividing District water usage by City treatment plant total annual output with averaging as additional annual measurements become available. If District water usage percent in Year 1, 2 or 3 is less than 23.54%, then for each 1.00% less than 23.54%, Share Adjustment Rate for that year is positive \$0.06 per thousand gallons calculated to nearest cent. If District water usage percent in Year 1, 2 or 3 is greater than 23.54%, then for each 1.00% greater than 23.54%, Share Adjustment Rate for that year is negative \$0.06 per thousand gallons calculated to nearest cent. Details and examples for Years 1 through 3 follow:

- i) After Year 1, divide District water usage in Year 1 by City treatment plant total annual output in Year 1. For example, if annual District water usage is 275,000 thousand gallons out of 1,200,000 thousand gallons output by the City in Year 1, then Year 1 District water usage percent is 22.92% ($= 275,000/1,200,000$). Therefore, Year 1 Share Adjustment Rate = \$0.04 per 1000 gallons = $(23.54 - 22.92) \times \$0.06$.
- ii) After Year 2, divide the average of District water usage in Years 1 and 2 by the average of City output in Years 1 and 2. For example, if annual District water usage is 285,000 thousand gallons and City output is 1,100,000 thousand gallons in Year 2, with Year 1 volumes above, then Year 2 District water usage percent is 24.35% ($= \text{average Year 1 and 2 water usage of } 280,000 / \text{average Year 1 and 2 output of } 1,150,000$). Therefore, Year 2 Share Adjustment Rate = $-\$0.05$ per 1000 gallons = $(23.54 - 24.35) \times \$0.06$.
- iii) After Year 3, divide the average of District water usage in Years 1, 2 and 3 by the average of City output in Years 1, 2 and 3. For example, if the result of this calculation is 23.21%, then the Year 3 Share Adjustment Rate = $+\$0.02$ per 1000 gallons = $(23.54 - 23.21) \times \$0.06$.

The District and the City shall meet on the second Tuesday of February of such succeeding year at 10:00 o'clock a.m. at the Dunkirk City Hall or at such other time and place as the parties may agree to review sources of changing costs and water volumes to assure transparency of operation between the District and the City. Although the parties recognize that all such sources are public information subject to disclosure under the Freedom of Information Act, the City affirmatively agrees to be fully forthcoming regarding all raw data, computations concerning it, and compilation of information relating thereto without assertion of privilege or exception from disclosure to simplify and expedite such review.

5. PRICE OF WATER SOLD BY THE DISTRICT: Each of the Purchasers shall pay the District for water purchased by such Purchaser during each calendar quarter within Thirty (30) days after the end of each quarter at a rate per 1000 gallons which is the sum of the following elements (A) the rate per 1000 gallons payable by the District for water purchased under paragraph 3 of the agreement adjusted in accordance with paragraphs 4 and 5 of this agreement and (B) the rate per 1000 gallons determined by dividing the annual expenses of the District reasonably estimated by the District for all matters including but not limited to interest, amortization, repairs, operation, maintenance, reserves and professional and administration expenses by the annual amount of water to be sold by the District reasonably estimated by the District to all Purchasers for such year. The District shall provide each of the Purchasers with notice in August of each year of the reasonably estimated rate for

water delivered during the succeeding calendar year. Any excess or deficiency of actual revenue compared to estimated revenue shall be applied in future computations. All revenue received by the District shall be applied to the expenses of the District.

6. IMPLEMENTATION OF PROJECT DESCRIBED IN MAP AND PLAN: The parties hereto assign, transfer and convey to the District facilities and related property rights required to implement the project described in the Map and Plan at such time and manner as required therefor. Appendix C sets forth some, but not all, of the facilities and property rights identified by the owners of such property (a) to be transferred to the District and (b) not to be transferred to the District. Otherwise, the Supplier and the Purchasers shall continue to administer, operate, maintain, repair and replace their respective water treatment and distribution systems. Purchasers agree to enact restrictions on connections by newly developed uses upon properties in agricultural districts which may connect directly to District lines as required by the Agricultural and Markets Law of the State of New York. Purchasers providing service by direct connection to lines built by the District shall form local water districts in connection with the provision of such service or shall have in place equivalent legal structures for the administration of such service and the protection of the lines of the District before permitting individual connections to the lines of the District. Brocton shall shutter its water treatment plant upon the commencement of operations under paragraph 10 of this agreement.

7. MEASUREMENT OF WATER PURCHASED AND SOLD BY THE DISTRICT: The District shall operate, maintain, repair and replace water meters at points of interconnection between the Supplier and Purchasers to accurately measure water conveyed for the administration of this agreement and shall install such meters where they do not currently exist *provided, however* that the readings of individual property water meters can be used where the interconnection serves three or less properties and the line between the point of intersection and individual meters is sound. Each party to this agreement shall have full access to facilities and properties pertinent to the measurement of water in connection with the agreement. Appendix D sets forth a listing by the City of some, but not all, of the existing points of interconnection stating particulars regarding the lines and meters in place and to be installed; the ultimate configuration of points of interconnection may be modified by the District consistent with the requirements set forth in this paragraph.

8. SUPERSEDING AUTHORITY: This agreement and all actions and operations performed pursuant to the terms hereof are subject to all Federal and New York State statutes, rules, regulations, mandates, directives and orders concerning the transportation, treatment and consumption of water including but not limited to financing the construction, operation and maintenance thereof, and provisions relating to water quality and conservation, now in effect, or hereafter adopted. This agreement and the actions and operations performed pursuant to its terms shall be modified from time to time as required in order to conform at all times with all Federal and New York State requirements.

9. EXISTING AGREEMENTS SUPERSEDED: Existing agreements between and among the Supplier and the Purchasers are superseded to the extent required to implement this agreement. If provisions superseded are integrated with functions not superseded (e.g. the performance by the Supplier of billing or distribution system maintenance as part of the cost of supply of water), the affected parties agree to negotiate in good faith a contract for the separate performance of such function. Anything herein to the contrary notwithstanding, this agreement shall not prevent (1) the continuation of water service within the District from Fredonia and ECWA distribution systems in areas with existing distribution lines for all uses and (2) the extension of such distribution lines for residential and commercial (but not industrial) uses, and consumers currently receiving water through

the Fredonia distribution system shall receive water under this agreement only with the consent of Fredonia; contracts for such service by Fredonia and ECWA are necessarily not superseded by the first sentence of this paragraph both because Fredonia and ECWA are not parties to this agreement and because their supercession is not required to implement this agreement..

10. TERM: The delivery of water under this agreement shall commence after the completion of the construction of facilities described in the Map and Plan and notice by the District to the other parties to this agreement that it is commencing operations hereunder. This agreement shall be effective for forty (40) years after said notice of commencement (hereinafter referred to as *Primary Term*) and shall continue in force thereafter until terminated by any party to this agreement as provided herein. Any party may terminate this agreement as of any date after the Primary Term by providing notice of termination to the other parties stating a date of termination after the Primary Term at least five (5) years after the giving of such notice.

11. ADDITIONAL AREAS TO BE SERVED HEREUNDER: The District may add the Town of Hanover, the Village of Silver Creek and the Village of Forestville as parties to this agreement with respect to areas within the boundaries of the District if they subscribe to the terms of this agreement and if the cost of additional improvements constructed to distribute water to them causes the parties to this agreement to pay no more than would have been payable without the addition of such parties. The District, Sheridan (with respect to the portion of Sheridan currently receiving water from ECWA), and Pomfret (with respect to the portion of Pomfret currently receiving water from Fredonia) may add such areas to those receiving water under this agreement if the cost of additional improvements constructed to distribute water to them causes the parties to this agreement to pay no more than would have been payable without the addition of such parties.

12. NOTICES: All notices required or permitted to be given by this agreement shall be deemed to be duly given if delivered in writing personally or sent by certified mail, return receipt requested at the address for the party receiving the notice designated in this agreement or to such other addresses as may be furnished by any party to the other in writing. The date of mailing shall be deemed the date of giving such notice.

13. WAIVER: No waiver by any party of any breach of any of the covenants or conditions herein contained to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

14. SEVERABILITY OF PROVISIONS: It is not the intention of either party to violate public policy or statutory law or common law; if any sentence, paragraph, cause or combination of same of this agreement is in violation of any law, such sentences, paragraphs, clauses or combinations of same shall be inoperative and the remainder of this agreement shall be binding.

15. GOVERNING LAW: This agreement shall be governed by, and construed in accordance with the laws of the State of New York.

16. ENTIRE AGREEMENT: This agreement contains the entire agreement and understanding between the parties hereto pertaining to the subject matter of this agreement, and there are no oral representations, stipulations or understandings, relating thereto which are not fully set forth herein. No amendment, addition to, or alteration, modification or waiver of any provision of this contract shall be any force or effect unless in writing and signed by the parties to this agreement.

17. **HEADINGS:** The headings of the paragraphs of this agreement are for convenience only and do not in any way limit, amplify or otherwise affect the covenants and agreements contained in this instrument.

IN WITNESS WHEREOF, the parties have caused their duly authorized officer to execute this agreement.

County of Chautauqua

By: _____

Print Name

Print Title

Village of Brocton

By: _____

Print Name

Print Title

Town of Dunkirk

By: _____

Print Name

Print Title

North County Industrial Water
District No. 1

By: _____

Print Name

Print Title

City of Dunkirk

By: _____

Print Name

Print Title

Town of Portland

By: _____

Print Name

Print Title

Town of Pomfret

By: _____

Print Name

Print Title

Town of Sheridan

By: _____

Print Name

Print Title

Appendix A

Water Purchase/Supply Agreement

City Budget Expenditures and Treatment Plant Water Output

Two years of fiscal and water data were used in the development of the cost allocation and Rate for the District. City of Dunkirk budget expenses for operations in 2013 and 2014 were averaged for each department in the budget. Since capital investment spending of the estimated \$20 million improvements to the water system are not completed, and some of the investment that has been completed has not been bond financed long term, an estimate of the debt payment for the full \$20 million assuming 30-year financing at 3% was used rather than the incomplete investment and financing listed in the budget for 2014.

City of Dunkirk Water Budget Expenses

Dept		2013	2014	2013-2014 Average
1900	General Services	\$ 378,960.44	\$ 390,514.30	\$ 384,737.37
8310	Water Administration	\$ 60,419.88	\$ 56,799.86	\$ 58,609.87
8320	Water Purification	\$ 1,182,494.50	\$ 1,086,750.73	\$ 1,134,622.62
8330	Laboratory	\$ 70,204.44	\$ 83,530.72	\$ 76,867.58
8340	Water Distribution System	\$ 289,006.86	\$ 434,888.66	\$ 361,947.76
8350	Water Meter Division	\$ 13,417.77	\$ 14,396.84	\$ 13,907.31
9010	Municipal State Retirement	\$ 132,546.07	\$ 136,984.00	\$ 134,765.04
9030	Employer SS	\$ 69,574.48	\$ 69,090.53	\$ 69,332.51
9040	Workers Compensation	\$ 45,223.56	\$ 46,912.86	\$ 46,068.21
9045	Life Insurance	\$ 1,628.80	\$ 1,749.45	\$ 1,689.13
9055	Disability	\$ 348.04	\$ 463.00	\$ 405.52
9060	Medical	\$ 273,969.42	\$ 261,832.86	\$ 267,901.14
9089	Medical	\$ 13,731.24	\$ 19,944.24	\$ 16,837.74
9722	Meter Replacement Project	\$ 51,847.94	\$ 57,925.04	
9723	DOH Improvement Project	\$ 251,929.00	\$ 404,598.60	
9725	Water Improvement Project	\$ -	\$ -	
	Total	\$ 2,835,302.44	\$ 3,066,381.69	

Source: City of Dunkirk Budget Preparation Publication dated 12/12/14

The *Water Purification and Laboratory Core Cost Element* is the sum of expenditures for departments 8320 and 8330. The Baseline amount for the Water Purification and Laboratory Core Cost Element in the table below is calculated by adding the 2013-2014 average of departments 8320 and 8330 to the estimated additional variable cost of \$59,239.00 for treating water for current Brocton-served customers.

The *Employee Benefits Core Cost Element* is the sum of expenditures for departments 9010, 9030, 9040, 9045, 9055, 9060 and 9089. The baseline Employee Benefits Core Cost Elements in the table below is calculated using the 2013-2014 average City expenditures.

The *Capital Investment Interest and Amortization Core Cost Element* is the sum of expenditures for departments 9723, 9725 and future treatment plant investments and the share of distribution investments attributable to District transmission that occur during the term of this agreement that are required beyond the current Department of Health consent order investments, which will be bonded in either department 9723 or 9725. Department 9722 expenditures for the \$1.4 million meter replacement project was part of the consent order but is wholly distribution related (it was partially paid out of operating revenues and partially bonded). The remaining \$18.6 million of the original projected \$20 million consent order investment is estimated to consist mostly of a \$16 million investment in the treatment plant with expected \$2.6 million distribution related. Since these treatment and distribution investments will be jointly bonded in departments 9723 and 9725, the estimated debt payment of \$948,958.22 on \$18.6 million at 3% over 30 years is used as the baseline for the Capital Investment Interest and Amortization Core Cost Element in the below table, matching the bonding assumptions used to develop the Year 1 Rate.

Core Cost Element	Baseline
Water Purification and Lab	\$1,270,729.20
Employee Benefits	\$536,999.29
Capital Investment Interest and Amortization	\$948,958.22
Total Core Costs	\$2,756,686.71

City treatment plant total annual output prior to adding Brocton-served customers is also determined by the 2013-2014 average of reported annual treatment plant output of 1,040,368 thousand gallons per year.

City of Dunkirk Treatment Plant Total Annual Output

	2013	2014	2013-2014 Average
Treatment plant output (1000 gal/year)	1,035,408	1,045,328	1,040,368

Source: Output volume data from Susan Franklin via Anthony Gugino 30Jan15 email.

The breakdown of output water usage (prior to distribution losses) based on individual town data and assuming Dunkirk Town losses equal to City losses is presented in the following table.

	Water Usage (1000 gallons/year)	Share of Water Usage
City	882,018	84.78%
Non-City	158,350	15.22%
Total	1,040,368	100.00%

Adding Brocton average treatment plant output of 113,150 thousand gallons per year to current non-City water usage yields estimated District water usage and percent share of total water

usage. Total baseline City treatment plant output is 1,153,518 thousand gallons per year including supply to current Brocton-served customers.

	Water Usage (1000 gallons/year)	Share of Water Usage
City	882,018	76.46%
District	271,500	23.54%
Total	1,153,518	100.00%

Appendix B

Water Purchase/Supply Agreement

Rate Calculation Formulas

Formulas from paragraph 4(a):

- i) Determine the annual Total Cost Adjustment Factor (TCAF) to four significant digits by dividing the just completed fiscal year (hereinafter label with subscript T for Year T) Core Cost Elements (CCE) total by the prior fiscal year (hereinafter Year T - 1) Core Cost Elements total.

$$TCAF_T = \frac{CCE_T}{CCE_{T-1}}$$

After completion of fiscal Year 1 only, use the baseline total of Core Cost Elements \$2,756,686.71 (see Appendix A) for the *prior fiscal year* in the above calculation.

- ii) Determine the annual Volume Adjustment Factor (VAF) to four significant digits by dividing the just completed fiscal year City treatment plant output (TPO) by the prior fiscal year City treatment plant total annual output.

$$VAF_T = \frac{TPO_T}{TPO_{T-1}}$$

After completion of fiscal Year 1 only, use the baseline treatment plant output with current Brocton-served customers of 1,153,518 thousand gallons per year for the *prior fiscal year* in the above calculation.

- iii) Determine the annual Average Cost Adjustment Factor (ACAF) to four significant digits by dividing the annual Total Cost Adjustment Factor by the annual Volume Adjustment Factor for the just completed fiscal year.

$$ACAF_T = \frac{TCAF_T}{VAF_T}$$

Formulas from paragraph 4(b):

- i) For the Rate calculation after Year 4 until the end of the agreement, the Rate for each subsequent year equals the Rate for the just completed year times the three-year average of the three most recent annual Average Cost Adjustment Factors' (subscript "T + 1" for subsequent year, subscript "T" for just completed year, subscript "T - 1" for prior year and subscript "T - 2" for year immediately before prior year).

$$\text{Rate}_{T+1} = \text{Rate}_T \times \left(\frac{\text{ACAF}_T + \text{ACAF}_{T-1} + \text{ACAF}_{T-2}}{3} \right)$$

- ii) After Year 1, with only the Year 1 Average Cost Adjustment Factor calculated, the Rate for Year 2 (Rate₂) will be (\$3.57 + Year 1 Share Adjustment Rate) times the Year 1 Average Cost Adjustment Factor (with the Year 1 Share Adjustment Rate (SAR₁) defined in paragraph 4(c)(i)).

$$\text{Rate}_2 = (\$3.57 + \text{SAR}_1) \times \text{ACAF}_1$$

- iii) After Year 2, Year 1 and 2 Average Cost Adjustment Factors are available, the Rate for Year 3 will be (\$3.57 + Year 2 Share Adjustment Rate) times the Year 1 Average Cost Adjustment Factor times the Year 2 Average Cost Adjustment Factor (with the Year 2 Share Adjustment Rate defined in paragraph 4(c)(ii)).

$$\text{Rate}_3 = (\$3.57 + \text{SAR}_2) \times \text{ACAF}_1 \times \text{ACAF}_2$$

- iv) After Year 3, Year 1 through Year 3 Average Cost Adjustment Factors are available, the Rate for Year 4 will be (\$3.57 + Year 3 Share Adjustment Rate) times the Year 1 Average Cost Adjustment Factor times the Year 2 Average Cost Adjustment Factors times the average of the Year 1 through 3 Average Cost Adjustment Factors (with the Year 3 Share Adjustment Rate defined in paragraph 4(c)(iii)).

$$\text{Rate}_4 = (\$3.57 + \text{SAR}_3) \times \text{ACAF}_1 \times \text{ACAF}_2 \times \left(\frac{\text{ACAF}_1 + \text{ACAF}_2 + \text{ACAF}_3}{3} \right)$$

Formulas from paragraph 4(c):

Projected District water usage is 23.54% of City treatment plant output (total metered water into distribution system at treatment plant serving all City customers including the District – see Appendix A). This will be the common comparison point for the Share Adjustment Rate (SAR) of \$0.06 per thousand gallons for each 1.00% that the average measured District water usage percent differs from this comparison point for the first three years of the agreement.

Determine the District water usage percent to two significant digits by dividing District water usage (DWU) by City treatment plant output (TPO) with averaging as additional annual measurements become available. If District water usage percent in Year 1, 2 or 3 is less than 23.54%, then for each 1.00% less than 23.54%, Share Adjustment Rate for that year is positive \$0.06 per thousand gallons calculated to nearest cent. If District water usage percent in Year 1, 2 or 3 is greater than 23.54%, then for each 1.00% greater than 23.54%, Share Adjustment Rate for that year is negative \$0.06 per thousand gallons calculated to nearest cent. Details and examples for Years 1 through 3 follow:

- i) After Year 1, divide District water usage in Year 1 (DWU_1) by City treatment plant output (TPO_1) in Year 1.

$$SAR_1 = \$0.06 \times \left(23.54 - \frac{DWU_1}{TPO_1} \times 100 \right)$$

(Note: “ $\times 100$ ” in formula just converts decimal expression of District water usage percent into a whole number percent, i.e. $.2544 \times 100 = 25.44$.)

- ii) After Year 2, divide the average of District water usage in Years 1 and 2 by the average of City treatment plant output in Years 1 and 2.

$$SAR_2 = \$0.06 \times \left(23.54 - \frac{[DWU_1 + DWU_2]/2}{[TPO_1 + TPO_2]/2} \times 100 \right)$$

- iii) After Year 3, divide the average of District water usage in Years 1, 2 and 3 by the average of City treatment plant output in Years 1, 2 and 3.

$$SAR_3 = \$0.06 \times \left(23.54 - \frac{[DWU_1 + DWU_2 + DWU_3]/3}{[TPO_1 + TPO_2 + TPO_3]/3} \times 100 \right)$$

Appendix C- Infrastructure Transfer

- a) The City of Dunkirk herewith transfers to The District any and all of its ownership in and to:
- 1) all existing drinking water infrastructure located outside the now-existing boundary lines of the City of Dunkirk, except as reserved in Item (b)-2 below, and 2) all existing drinking water infrastructure located partially within the existing boundary lines of the City of Dunkirk for the specific area that is easterly of the easterly right-of-way of Stegelske Avenue southerly of the Stegelske Avenue culvert over Hyde Creek and northerly along Stegelske Avenue from the CSX Railroad, and 3) all existing drinking water infrastructure located partially within the existing boundary lines of the City of Dunkirk for the specific area that is along Greenhurst Avenue easterly of Franklin Avenue, and 4) all the specific leased telephone telemetry lines that transmit drinking water infrastructure system supervisory control and data acquisition from specific locations listed above to the City of Dunkirk water treatment plant.
- b) The City of Dunkirk hereby retains any and all ownership in and to: 1) all existing drinking water infrastructure located within the now-existing boundary lines of the City of Dunkirk, except as released in Item (a)-2 and Item (a)-3 and Item (a)-4 above listed, 2) existing electronic telemetry equipment, but not the leased lines and not the future maintenance cost of said existing electronic telemetry equipment, that provide supervisory control and data acquisition from specific locations listed in Items (a) above to the City of Dunkirk water treatment plant. The City recommends that supervisory control and data acquisition from new master meters and from all new system-wide distribution facilities be sent by District- installed telemetry to match City telemetry and have such sent to the Dunkirk water treatment plant to continue to monitor functions to benefit production and distribution.

Appendix D - Master Meter Locations and Discussion:

- 1) 8-inch drinking water line master meter with new check valve on Vineyard Drive into the Town of Dunkirk easterly of the Village of Fredonia's existing pump station from the City of Dunkirk drinking water system into the Village of Fredonia drinking water system.
- 2) 8-inch drinking water line master meter with new check valve near the City boundary at the Main Street Booster Station for the line easterly into the Town of Dunkirk.
- 3) 6-inch drinking water line master meter on New York State Route 60 southerly of the existing check valve into the Town of Dunkirk near the City boundary.
- 4) 6-inch drinking water line master meter with new check valve on Franklin Avenue northerly of Greenhurst Avenue feeding into the Town of Dunkirk.
- 5) 16-inch drinking water line two-way master meter near the City boundary on Roberts Road for the line into the Town of Dunkirk.
- 6) 8-inch drinking water line master meter for the line into the Town of Dunkirk southerly of the southerly end of Stegelske Avenue near the CSX railroad.
- 7) 12-inch drinking water line master meter for the line easterly of Stegelske Avenue toward the Town of Dunkirk.
- 8) 6-inch drinking water line master meter for the line easterly of Stegelske Avenue toward the Town of Dunkirk.
- 9) Additional drinking water master meters, and with new check valves as may be required, for other existing lines easterly of Stegelske Avenue, such as for the Town of Dunkirk's Stegelske Avenue industrial area fire protection tank and pump station.
- 10) 8-inch drinking water master meter with new check valve from East Chestnut Street to the Town of Dunkirk.
- 11) 8-inch drinking water master meter with new check valve on New York State Route 5 at the City boundary for the line easterly into the Town of Dunkirk.
- 12) 12-inch drinking water line two-way master meter on New York State Route 5 at the City boundary for the line westerly into the Town of Dunkirk.
- 13) 20-inch drinking water line with new check valve for the proposed new line on Willow Road at the City boundary westerly into the Town of Dunkirk.
- 14) Drinking water master meter(s) for line(s) southerly into the Town of Dunkirk on Brigham Road at the City boundary.
- 15) Master meter for proposed new pipe south on Roberts Road from Tenney Street.

Councilman Rivera advised this is a groundbreaking step and wished everyone good luck in the future with this Agreement.

Councilman Gonzalez advised he believes this Agreement is for the good of the City.

Councilwoman Szukala advised she is excited to move forward with this and believes this is a wonderful thing for the City.

Councilman-at-large Rosas advised Council has had long discussions in regards to this Agreement and believes this is what is best for City residents at this time.

Carried, all voting aye.

Mayor Dolce thanked everyone for their time and effort to come to this Agreement and requested that, due to the time sensitive nature of the Contract, it be signed and immediately sent to County Executive Horrigan by City Attorney Szot.

RESOLUTION #82-2015
NOVEMBER 17, 2015

BY: THE ENTIRE COUNCIL

AWARDING BID FOR DEMOLITION
(31 N. PANGOLIN STREET (79.12-1-6); 75 W. DOUGHTY STREET (79.20-8-73))

WHEREAS, the City of Dunkirk in 2014, entered into a Contract with the Chautauqua County Land Bank to demolish structures in the City; and

WHEREAS, because of the structures being structurally unsafe and unsound, pursuant to the limited parameters of 12 NYCRR 56, asbestos survey and remediation was not required to be conducted on properties located at: 31 N. Pangolin Street (79.12-1-6), and 75 W. Doughty Street (79.20-8-73), which are listed for demolition; and

WHEREAS, following published Legal Notice, sealed bids for the demolition of two (2) structures were opened and read aloud in the Dunkirk City Clerk's Office at 10:00 A.M. on November 10, 2015, with (3) three bids being received for demolition; now, therefore, be it

RESOLVED, that upon review and recommendation of the Building Inspector, the lowest responsible bid of **Metro Contracting & Environmental, Inc., 2939 Lockport Road, Niagara Falls, NY 14305-2307**, in the amount of **Forty Thousand Seven Hundred Fifty Dollars and Zero Cents (\$40,750.00)**, be and hereby is accepted for demolition of 31 N. Pangolin Street (79.12-1-6), and 75 W. Doughty Street (79.20-8-73); and, be it further

RESOLVED, that – after receiving confirmation of authority of the owners to allow access and demolition, and after the contractor provides satisfactory insurance certificates to the City Law Department, and the contractor provides performance bond and payment bonds, which are reviewed and approved, and the contractor shows compliance with the MWBE procedures – the Mayor is hereby authorized and directed to execute any and all documents, on behalf of the City of Dunkirk, with the above-named contractor for the demolition of the said structures; and, that the City Clerk is hereby

authorized to return the bid deposits of the bidders, after contract execution or non-awarded bid, in accordance with the contract specifications, and that the City Clerk shall return unaccepted and unsealed, any and all bids, received after the date and time of the published bid opening; and, be it finally

RESOLVED, that the following funds are to be utilized for such demolition:

072-8000-4000-0562 - CDBG	\$40,750.00
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Councilman Rivera congratulated everyone involved in moving this many properties in a one year period and inquired to Building Inspector Zurawski if there was a list set for next year to be demolished.

Building Inspector Zurawski advised 14 houses total will be demolished by the end of the year and that a list of houses for next year has yet to be determined.

Carried, all voting aye.

RESOLUTION #83-2015
NOVEMBER 17, 2015

BY: THE ENTIRE COUNCIL

AUTHORIZING BUDGET LINE MODIFICATIONS
For Fiscal Year 2015

WHEREAS, there is a need to make timely adjustments to the 2015 Fiscal Year to address modifications in certain line items for confirmation of New York State Grants; now, therefore, be it

RESOLVED, that the appropriate revenue and corresponding appropriation be increased by One Hundred Thirty-Seven Thousand Five Hundred Thirty-Six Dollars and Zero Cents (\$137,536.00), comprised of: the 'NYS Main St.' grant of One Hundred Twenty-Five Thousand Forty-Seven Dollars and Zero Cents (\$125,047.00), 'NYS Streetscape' Grant of Eleven Thousand Four Hundred Eighty-Nine Dollars and Zero Cents (\$11,489.00), and an 'Arbor Day' Grant of One Thousand Dollars and Zero Cents (\$1,000.00); and, be it further

RESOLVED, that the Fiscal Affairs Officer is hereby authorized and directed to make the following line item budget modifications to properly reflect needed modifications in certain line items in the Fiscal Year 2015 budget:

FUND 1 - GENERAL FUND

Account No.	Department	Line	Change
Revenue			
001.0001.2285	General Fund Revenue	NYS Grants - Other	\$ 137,536.00
Appropriation			
001.8020.4036	Development	Contracted Services	\$ 137,536.00

Carried, all voting aye.

RESOLUTION #84-2015
NOVEMBER 17, 2015

BY: THE ENTIRE COUNCIL

**AWARDING BID FOR ASBESTOS REMOVAL
 (630-632 GRANT AVENUE (79.19-5-24); 215 LEOPARD STREET (79.57-1-31);
 707 MAIN STREET (Garage to remain) (79.19-6-36); 208 ANTELOPE STREET
 (79.11-6-25); AND 60 E. SEVENTH STREET (79.19-7-22))**

WHEREAS, the City of Dunkirk in 2014, entered into a Contract with the Chautauqua County Land Bank to demolish structures in the City; and

WHEREAS, asbestos abatement is needed to be conducted for properties located at: 630-632 Grant Avenue (79.19-5-24), 215 Leopard Street (79.57-1-31), 707 Main Street (Garage to remain) (79.19-6-36), 208 Antelope Street (79.11-6-25), and 60 E. Seventh Street (79.19-7-22), which are listed for demolition; and

WHEREAS, following published Legal Notice, sealed bids for the asbestos abatement of 630-632 Grant Avenue (79.19-5-24), 215 Leopard Street (79.57-1-31), 707 Main Street (Garage to remain) (79.19-6-36), 208 Antelope Street (79.11-6-25), and 60 E. Seventh Street (79.19-7-22); were opened and read aloud in the Dunkirk City Clerk's Office at 4:00 P.M. on November 10, 2015, with five (5) bids being received for asbestos abatement; now, therefore, be it

RESOLVED, that upon review and recommendation of the Building Inspector, the lowest responsible bid of **Stohl Remediation Services, Inc., 4169 Allendale Parkway, Blasdell, NY 14219**, in the amount of **Twenty-Four Thousand Nine Hundred Ninety-Five Dollars and Zero Cents (\$24,995.00)** be and hereby is accepted for asbestos removal for 630-632 Grant Avenue (79.19-5-24), 215 Leopard Street (79.57-1-31), 707 Main Street (Garage to remain) (79.19-6-36), 208 Antelope Street (79.11-6-25), and 60 E. Seventh Street (79.19-7-22); and, be it further

RESOLVED, that – after the contractor provides satisfactory insurance certificates to the City Law Department, and the contractor provides performance bonds and payment bonds, which are reviewed and approved, and the contractor shows compliance with the MWBE procedures – the Mayor is hereby authorized and directed to execute any and all documents, on behalf of the City of Dunkirk, with the above-named contractor for the asbestos removal of the said structures; and, that the City Clerk is hereby authorized to return the bid deposits of the bidders, after contract execution or non-awarded bid, in accordance with the contract specifications, and that the City Clerk shall return unaccepted and unsealed, any and all bids, received after the date and time of the published bid opening; and, be it finally

RESOLVED, that the following funds are to be utilized for such asbestos removal:

072.8000.4000.0562 – CDBG	\$ 13,720.00
LANDBANK FUNDS	\$ 11,275.00

Carried, all voting aye.

RESOLUTION #85-2015
NOVEMBER 17, 2015

BY: THE ENTIRE COUNCIL

**AUTHORIZING LEASE-TO-PURCHASE ONE (1) VEHICLE
FOR FIRE DEPARTMENT THROUGH
LOCAL GOVERNMENT (VILLAGE) CONTRACT**

WHEREAS, the City of Dunkirk Fire Department is in need of one (1) new automobile for use by the Fire Department; and

WHEREAS, one (1) suitable vehicle is available for purchase on Local Government (Village) Contract Bid; now, therefore, be it

RESOLVED, that the Mayor is authorized and empowered to execute a (3) three - year lease-to-purchase agreement, on behalf of the City of Dunkirk, with **DeLacy Ford, Inc., 10361 Transit Road, Elma, New York 14059-0437**, and/or First Niagara Leasing, Inc., for the purchase of one (1) Year 2016 Ford Police Interceptor SUV for the sum of Thirty-Four Thousand Eight Hundred Eighty-Three Dollars and Zero Cents (\$34,883.00) (including extended warranty service contract and financing charges), and, be it finally

RESOLVED, that the Fiscal Affairs Officer make the following budget modifications to the 2015 Budget to accommodate the first of three (3) payments:

Deduct

001.1900.1990	Contingency	(\$13,000.00)
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Add

001.3410.2000	Equipment	\$13,000.00
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Councilman-at-large Rosas inquired if the finance options were solicited properly.

Mayor Dolce advised that the correct procedures were done to assume financing.

Carried, all voting aye.

RESOLUTION #86-2015
NOVEMBER 17, 2015

BY: THE ENTIRE COUNCIL

**AUTHORIZING BUDGET MODIFICATIONS
(November 2015)**

WHEREAS, it is anticipated that some expenses will exceed their entire budgetary essentials, and it is anticipated that some appropriations will have surpluses for Fiscal Year 2015, ending December 31, 2015; now, therefore, be it

RESOLVED, that the Fiscal Affairs Officer is hereby authorized and directed to make the following modifications to the Fiscal Year 2015 budget:

FUND 1

<u>Account No.</u>	<u>Department</u>	<u>Line</u>	<u>Change</u>
001.7110.2000	Parks Division	Equipment	\$2,800.00
001.1640.4061	Central Garage	Vehicle Fuel	(\$2,800.00)
001.3120.1007	Police	Bldg City Hall Overtime	\$ 800.00
001.3120.4036	Police	Contracted Services	(\$ 500.00)
001.3120.4021	Police	Repair/Maintenance	(\$ 300.00)
001.3120.4001	Police	Travel & Training	\$ 400.00
001.3120.4538	Police	Police SWAT Equipment	(\$ 400.00)
001.8020.4036	Development	Contracted Services	\$28,000.00
001.8020.1990	Development	Contingencies Allow-HUD	(\$25,000.00)
001.1900.1990	General Services	Contingencies	(\$ 3,000.00)
001.3410.2000	Fire Department	Equipment	\$20,000.00
001.7110.2000	Parks Division	Equipment	\$15,000.00
001.1900.1990	General Services	Contingencies	(\$35,000.00)

FUND 3

<u>Account No.</u>	<u>Department</u>	<u>Line</u>	<u>Change</u>
003.8130.1001	Wastewater Treatment	Overtime	\$10,000.00
003.8130.4002	Wastewater Treatment	Supplies	\$ 100.00
003.8130.4021	Wastewater Treatment	Repair/Maintenance	\$ 5,000.00
003.8131.1000	Laboratory	Personal Services	\$ 6,000.00
003.1900.1990	General Services	Contingencies Allowance	(\$21,100.00)

Councilman-at-large Rosas advised a motion to amend Resolution #86-2015 to change "Fire Department Equipment Line" from \$20,000 to \$7,000 and "General Services Contingencies" from \$35,000 to \$22,000 was needed.

Councilwoman Szukala made the motion to amend Resolution #86-2015. Seconded by Councilman Gonzalez.

Vote to amend Resolution #86-2015:

Carried, all voting aye.

RESOLUTION #86-2015
NOVEMBER 17, 2015

BY: THE ENTIRE COUNCIL

AUTHORIZING BUDGET MODIFICATIONS
(November 2015)

WHEREAS, it is anticipated that some expenses will exceed their entire budgetary essentials, and it is anticipated that some appropriations will have surpluses for Fiscal Year 2015, ending December 31, 2015; now, therefore, be it

RESOLVED, that the Fiscal Affairs Officer is hereby authorized and directed to make the following modifications to the Fiscal Year 2015 budget:

FUND 1

<u>Account No.</u>	<u>Department</u>	<u>Line</u>	<u>Change</u>
001.7110.2000	Parks Division	Equipment	\$2,800.00
001.1640.4061	Central Garage	Vehicle Fuel	(\$2,800.00)
001.3120.1007	Police	Bldg City Hall Overtime	\$ 800.00
001.3120.4036	Police	Contracted Services	(\$ 500.00)
001.3120.4021	Police	Repair/Maintenance	(\$ 300.00)
001.3120.4001	Police	Travel & Training	\$ 400.00
001.3120.4538	Police	Police SWAT Equipment	(\$ 400.00)
001.8020.4036	Development	Contracted Services	\$28,000.00
001.8020.1990	Development	Contingencies Allow-HUD	(\$25,000.00)
001.1900.1990	General Services	Contingencies	(\$ 3,000.00)
001.3410.2000	Fire Department	Equipment	\$7,000.00
001.7110.2000	Parks Division	Equipment	\$15,000.00
001.1900.1990	General Services	Contingencies	(\$22,000.00)

FUND 3

<u>Account No.</u>	<u>Department</u>	<u>Line</u>	<u>Change</u>
003.8130.1001	Wastewater Treatment	Overtime	\$10,000.00
003.8130.4002	Wastewater Treatment	Supplies	\$ 100.00
003.8130.4021	Wastewater Treatment	Repair/Maintenance	\$ 5,000.00
003.8131.1000	Laboratory	Personal Services	\$ 6,000.00
003.1900.1990	General Services	Contingencies Allowance	(\$21,100.00)

Vote on amended Resolution:

Carried, all voting aye.

RESOLUTION #87-2015
NOVEMBER 17, 2015

BY: COUNCILWOMAN SZUKALA AND COUNCILMAN GONZALEZ

**AWARDING DEFERRED COMPENSATION CONTRACTS
AND AUTHORIZING MAYOR TO EXECUTE SUCH CONTRACTS**

WHEREAS, the City of Dunkirk did establish a Deferred Compensation Plan for employees; and

WHEREAS, the Deferred Compensation Committee did accept and review proposals for the administration of the Deferred Compensation Plan for a (5) five-year renewal contract period as stipulated in Section 9003.1; and

WHEREAS, after publishing in the New York State Register, the Deferred Compensation Committee does recommend the award of such contract to the current providers administering the City's plan; and

WHEREAS, the Deferred Compensation Committee does recommend **Mass Mutual**, as Administrative Services Agency and Financial Organization with Reliance Trust Company as trustee, and with **Nationwide**, as Administrative Services Agency with Nationwide Trust Company, FSB as trustee; now, therefore, be it

RESOLVED, that the Mayor of the City of Dunkirk hereby is directed to execute all necessary documents to contract with **Mass Mutual** and the Reliance Trust Company, and with **Nationwide and the Nationwide Trust Company, FSB**, for administrative, financial, and trustee services for the City of Dunkirk Deferred Compensation Plan for the next 5 (five) years.

Carried, all voting aye.

RESOLUTION #88-2015
NOVEMBER 17, 2015

BY: THE ENTIRE COUNCIL

**AUTHORIZING MAYOR TO EXECUTE CHAUTAUQUA COUNTY AGREEMENT
AMENDMENT
(SNOW REMOVAL AND ICE CONTROL)**

WHEREAS, the City is seasonally reimbursed by Chautauqua County for snow removal and ice control on County routes within the City, and

WHEREAS, the current agreement for said services has expired and the County has since requested an extension and payment amendment to the original agreement; now, therefore, be it hereby

RESOLVED, upon the recommendation of Director of Public Works Gugino, that the Mayor be, and hereby is, authorized and directed to execute an agreement amendment on behalf of the City of Dunkirk, with Chautauqua County, for provision of snow removal and ice control services for snow seasons through April 30, 2018 at the following annual reimbursements:

2015/2016 Season	\$3,000.00 per centerline mile
2016/2017 Season	\$3,150.00 per centerline mile
2017/2018 Season	\$3,300.00 per centerline mile.

Councilwoman Szukala made a motion to TABLE Resolution #88-2015 pending verification of numbers. Seconded by Councilman Gonzalez.

Carried, all voting aye. TABLED.

ADJOURNMENT:

Councilwoman Szukala moved to adjourn. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Adjourned at 6:10 PM

Nicole Joiner, City Clerk
