

**Town of Elba
Regular Meeting
March 9, 2023**

Supervisor Hynes called the meeting to order at 7:00 p.m.; followed by the Pledge to the Flag.

Those in attendance included:

Supervisor Hynes
Councilman Augello
Councilman Chamberlain
Councilman Coughlin
Councilwoman Marshall

Others Present:

Town Clerk Werth
Superintendent of Highways Yungfleisch
Barry Flansburg, Assessor
Christian Yunker, County Legislator

Minutes of February 2, 2023 Town Board Meeting

MOTION Councilwoman Marshall, second by Councilman Chamberlain to approve the minutes as written.

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall

MOTION CARRIED by unanimous vote (5-0)

RESOLUTION #6-2023:

Councilman Coughlin, second by Councilwoman Marshall offered the following:

**INTERMUNICIPAL AGREEMENT FOR
OFFICE AND COURT FACILITIES LEASE AGREEMENT**

THIS LEASE, made this 9th day of March, 2023, by and between the **TOWN OF OAKFIELD**, having offices at 3219 Drake Street Road, Oakfield, New York; herein called “Landlord”, and the **TOWN OF ELBA**, having offices at 7133 Oak Orchard Road, Elba, New York, herein called “Tenant”.

IN CONSIDERATION of the mutual covenants and agreements contained herein it is agreed as follows:

1. Landlord hereby leases to Tenant and Tenant hereby rents from Landlord, the space hereinafter called the “Premises”. Located at Landlord’s Community and Government Center, 3219 Drake Street Road, Oakfield, New York, including the right to use common parking areas as follows:
 - A. At all times, exclusive use of one office consisting of approximately 143 square feet and one storage room consisting of approximately 76 square feet.
 - B. During the hours of Tenant’s Town Court operations, use of the Courtroom Facilities and two conference rooms.
 - C. At all times, non-exclusive use of restroom facilities.
2. The Premises is leased for a term of 3 years, to commence on the 1st of January, 2023.
3. The rent shall be for sum of Seven Thousand Dollars (\$7,000.00) per year for three years (3). Monies are to be paid on or before the 1st day of February of each year.

4. Either party may terminate the Lease by providing to the other party a written notice on or before December 31st of any calendar year, to be effective on December 31st of the following calendar year. No termination shall be effective during the calendar year.
5. Landlord shall be responsible to pay for any telephone, security system, and trash removal contracts.
6. **ALL OFFICE SUPPLIES ARE AT THE TENANT'S EXPENSE.**
7. Tenant shall use and occupy the Premises for office activities and to operate its Town Court by its Town Judges and support staff, and for no other purpose without the written consent of the Landlord. The Tenant's Town Judges shall coordinate with the Landlord's Town Judges the times and dates for Tenant to hold its Court operations, with the Landlord's court operations to have precedence with regard to times and dates.
8. Tenant shall pay rent to Landlord at Landlord's above stated address, or at such other place as Landlord may designate in writing, without demand and without counterclaim, deduction or set off.
9. Tenant shall commit no act of waste and shall take good care of the Premises and the fixtures and appurtenances therein, and shall, in the use and occupancy of the Premises, conform to all laws, orders and regulations of Federal, State and Municipal Governments or any of their departments.
10. The Landlord's responsibilities for maintenance and repairs are as follows:
 - A. The Landlord shall be responsible for all maintenance and repairs of existing common areas, including, but not limited to, common exits and entrances to and from the building, common ramps, common hallways within the building of which the leased Premises is a part, common parking, sidewalks and roadways.
 - B. The Landlord shall also be responsible for all structural maintenance and repairs to existing facilities, including, but not limited to, the existing roof, interior, exterior walls (and windows), floors, ceiling and foundation.
 - C. The Landlord shall also be responsible for all maintenance and repairs involving the existing and current configurations for the electrical system, plumbing system, sewage system, heat and air cooling installations.
 - D. Notwithstanding the foregoing, the Tenant shall reimburse the Landlord for any maintenance, repair, rebuilding, or other costs incurred by Landlord as the result of damages caused by the action or failure to act by the Tenant, its agents, employees, servants and invitees.
11. Tenant shall not do any of the following:
 - A. Without first obtaining the written consent of Landlord, make any alterations or improvements in, to or about the Premises.
 - B. Do or suffer anything to be done on the Premises which will increase the rate of fire or casualty insurance on the building.
 - C. Permit the accumulation of waste or refuse matter on the leased Premises or anywhere in or near the building.
12. Tenant may not sublease all or any portion of the Premises.
13. The Landlord agrees to pay all utilities for the building of which the leased Premises are a part, including, but not limited to, heat. Light, gas, electric, water and sewer.
14. Tenant agrees to promptly notify the Landlord upon determining that repairs need to be made to the leased Premises and Tenant further agrees to allow the Landlord to examine the leased Premises at any time during the term of this Lease, upon reasonable notice to the Tenant, for the purpose

of making repairs, or determining whether repairs need to be made, or for any other legitimate purposes.

15. In case the leased Premises shall be damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unusable by the Tenant, then the rent shall be suspended or abated until the said Premises shall have been put in proper condition for use by the Tenant. In case of fire, other damage or casualty, the Landlord shall thereupon cause the damage to be repaired, but if the Premises be so damaged that the Landlord shall decide not to rebuild, which decision shall be solely within the discretion of the Landlord, the term hereby created shall cease, and the rent shall either be paid by the Tenant or rent shall be refunded to the Tenant on a prorated basis for such period of time up to the date of the casualty.
16. Tenant is granted the right, in common with the Landlord and other tenants and licensees of the Landlord, to use common exits and entrances to and from the building of which the leased Premises is a part, parking, sidewalks and roadways, all in areas and upon conditions as designated by Landlord. The Tenant is expressly prohibited from storing any and all property in any common areas. The tenant agrees to keep the common areas clear at all times.
17. The Tenants shall hold harmless, indemnify and defend Landlord from all liability, penalties, losses, damages, costs, expenses, causes of action, claims and/or judgements, including reasonable attorney's fees, which arise by reason of any injury or death to any person or persons, or damage to the property of any person or persons resulting from the actions or inaction of the Tenant, its agents, servants, employees and invitees which in , upon or in any way connected with the leased Premises or use of the common areas, during the term of the Lease or any occupancy hereunder.
18. The Landlord shall hold harmless, indemnify and defend Tenant from all liability, penalties, losses, damages, costs expenses, cause of action, claims and/or judgements, including reasonable attorney's fees, which arise by reason of any injury or death to any person pr persons, or damage to the property of any person or persons, resulting from the actions or inaction of the Landlord, its agents, servants, employees and invitees while in , upon or in any way connected with all areas inside or outside of the building known as the Community and Government Center in the Town of Oakfield, New York, during the term of this Lease or any occupancy hereunder.
19. If Tenant defaults in the payment of rent, or defaults in the performance of any of the other covenants or conditions hereof, Landlord may give Tenant notice of such default and if Tenant does not cure any rent default within three (3) days, or other default within ten (10) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Tenant does not commence such curing within such ten (10) days thereafter proceed with reasonable diligence and in good faith to cure such default) then Landlord may terminate this Lease on not less than ten (10) days' notice to Tenant, and on the date specified in said notice the term of this Lease shall terminate, and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided. If this Lease shall have been so terminated by Landlord, Landlord may at any time thereafter resume possession of the Premises by any lawful means and remove Tenant or other occupants and their effects.
20. The failure of either party to insist on strict performance of any covenant or condition hereof, or to exercise any option herein contained, shall not be construed as a waiver of such covenant, condition, or option in any other instance. This Lease cannot be changed or terminated orally.
21. Interruption or curtailment of any service maintained in the building, if caused by strikes, mechanical difficulties or any causes beyond Landlord's control whether similar or dissimilar to the

- enumerated, shall not entitle Tenant to any claim against Landlord or to any abatement in rent and shall not constitute constructive or partial eviction, unless Landlord fails to take such measures as may be reasonable in the circumstances to restore the service without undue delay. If the Premises are rendered untenable in whole or in part, for a period of ten (10) consecutive business days, by the making of repairs, replacements or additions, other than those made with Tenant's consent or caused by misuse or neglect by Tenant or Tenant's agents, servants, visitors or licensees, there shall be a proportionate abatement of rent during the period of such untenable.
22. All notices or demands required or desired to be given pursuant to this Lease shall be in writing and addressed to the parties at the addresses given on the first page of this Lease; or at such other addresses as shall be designated hereafter by either party in writing. Such notice or demand shall take effect when received.
 23. If any provision of this Lease shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render the unenforceable this Lease or any other provisions hereof and a valid and enforceable construction shall be given to the invalid and unenforceable provision to best reflect the commercial intent of the parties expressed herein. In the event such construction is not available, then the parties shall agree to replace the invalid provision with a valid provision which most closely reflects the commercial intent of the parties which is expressed herein.
 24. No representation or promise shall be binding on the parties hereto except those representation and promises contained herein or in some future writing signed by the parties making such representations or promises.
 25. Landlord has made no representation or promises with respect to the said Premises except as herein expressly set forth. The taking of possession of the demised Premises by the Tenant shall be conclusive evidence as against the Tenant that the Tenant accepts the same "as is" and that said Premises and the building and fixtures of which the same form a part was in good and satisfactory condition at the time such possession was taken.
 26. Landlord covenants that if, and so long as Tenant pays the rent and any additional rent as herein provided, and performs the covenants hereof, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the term herein mentioned, subject to the provisions of the Lease.
 27. This Agreement and the performance of the parties hereunder shall be construed in accordance with the governed by the laws of the State of New York. The parties agree that claims asserted or causes of action arising hereunder shall be submitted to the jurisdiction of the Courts of the State of New York and shall be venued in Genesee County.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease the date first appearing above.
TOWN OF OAKFIELD

BY: _____
Matthew E. Martin, Supervisor

TOWN OF ELBA

BY: _____
Donna Hynes, Supervisor

STATE OF NEW YORK)

COUNTY OF GENESEE) SS:

On the _____ day of _____, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Matthew E. Martin**, personally known to me 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 GENESEE) SS:

On the _____ day of _____, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Donna Hynes**, personally known to me 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

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall
APPROVED by unanimous vote (5-0)

RESOLUTION #7-2023:

Councilman Chamberlain offered the following:

INTERMUNCIPAL AGREEMENT FOR DOCUWARE SHARING POLICY FOR THE TOWN OF OAKFEILD AND TOWN OF ELBA

This agreement, made the 1st day of January, 2023, by and among the Town of Oakfield, a Municipal Corporation of the State of New York, 3219 Drake Street Road, Oakfield, New York 14125 and the Town of Elba, a Municipal Corporation of the State of New York, 7133 Oak Orchard Road, Elba, New York 14058.

Witnesseth:

WHEREAS, the Town of Oakfield and the Town of Elba share the services of Docuware on the Town of Oakfield server and

WHEREAS, the Town of Oakfield pays the entire bill for year and

WHEREAS, the Town of Elba agrees to pay yearly their share of the total cost of the system based on how many user accounts they desire and the initial amount of user accounts for the Town of Elba is currently two (2) and can be amended at any time and

WHEREAS, the yearly payment going forward will be \$4,000.00, payable to the Town of Oakfield by January 31st of each year to cover the calendar of the payment and a bill will be sent to the Town of Elba every December and

WHEREAS, if the Town of Elba increases the amount of user accounts or amount of cloud storage, the fee will change with the next yearly payment and the user account fee could change each year based on the rate charged by Docuware and

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

TOWN OF OAKFIELD

Matthew E. Martin, Supervisor

TOWN OF ELBA

Donna Hynes, Supervisor

STATE OF NEW YORK)
COUNTY OF GENESEE) SS:

On the _____ day of _____, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Matthew E. Martin**, personally known to me 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 GENESEE) SS:

On the _____ day of _____, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Donna Hynes**, personally known to me 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

Second by: Councilman Coughlin
Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 8-2023

Councilwoman Marshall offered the following:

CLOSING OF ROADS FOR ARC GLOW FRIENDS & FAMILY 5K

WHEREAS, the Arc GLOW Friends & Family 5K, has scheduled a 5K race to take place on Saturday, September 16, 2023, 9:50 A.M.-10:50 A.M. in Elba, New York.

WHEREAS, the proposed race will start on Barrville Road, Elba, New York and includes portions of Bridge Road and Luddington Road and ends at the Genesee ARC facility on Barrville Road,

WHEREAS, the Town Board of the Town of Elba has determined that it is necessary to close portions of Barrville Road, Bridge Road and Luddington Road in the Town of Elba, New York as described herein in order to adequately protect the health, safety and welfare of the participants in the race and spectators along said route, and

BE IT FURTHER RESOLVED AND ORDERED that the Town Clerk of the Town of Elba, New York shall post a copy of this Resolution and Order on the signboard maintained at her office on or before August 1, 2023, and shall remain posted until Monday, September 20, 2023.

**BY ORDER OF THE TOWN BOARD
TOWN OF ELBA**

Trisha Werth
Town Clerk

RESOLVED: That the Town Board of the Town of Elba does hereby adopt this resolution in support of closing roads within the Town of Elba for the Arc GLOW as part of the “2023 Friends & Family 5K” race, this 9th day of March, 2023.

CC: Sandy Konfederath, Community Relations Coordinator, Arc GLOW
Mike Heale, Elba Fire Chief
Mark Yungfleisch, Town of Elba, Superintendent of Highways

State of New York)
County of Genesee)
Town of Elba) ss.

I, Trisha Werth, Town Clerk of the Town of Elba in the County of Genesee, State of New York, hereby certify that the foregoing Resolution was duly adopted at a meeting of the Town Board on the Town of Elba held on the 9th day of March, 2023, by the required necessary votes of the members to approve this Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Elba, Genesee County, New York this 9th day of March, 2023.

Second by: Councilman Augello
Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 9-2023:
Councilman Coughlin offered the following:

SPECIAL COUNCIL AGREEMENT

RESOLVED, that the Town of Elba enter into an annual agreement with Knauf Shaw LLP, 1400 Crossroads

Building, 2 State Street, Rochester, NY to provide special counsel for the Town on an as needed basis for matters to be identified by the Town Board from March 9, 2023 to December 31, 2023. The rate will be \$260 per hour for partners, \$185 per hour for associates, and \$105 per hour for paralegals/law clerks.

RESOLVED, that the Town Supervisor is hereby authorized to sign this agreement.

Second by: Councilman Chamberlain

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall

APPROVED by unanimous vote (5-0)

ABSTRACT 3-2023

MOTION, Councilman Coughlin second by Councilman Chamberlain approve the following:

General Fund	48-70	\$12,510.74
Highway	12-27	\$78,136.84
Water District 2	5	\$38,945.73
Total		\$129,593.31

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall

MOTION CARRIED by unanimous vote (5-0)

COMMITTEE REPORTS

Building and Grounds

Mr. Yungfleisch reported that they are waiting on the boom mower.

Zoning Board

Councilman Chamberlain stated there was no meeting in March.

Planning Board

Councilman Coughlin shared:

- No update on BW Solar
- Forefront will soon need an extension on their Special Use Permit
- Genesee County is offering \$5K reimbursement for grants.

GAM

Councilman Augello shared:

- Shifting to meetings taking pace via hybrid and in person
- Next meeting is 3/16

Cemetery

Highway MEO's leveling off plots and will help Mr. Davis this summer.

DEPARTMENT REPORTS

Highway

Mr. Yungfleisch reported:

- The Tree Doctor provided a quote and will be spraying around hydrants, trees, signs, etc. this spring.
- A pipe caved in the middle of West Much Road. A road closed sign was put in place along with a load of stone to prevent anyone from driving across there. Mr. Yunker stated the Water Shed will have this repaired.

- Have used quite a bit of salt with the last couple of storms, will continue to purchase more to fill the salt shed.
- Mr. Yungfleisch provided the Board with a copy of a quote from Fleet Maintenance for a Western Star 47X truck.

MOTION was offered from Councilman Coughlin second by Councilman Augello to purchase a truck, chassis, dump and equipment for approximately \$274,361.00.

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall

MOTION CARRIED by unanimous vote (5-0)

Assessor

Mr. Flansburg's shared:

- Update is completed, came in at 94.69 which was enough to claim 100%. Change notices will be mailed next week.
- GLK is selling their muck land
- Strobele parcel is with the County

ZEO/CEO

Mr. Morris' monthly report was emailed and is also available in the Town Clerk's office.

Town Clerk

Town Clerk Werth reported that she took in \$530.00 and remitted \$453.00 to the Supervisor for local share, \$17.00 to NYS Ag. & Markets for spay/neuter program and \$60.00 to NYS Comptroller's Office for the bell jar and raffle licenses.

Tax collection continues to go well. We sent reminder letters out for just over 100 parcels.

Town Clerk Werth will be attending the annual NYS Town Clerks Association Conference in Syracuse April 23-26, 2023.

Supervisor

Supervisor Hynes shared a water hook up application that she received. The applicant stated the property (4106 Maltby Road) was located in the Smart Growth area, it is not. They also stated they would like to put two individual single family homes on one property and our Zoning Laws do not allow this. Supervisor Hynes will reply back that the Board is unable to make a decision at this time as the application is not filled out correctly.

Supervisor Hynes shared the original Smart Growth plan with Mr. Kanyuck. He will review and come out in the Spring to review and answer any questions.

There will be a wire transfer on 3/15 for Water District 1. The lowest rate came in from Oppenheimer.

Councilpersons

Councilwoman Marshall asked if we would be applying for any of the grants that the County will reimburse for. Supervisor Hynes shared the County is not interested in paying a past bill from the Comprehensive Plan, they are encouraging the Town to apply for new grants. Mr. Yunker stated the County is trying to be helpful in providing funds for the Towns. Supervisor Hynes will contact Jay Grasso for a list of available grants and share that with the Board once she receives it.

Councilman Augello will arrange the annual Court Audit.

Councilwoman Marshall asked if any direction or information has been provided from the Governor on the housing plan she has put forward. Nothing has been received at this time.

Miscellaneous

Legislator Yunker gave a brief update from the County:

- The jail is being built, coming along well and staying within budget.
- They continue to work hard at the \$150 million water project. Trying to get Federal and State money.
- Attorneys are still working on broadband with the goal of every address point have internet.
- Conversations are taking place regarding EMS. It is well known that we are in crisis mode and the County is working with Mercy and LeRoy to help support them in staffing them and improving response times.
- There is more money in the upcoming Governor's budget for bridges and culverts. The County continues to work at catching up on these.

ADJOURNMENT

MOTION was offered from Councilman Chamberlain second by Councilman Coughlin to adjourn the meeting at 8:00 p.m.

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall

MOTION CARRIED by unanimous vote (5-0)

Respectfully Submitted,

Trisha Werth
Town Clerk