

**Town of Elba
Regular Meeting
October 13, 2022**

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

Others Present:

Town Clerk Werth
Superintendent of Highways Yungfleisch
Barry Flansburg, Town Assessor, exited meeting at 7:30 p.m.

Absent:

Councilwoman Marshall

Minutes of September 8, 2022 Town Board Meeting

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

Ayes: Augello, Chamberlain, Coughlin, Hynes

MOTION CARRIED by unanimous vote (4-0)

Minutes of September 21, 2022 Special Town Board Meeting

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

Ayes: Augello, Chamberlain, Coughlin, Hynes

MOTION CARRIED by unanimous vote (4-0)

RESOLUTION NO. #21-2022:

Councilman Chamberlain offered the following:

PRELIMINARY 2023 TOWN BUDGET

RESOLVED, the Elba Town Board accepts the Preliminary Town Budget for 2023; and be it further

RESOLVED, that the 2023 thousand Preliminary Town Budget hereby be filed in the Office of the Elba Town Clerk.

Second by: Councilman Coughlin

Ayes: Augello, Chamberlain, Coughlin, Hynes

APPROVED by unanimous vote (4-0)

RESOLUTION NO. 22-2022:

Councilman Coughlin offered the following:

CALLING FOR PUBLIC HEARING ON THE 2023 TOWN BUDGET

RESOLVED, the Elba Town Board hereby authorizes and orders that a Public Hearing on the Preliminary Town Budget for 2023 be conducted at the Elba Town Hall, 7133 Oak Orchard, Elba, New York, beginning at 6:55 p.m. on Thursday, November 10, 2022 at which time and place all interested persons will be heard; and be it further

RESOLVED, that the Town Clerk is hereby authorized and directed to publish such public notice of the subject Public Hearing as required by law.

Second by: Councilman Augello

Ayes: Augello, Chamberlain, Coughlin, Hynes

APPROVED by unanimous vote (4-0)

NOTICE OF PUBLIC HEARING
ON THE 2023 TOWN BUDGET

PUBLIC NOTICE IS HEREBY GIVEN that the Preliminary Budget of the Town of Elba for fiscal year 2023 has been completed and filed in the Office of the Town Clerk of the Town of Elba, where is it available for public inspection during regular business hours.

Notice is also given that the Town Board of the Town of Elba will hold a Public Hearing on the Preliminary Budget at the Elba Town Hall, 7133 Oak Orchard Road, Elba, New York beginning at 6:55 p.m. on Thursday, November 10, 2022 at which time and place any person will be heard in favor of or in opposition to any item or items contained therein.

Public Official Salaries are as follows:

| | |
|---------------------------------|--------------------|
| Supervisor | \$10,512.00 |
| Councilperson (4) | \$1,982.50 |
| Town Clerk/Tax Collector | \$32,528.00 |
| Highway Superintendent | \$64,408.00 |
| Town Justice (2) | \$9,311.50 |

By Order of the Elba Town Board

Trisha Werth, Town Clerk

RESOLUTION NO. 23-2022

Councilman Chamberlain offered the following:

INTERMUNICIPAL AGREEMENT BETWEEN
GENESEE COUNTY AND TOWN OF ELBA FOR THE PROVISION OF SNOW REMOVAL AND ICE
CONTROL SERVICES AND ROADSIDE MOWING

THE AGREEMENT, dated October 13, 2022, by and between the **COUNTY OF GENESEE**, a municipal corporation having its office and place of business in the County Building, 15 Main Street, Batavia, New York, 14020, hereinafter referred to as the “**County**,” and the **TOWN OF ELBA**, a municipal corporation within the **County of GENESEE**, having its office and place of business at 7133 Oak Orchard Road and 7 Maple Avenue (respectively), Elba, New York, 14058 hereinafter referred to as the “**Town**.”

W I T N E S S E T H

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

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

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

WHEREAS, County funds may be expended for roadside mowing and removal of noxious weeds along County roads; and

WHEREAS, the County desires to enter into an agreement with the Town for snow removal and for salting and treating County roads for the purpose of removing the danger of ice and snow and the mowing along the sides of County roads; and

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

WHEREAS, the Town Board has authorized the Agreement by Resolution No. 23-2022, adopted October 13, 2022.

NOW THEREFORE, in consideration of the mutual covenants, agreements, and consideration hereinafter set forth and pursuant to Sections 118-b, 135-a and 142-d of the New York State Highway Law, the parties hereto mutually agree that the Town will provide snow and ice control services and roadside mowing on the County highway system and that the County will reimburse the Town for the provision of these services under a lump sum reimbursement contract.

I. TERM OF THE AGREEMENT:

The term of this Agreement shall be for a period of five (5) years beginning January 1, 2023 and expiring on December 31, 2027. The Agreement can be terminated by either party if at least 365 days of notice is provided. The purpose of this provision is to allow the parties to make alternate arrangements for the services provided under the Agreement including, but not limited to, purchasing equipment and hiring labor.

II. SCOPE OF WORK:

This Agreement shall include all activities by the Town upon County roads and roadsides within the Town that are necessary to control snow and ice and roadside mowing, together with all necessary labor, equipment and materials. The contracted activities, which will be routinely performed by all towns, are listed below: (will there be any differences for any Towns)

1. Supervision of Town equipment and trucks on County Roads;
2. Supervisory patrolling of Town equipment and trucks on County Roads;
3. Preparedness for snow and ice control, snow fencing and stockpiling;
4. Plowing of snow from the roadways and shoulders, and/or the application of anti-icing or de-icing materials
5. Treatment of slippery spots, including ‘black ice’, and bridge decks;
6. Routine benching using plow trucks;
7. Pushing back high banks with other heavy equipment;
8. Roadside mowing along roadways, embankments, and ditches

III. SERVICES TO BE PROVIDED:

A. Snow and Ice Control Standards.

The Town shall provide the basic service elements as outlined in this Agreement and as outlined in the latest revision(s) to the New York State Department of Transportation “Highway Maintenance Guidelines Chapter 5 - for Snow and Ice Control”, and as the Guidelines may be further updated/revised from time to time throughout the term of this Agreement; with the exception that the following modifications or clarifications to the Guidelines, and as amended, shall be applicable to this Agreement:

1. **Section 5.3200 Snow Control Goals**

Replace the table in subsection 5.3201 and 5.3202 with the following; The Town shall provide for the middle half width of pavement (wheel tracks) to be bare 4 to 8 hours after the event. If suitable weather conditions allow, the Town shall provide for the full width of the pavement to be bare 12-24 hours after the event.

2. **Section 5.4405 Guidelines for the use of Salt**

Paragraph F. Spreading speed. Delete the third paragraph and replace with the following;

Depending on the road and traffic conditions, speeds should be in the range of 15 MPH to 30 MPH.

3. **Section 5.4406 Guidelines for the use of Abrasives.**

Replace paragraph E. Spreading speed with the following;

The spreading speed should be in the range of about 15 to 30 MPH, depending on traffic and highway surface conditions.

4. **Section 5.8300 Methodology for Passive Snow Control**

Section 5.8301 General. Add the following: Snow fence - The installation, maintenance and storage of snow fence is not considered a special activity and the County will not provide additional reimbursement. The decision to install snow fence shall be determined by the Town Highway Superintendent.

B. Sweeping

At the end of the snow season, the Town shall be responsible to sweep County road sections where abrasive materials have accumulated on the pavement.

C. Operational Plan

In November of each year, the Town may be required to submit an operational plan (electronic submission is acceptable), which outlines the approach to meet the requirements of this Agreement. If there are no changes from the previous year, a simple statement submitted by the highway superintendent via email referencing the previous years' plans and stating "no change" is sufficient. The County and Town may modify the operational plan by mutual consent.

D. Mutual Aid

The County agrees to provide additional equipment and work force to assist the Town in unusual storms or events at no penalty or cost to the Town. The Town and County will maintain records and log books of such mutual aid so that it may be communicated with emergency managers and, if needed, disaster recovery reimbursements.

E. Roadside Mowing

The Town shall provide the basic service elements as outlined in this Agreement and as outlined in the latest revision(s) to the New York State Department of Transportation "Highway Maintenance Guidelines Chapter 3 - for Roadside and Drainage Maintenance", and as the Guidelines may be further updated/revised from time to time throughout the term of this Agreement;

IV. LEVEL OF SERVICE:

A. Snow and Ice Control.

The Genesee County plowing and salting lane mileage inventory for each road in the Town will be

provided each year. The County shall update this inventory annually as of December of each year. The County shall provide a copy of this amended inventory to the Town for its review and acceptance. The values contained on the annual inventory will be used for the annual calculation for lump sum payment as outlined in this Agreement. For the purpose of this agreement, turning lanes will be accounted for as lane miles and will be converted to centerline miles at half their distance.

B. Roadside Mowing.

In general, grass height shall be maintained between 6 and 10 inches in all mowed areas and extend from the pavement edge a minimum of ten feet on the first mowing and to the right-of-way edge on the second and any additional mowing. Traffic signs shall be clearly visible at all times and sight distance areas shall be mowed to a sufficient width.

V. PAYMENT:

In consideration of the performance by the Town, the County agrees to pay to the Town amounts calculated as follows:

A. Snow and Ice Control.

The payment for Snow and Ice Control on County Roads shall be lump sum on a per centerline mile basis. The payment shall be recalculated annually using the most current equipment rates as provided by NYSDOT, supervisory rates based upon the average of the Town Highway Superintendent salaries across the County, labor rates based on the Genesee County Highway AFSCME collective bargaining agreement and the annual sodium chloride bid price as awarded by Genesee County. The calculation will assume that each Town is running at least 4 plow trucks to cover their County snow plow mileage. The annual rate will be based on and adjusted annually by the previous 3-year average number of days with at least one inch of snow cover as recorded by the National Weather Service at the Buffalo (BUF) Airport. A sample of the calculation is shown in Exhibit "A". County Highways classified as Touring Routes shall be compensated at 1.5 times the centerline mile rate established annually. For calendar year 2023, the County shall pay to the Town a lump sum payment of \$6,657 per centerline mile for 15.85 miles of County Roads for a total annual payment of \$105,513.45 to be paid as described in this agreement under Section VI "Method of Payment".

B. Roadside Mowing.

The payment for Roadside Mowing on County Roads shall be lump sum on a per centerline mile basis. For calendar year 2023, the County shall pay to the Town a lump sum payment of \$542 per centerline mile for 15.85 miles of County Roads for a total annual payment of \$8,590.70 to be paid as described in this agreement under Section VI "Method of Payment".

VI. METHOD OF PAYMENT:

A. Snow and Ice Control.

The Town shall be reimbursed for services provided in two (2) payments. The first payment shall represent 50% of the Snow & Ice Payment. The first payment shall be made in February of each year of this Agreement. The second and final payment will be made in April and represent the remaining 50% of the Snow & Ice Payment.

B. Roadside Mowing.

The Town shall be reimbursed for services provided in one (1) payment. The payment shall be made in September of each year of this Agreement.

VII. NOTICES

All notices and other communications hereunder shall be in writing and shall be delivered personally, or by guaranteed overnight delivery, or by registered or certified mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice:

To County, at the following address:

Timothy Hens, P.E.
Genesee County Superintendent of Highways
153 Cedar Street
Batavia, NY 14020
Phone: (585) 344-8508

To Town, at the following address:

Mark Yungfleisch
Town of Elba Highway Superintendent
7133 Oak Orchard Road
Elba, NY 14058
Phone: (585) 757-2762 Ext. 30

IN WITNESS WHEREOF, the parties have hereunto executed the Agreement the date set forth above.

COUNTY OF GENESEE

TOWN OF ELBA

By: _____
Chairperson of the Legislature

By: _____
Supervisor

STATE OF NEW YORK)
COUNTY OF GENESEE) SS:

On this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF GENESEE) SS:

On this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

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

RESOLUTION NO. 24-2022

Councilman Coughlin offered the following:

**ADOPTION OF THE STATE OF
NEW YORK DEFERRED COMPENSATION PLAN**

WHEREAS, the Town of Elba wishes to adopt the Deferred Compensation Plan for Employees of the State of New York and Other Participating Public Jurisdictions (the "Plan") for voluntary participation of all eligible employees; and

WHEREAS, the Town of Elba is a local public employer eligible to adopt the Plan pursuant to Section 5 of the State Finance Law* and

WHEREAS, the Town of Elba has reviewed the Plan established in accordance with Section 457 of the Internal Revenue Code and Section 5 of the State Finance Law of the State of New York; and

WHEREAS, the purpose of the Plan is to encourage employees to make and continue careers with the Town of Elba by providing eligible employees with a convenient and tax-favored method of saving on a regular and long-term basis and thereby provide for their retirement;

* A local public employer eligible to adopt the Plan pursuant to Section 5 of the State Finance Law includes: a county, city, town, village or other political subdivision as defined in Section 131 of the retirement and Social Security law or civil division of the State; a school district or other governmental entity operating a public school, college, or university; a public improvement or special district, a public authority, commission , or public benefit corporation; or any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the State.

NOW, THEREFORE, it is hereby:

RESOLVED, that the Town of Elba hereby adopts the Plan for the voluntary participation of all eligible employees; and it is further

RESOLVED, that the appropriate officials of the Town of Elba are hereby authorized to take such actions and enter such agreements as are required or necessary for the adoption, implementation, and maintenance of the Plan; and it is further

RESOLVED, that the Administrative Services Agency is hereby authorized to file copies of these resolutions and other required documents with the President of the State of New York Civil Service Commission.

Adopted the 13th day of October, 2022, at a meeting of the Town of Elba. I hereby certify that the Town of Elba is a local public employer within the meaning of Section 5 of the State Finance Law and that the adoption of the Plan has received all required approvals of any local governing body or officer and otherwise complies with local law.

Witnesseth by:

(Town of Elba)
By:

Consent of The Deferred Compensation Board of the State of New York to Local Public Employer's Participation

By: _____

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

RESOLUTION NO. 25-2022
Councilman Augello offered the following:

ADOPTION OF THE ROAD PRESERVATION, USE AND REPAIR AGREEMENT

This Road Preservation, Use and Repair Agreement (**Agreement**) effective the ____ day of _____, 20__ is made and entered into by and between **Town of Elba**, acting through its Town Board (**Municipality**), located at 7133 Oak Orchard Road, Elba, NY 14058; _____ (**Developer**), a _____ having its principal place of business _____.

Whereas, the parties hereto desire to provide for the use and repair of Town of Elba Roads when subjected to damage or degradation by frequent or repetitive traversing of heavy vehicles employed in respect to transporting heavy construction equipment and hauling construction materials.

Now Therefore, in consideration of the premises and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Terms and Conditions: Shall be set forth in Sections One to Eleven and Appendices A, B, C, D, E, and F.

Term of Agreement: This Agreement shall be for a term commencing on the effective date hereof and ending when the project in respect of which it is entered into is complete.

In Witness Whereof, the parties hereto have executed this agreement as of the latest date written below.

Developer

Municipality

Town of Elba

By: _____

By: _____

Name: _____

Donna Hynes

Title: _____

Town Supervisor, Town of Elba

Date: _____

Date: _____

Road Preservation Use and Repair Agreement

An Agreement Relating to the Use and Repair of Roads in the Town of Elba

October 2022

Section 1: PURPOSE

The purpose of this Road Preservation Use and Repair Agreement, hereinafter this “Agreement,” is to maintain the safety and general welfare of Town of Elba residents by regulating commercial activities that have the potential to adversely affect road conditions and public right-of-ways. Well maintained roads are important to the economic well being of the Town of Elba, hereinafter, the “Town” or the “Municipality”. The Elba Town Board hereby adopts the following Road Preservation Use and Repair Agreement pursuant to the provisions of the Municipal Home Rule Law.

Section 2: ENFORCEMENT

The Elba Town Board hereby delegates to the Town of Elba Highway Superintendent hereinafter, the “Designee,” the oversight of assuring commercial activities do not have an adverse impact on roads within the Municipality. The Designee will work directly with the company representative named on Appendix A.

Section 3: DEFINITIONS

a. Structural Class:

1. **Structural Class 1** - The road structure has been upgraded to an adequate and high quality base of

uniform thickness and material type. The driving surface is either an asphalt concrete pavement or bituminous surface treatment in good to excellent condition. The Granular Base and/or the Asphalt Pavement/Bituminous Surface Treatment are less than 10 years old and have 20 to 30 years remaining life. The complete road structure is capable of supporting heavy construction equipment (total estimated 18-KIP Equivalent Single Axles Loads) throughout the duration of the project, without needing major structural improvements prior to the project. However, heavy construction traffic loading will expend some of the useful life of the road pavement structure and shorten the life expectancy of the road, even though visible damage at the end of the project may not be severe. Visible damage could include but is not limited to increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness.

2. **Structural Class 2** - The road structure has been upgraded to an adequate and high quality base of uniform thickness and material type. The driving surface is either an asphalt concrete pavement or bituminous surface treatment in fair to good condition. The Granular Base and/or the Asphalt Pavement/Bituminous Surface Treatment are 10-20 years old, and have 10 to 20 years remaining life. The road is adequate to sustain construction traffic for the project. However, damage to the asphalt pavement/bituminous surface or base will be likely during the project thereby causing a significant decrease in serviceability for the traveling public, rough travel for construction equipment, and potential safety issues and increased difficulties in performing winter maintenance. Visible damage could include but is not limited to increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness.

3. **Structural Class 3** – The road structure has not been upgraded. The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The asphalt pavement is in fair to good condition with one or more of the following surface distresses present; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths). Ride roughness may range from fair to excellent. The combined layers of the pavement structure continue to provide an acceptable level of service for the traffic using the road. The road is judged to be generally adequate to service the construction traffic and the traveling public throughout the duration of the proposed drilling. However, by the end of the project damage to the pavement structural system will likely be visible, and will take the form of increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and increased ride roughness.

4. **Structural Class 4** – The road structure has not been upgraded. The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The asphalt pavement is in poor to fair condition with a rough deteriorated driving surface. The road is not capable of sustaining the magnitude and the duration of loading commensurate with a designated haul route (total estimated 18-KIP Equivalent Single Axles Loads) for an extended project. Use of the road without prior reconstruction may result in significant distresses such as severe alligator cracking, potholes, rutting, and very rough ride-ability within the duration of the project. The accelerated deterioration would create excessive demand for pavement repairs (i.e. pothole patching, rut filling etc.). The effectiveness of winter snow and ice maintenance would be greatly diminished (i.e. snow plows would not be able to operate efficiently and safely, snow and ice would be left in deep wheel path ruts after plowing etc.). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

5. **Structural Class 5** – The road structure has not been upgraded. The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The road is not capable of sustaining the magnitude and the duration of loading commensurate with a designated haul route (total estimated 18-KIP Equivalent Single Axles Loads) for an extended project. Use of the road without prior reconstruction may result in significant distresses such as potholes, rutting, and very rough ride-ability within the duration of the project. The accelerated deterioration would create excessive demand for repairs (i.e. pothole patching, rut filling

etc.). The effectiveness of winter snow and ice maintenance would be greatly diminished (i.e. snow plows would not be able to operate efficiently and safely, snow and ice would be left in deep wheel path ruts after plowing etc.). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

b. **High Frequency, High Impact Traffic**: Traffic to and from a single project site that generates more than ten truck trips per day for more than four consecutive days, involving trucks that exceed 20 tons (truck and load combined) that could impact the Municipality's roads.

c. **Road Preservation Use and Repair Worksheet (Appendix A)**: Worksheet is to be completed by Developer, summarizing the project, project location, start and completion dates, expected max gross weight used for the project, designated haul routes (**Appendix B**), and any other information that the Designee deems necessary.

d. **Designated Haul Routes (Appendix B)**: Roads used for: (1) transportation and delivery of oversized equipment and components and other materials and equipment to be used in connection with the construction of the Project; (2) truck transportation leaving the Project site following delivery of equipment and materials; (4) transportation and delivery of local sources of materials, including concrete and gravel.

e. **Developer**: Refers to the Developer who is a party to this Agreement, and any subcontractor used by the Developer.

f. **Project**: Means the project to [described project].

Section 4: GENERAL PROVISIONS - DESIGNATION OF HAUL ROUTES

Prior to the commencement of construction, the Developer shall submit to the Municipality for approval requested routes (hereto referred to as "Designated Haul Routes") for hauling equipment and materials to and from the Project. These routes will be further designated, by the Municipality, as Structural Class 1, 2, 3, 4, or 5 (as defined in Section 3) with certain requirements stipulated for their use as set forth in Sections 4.1, 4.2 and Section 5 below. **A list and map of the Designated Haul Routes are identified in Appendix B.** The Haul Routes shall be designated **prior** to the final signing and execution of this Agreement. The Pre-Construction Survey will begin after the signing of this Agreement.

4.1 Class 1, 2, and 3 Roads – These roads can be used by the Developer for the Project without any repairs or improvements to the pavement structure prior to construction. However, geometric improvements (turning radii etc.) and bridge or culvert improvements will still be required, at the Developer's expense, as needed.

4.2 Class 4 and 5 Roads – The Municipality may require, for the safety of the traveling public, that the Developer reconstruct the road before the construction process begins. This determination shall be at the sole discretion of the Municipality. If the Municipality does not require reconstruction prior to construction, the Developer may proceed to use the road at their own risk. However, the Municipality shall monitor the use of the road during the construction project. If the road becomes dangerous to the traveling public, the Municipality shall close the road to all construction traffic. In the case of closure, the Developer shall be required, at their own expense, to complete reconstruction of the road base and asphalt concrete pavement to include shoulders and necessary improvements of ditches, culverts and other drainage related facilities before construction traffic is allowed to continue. The Municipality shall determine the full cross section design and material specifications for this reconstruction. The Developer shall hire a qualified contractor of its choice to construct the pavement system (base and asphalt pavement layers for Class 4, if applicable) according to the full specifications provided by the municipality.

Section 5: USE OF DESIGNATED HAUL ROADS AND PRE-CONSTRUCTION ROAD SURVEY

5.1 Construction Traffic Estimation- The Developer shall engage and pay for the services of a study, completed under the direction of a NYS licensed Civil Engineer, to estimate all of the construction traffic that will use each Designated Haul Route. The type, weight, number of axles, and load on each axle, of each construction vehicle shall be defined and the number of trips for each shall be estimated. This shall be done for overweight vehicles as well as all non-overweight loads carrying aggregate, concrete and any other building supplies and materials over the designated haul roads from any and all suppliers, vendors, contractors etc. involved in the project. Then, the sum total estimated construction traffic shall be converted to a total number of Equivalent 18-Kip Single Axle Loads (ESAL's), according to the AASHTO Pavement Design Guide, over the duration of the project. This shall be done for each Designated Haul Route that the Developer will use for the project. The Road Use Agreement shall be executed before this data is submitted and the Haul Routes are designated. **All Designated Haul Routes will be posted at each end of the road with final locations to be determined by the Municipality and paid for as detailed in Appendix B.**

5.2 As soon as practicable after the execution of the Road Use Agreement, but in any event prior to the commencement of construction the Developer shall conduct the surveys and assessments explained in section 5.4 below under the direction of a NYS licensed Civil Engineer. Roads and highways within the boundaries of the Municipality anticipated to be used as Designated Haul Routes plus any roads anticipated to serve on a one time basis or roads which could be added as Designated Haul Routes will be assessed as described below. A representative from the group completing the survey and assessment shall meet with the Designee or their designee prior to data collection to review how the data will be collected and reported.

5.3 Structural Class Designation- The Municipality shall retain exclusive rights to designate the Road Structural Class for the Designated Haul Routes. The Developer agrees to abide by this decision. The Municipality shall make this decision based on the road surface condition, structural condition, and the traffic using the road prior to construction. If road structural classes are to change the Municipality shall hire a NYS licensed Civil Engineer to evaluate the road and provide recommendation on the structural class of the road. Structural class designation changes, if necessary, shall be communicated to the Developer 15 calendar days prior to the changes of the road classification. Pre-construction road survey requirements are enumerated in Section 5.4 (a)-(d) below.

5.4 Pre-Construction Survey- A full report of the assessments in (a) – (d) below shall be provided to the Municipality by the Developer and paid for by the Developer, prior to the commencement of construction.

(a) **Video Survey of Roads.** Videotape the Designated Haul Roads and One Time Use Roads that could be used as explained above. Videos will be provided in digital/electronic format. The full costs of the Video Survey will be borne by the Developer. Additional video surveys shall only be conducted in the event the Parties mutually agree and the additional survey costs are borne by the Developer.

(b) **Distress Survey.** – Measure and record the extent and severity of surface distresses for each designated haul road. The survey shall include the severity and extent of alligator cracking, longitudinal cracking, transverse cracking, edge cracking/deterioration, potholes and patches.

(c) **Rutting and cross slope assessment.** – Wheel rut depth in both outer and inner wheel paths shall be measured with a straight edge. If the lane is crowned in the middle the rut depth can be measured for each wheel path by laying the straight edge from the centerline of the road to center of the lane and from the center of the lane to edge of the road for the inner wheel path and outer wheel path, respectively. Cross slope shall also be measured, using the full lane width straightedge and a “smart level” in percent mode. Again, if there is a crown in the middle of the lane the cross slope shall be measured independently, and recorded as such, for the inner and outer wheel paths. The rut depth and cross slope measurements will be made at a uniform spacing at 15 locations per mile.

(d) **Road Roughness** – Measure, record, and report the International Roughness Index (IRI) using a

profilometer for each designated haul road. A full report of the Roughness assessment shall be provided to the Municipality at no cost to the Municipality prior to the commencement of construction.

(e) **Core Sample**- A core or crosscut sample may be required, at the Municipality's discretion, to determine necessary repairs.

5.5 Inspection of Culverts and Bridges- Within one month after the execution of this Agreement, and prior to the commencement of construction, the Developer shall select a qualified NYS licensed engineer, to inspect the culverts and bridges on the Designated Haul Routes. Culverts and bridges on any other roads anticipated to serve on a 'one- time' basis or roads which could be added as Designated Haul Routes shall also be included. The engineer shall take photographs of the culvert and bridges. The full costs of the inspections will be borne by the Developer. Based on the inspections the engineer shall provide a report discussing the status of culverts and bridges that shall require improvements/upgrades prior to the commencement of construction of the Project. This report shall also present the recommended improvements/upgrades to the structures and shall be submitted to the Municipality for review. The Municipality and the Developer will prepare a final list of improvement/upgrade projects that must be done prior to commencement of construction based on the engineer's recommendations. The Municipality reserves the right to require an evaluation of any bridge that will be crossed by an overweight special hauling vehicle. The evaluation shall be done by a qualified NYS licensed Engineer.

5.6 Limitations of Road Use

(a) **Restrictions.** All other Municipal roads not selected as Designated Haul Routes are strictly forbidden for use by the Developer throughout the duration of the Project. In the event that the Developer would like to amend and add any road to the list of Designated Haul Routes during the Project, the requested amendment shall be made to the Designee, and the Designee will determine whether or not Appendix B shall be amended. All Sections of this Agreement shall then be immediately applicable and satisfied prior to the added road being used. The Municipality shall agree not to schedule road repairs or improvements to Designated Haul Routes or any other road repairs or improvements that would materially impact Designated Haul Routes or Project construction traffic.

(b) **"One Time Use" of a road that is not a Designated Haul Route** - In the event the Developer determines it is necessary for the Project to use a Municipal road not identified on **Appendix B** as a Designated Haul Road, then the Developer shall notify the Designee, describing in detail such use and the reasons therefore. If the use is to be 'one time,' the Designee shall make the determination to allow the road use without the road being added to Appendix B as a Designated Haul Route. If the Developer determines that the road may be used multiple times, a requested for it to be added to Appendix B may be made, as described in Section 5.6(a) of this Article, as a Designated Haul Route.

(c) **Extreme Weather Conditions** - Once construction begins on the Project the Designee shall be entitled, at any time, to notify the Developer that use of a/the Designated Haul Route may result in excessive damage to a/the Designated Haul Route due to weather conditions that may pose a serious safety risk to the traveling public. The Developer shall work with the Designee to develop a plan to mitigate or prevent safety liabilities concerning all Designated Haul Routes as a result of such weather conditions. If the Parties are able to develop a plan to mitigate or prevent such safety liabilities, then the Developer may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, the Developer may propose an alternate route to the Project site for approval by the Municipality within 5 calendar days of submission of the proposed alternate route (such approval not to be unreasonably withheld, delayed or conditioned).

Section 6: POST USE PAVEMENT SURVEY

6.1 Post Use Pavement Survey Tasks - The Developer shall complete a post use survey under the direction of a NYS licensed Civil Engineer. The Post Use Pavement Survey tasks listed below shall be completed within a three (3) month window following the project completion date.

(a) **Photo & Video Survey of Roads** – Repeat as described in section 5.4 (a) above.

(b) **Distress Survey** – Repeat as described in Section 5.4 (b) above.

(c) **Rut Depth and Cross Slope measurements** – Repeat as described in Section 5.4 (c) above.

(d) **Road Roughness** – Repeat as described in Section 5.4 (d) above.

(e) **Core Sample**- May be required per Municipality’s discretion and must be deemed necessary by the Engineer completing the survey.

(f) Recommendations by NYS licensed engineer on needed repairs and opinion of costs for repairs.

Section 7: DETERMINATION OF FINAL REPAIRS

The Municipality shall examine the post use survey data and compare it to the pre-construction survey data. Based on the data, field inspection, and structural evaluation (if necessary) the Municipality shall determine the needed repairs based on the engineer’s recommendation. If the Municipality and the opinion of the engineer in the evaluation report determines repairs are necessary based on damage caused by Developer as identified when comparing the pre and post use survey, such repairs shall be made as set forth in paragraphs 7.1 to 7.6. The Municipality shall prepare a report of the needed repairs that includes the treatment for each road segment under the direction of a NYS licensed engineer and the total estimated cost of the repair. The report shall be submitted to the Developer within the first three month period after the Project completion date (assuming the Developer submits the Post Use Pavement survey data to the Municipality within forty-five days).

7.1 - Class 1 Roads - Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) **or** a microsurfacing shall be done to replace the structural capacity ‘loss’ of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced; the thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Municipality and agreed upon by the Developer. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½” hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Municipality shall determine the repair type under the direction of a NYS licensed engineer (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid by the Developer to the Municipality..

7.2 Class 2 Roads - Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) **or** a microsurfacing shall be done to replace the structural capacity ‘loss’ of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Municipality. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½” hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Municipality shall determine the repair type under the direction of a NYS licensed engineer (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to the Municipality. *The Municipality retains the right to make the final*

decision regarding the extent and type of road repairs.

7.3 Class 3 Roads - Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) **or** a microsurfacing shall be done to replace the structural capacity 'loss' of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Municipality. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½" hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Municipality shall determine the repair type under the direction of a NYS licensed engineer (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to the Municipality.

7.4 Class 4 and 5 Roads - If the road was not rebuilt by the Developer prior to or during the project then upon completion of the project the road will be repaired by one of the following methods: Full pavement rehabilitation (recycling or replacement of asphalt) or Full depth reconstruction (asphalt pavement and base layer reconstruction). One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to the Municipality.

(a) Full Pavement Rehabilitation –Major rehabilitation of the asphalt pavement only, such as a thick asphalt overlay or a Cold-in-Place recycle with a hot mix over lay.

(b) Full Depth Reconstruction - Asphalt pavement repair/replacement and gravel base material repair/replacement.

The Municipality retains the right to make the final decision regarding the extent and type of road repairs.

7.5 One-Time Use Roads - The Developer will repair any damage caused by the project to the One-time use roads, and return such roads to the condition such roads were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the Municipality and Developer shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. The Developer shall repair (or cause to be repaired) such damage and restore the road to the standard agreed upon, unless the Developer can demonstrate to the reasonable satisfaction of the Municipal Designees that the damage was not caused by the Developer. Any repair and restoration shall be promptly performed at such times as the Developer and the Municipality determine, having due regard for safety and, the presence of emergency conditions. In the event that the Developer fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, the Municipality may make such repairs and shall invoice the Developer for the costs incurred by the Municipality in connection with the repair. The Developer shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

7.6 Culverts and Bridges – Improvements/Upgrades to bridges and culverts may be required prior to commencement of construction of the Project. These improvements are discussed in Section 5.5. Damage as a result of the Project to a culvert or bridge structure that was not improved or upgraded must be repaired following the project, or sooner if deemed necessary by the Municipality under the direction of a NYS licensed engineer. All modifications or repairs to culverts or bridges shall be designed by a Professional Engineer licensed to practice in New York State in accordance with accepted AASHTO and NYSDOT standards and approved by the Municipality. All damage due to Developer's work shall be mitigated, either through repair or replacement, by the Developer at its expense to the satisfaction of Municipality.

7.7 Emergency and/or Periodical Repair- The Developer will be expected to perform any emergency repairs

and or periodical, necessary repairs to the Designated Haul Routes, including the pavement, drainage structures, or any other highway related appurtenance that is damaged by the Project and which the Municipality determines must be repaired. The Municipality will inform the Developer of required emergency repairs and the repair shall be accomplished within a minimum of three days time. If more time is required the Developer shall inform the Municipality of the status of the repair on a daily basis. Close communication will be required between the Designee and the Project Manager of the Project. All costs of the repair shall be paid for by the Developer.

7.8 Insurance Requirements- The Municipality requires the following Certificates of Insurance showing the following:

- a. Certificate of Insurance showing that the contractor is carrying General Liability Insurance with limits of \$2,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operation aggregate limits. **The Municipality shall be listed as additional named insured on the liability policy.**
- b. Workers Compensation and New York State Disability Benefits Insurance. **The Municipality must be listed as Certificate holder. The previously accepted ACCORD 25 forms will not be accepted as proof of Worker's Compensation or Disability Insurance.** Forms C-105.2, U-20.3, GSI-105.2 or SI-12 are the only forms that will be accepted as proof of Workers' Compensation Insurance or Disability Insurance. The only exception to this requirement is the unincorporated sole proprietorship or partnership, where there are no employees. In such event Form CE-200 (Certificate of Attestation) must be submitted.
- c. The Town Highway Superintendent shall be notified immediately if the insurance coverage is in any way modified or terminated while this agreement is in effect.

Section 8: PERMITS

The Developer shall obtain all necessary governmental permits and approvals that are necessary to permit the Developer to make the modifications and improvements to the Designated Haul Routes contemplated herein, including, but not limited to the following:

1. Municipality's Highway Work Permits – For any and all work in the Municipal right-of-way (including utilities)
2. Municipality's Highway Driveway Access Permits
3. Municipality's Overweight and Special Hauling Permits
4. NYS DOT Overweight and Special Hauling Permits for Town Roads
5. NYS DEC permits for water crossings, wetlands, etc.
6. Army Corps of Engineer permits for water crossings etc.

Section 9: WARRANTIES BY DEVELOPER

9.1 Workmanship and Material Warranties- The following warranty and workmanship requirements apply to all repairs, modifications, and improvements that the Developer (its contractors or subcontractors) shall make prior to or during the course of the Construction project in order to accomplish the construction process. As used herein, "Applicable Warranty Period" means, with respect to any repair, modification, or improvement by the Developer hereunder, the time period that begins on the date repairs, modifications or improvements to Designated Haul Routes are complete and ending on the date that is twelve (12) months after such completion date.

(a) Developer's engineering responsibility, including the selection of material and equipment suitable for the repair of, and modifications and improvements to, the Designated Haul Routes and One Time Use Roads shall be carried out in accordance with **NYS Department of Transportation (NYSDOT) standards and specifications**, and Developer's construction responsibility shall be carried out in accordance with sound

construction practices. The Developer shall require from its construction contractors and subcontractors the same standards for engineering and construction practice. The Developer warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

(b) The Developer warrants that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. The Developer shall remedy any defects in the repairs, modifications and improvements performed hereunder including repairs, modifications and improvements, workmanship, materials and equipment provided by subcontractors during the “Applicable Warranty Period”. A “defect” means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which (1) does not conform to the terms of this Agreement or (2) is of improper or inferior workmanship by industry standards. The Municipality will determine whether there are defects, as explained.

9.2 Remedies- During the Applicable Warranty Period, the Municipality shall notify the Developer in writing of any defects in the repairs, modifications or improvements. At no additional cost to the Municipality, the Developer shall proceed promptly to take such action relating to its performance or that of its subcontractors hereunder as is necessary to cause the repairs, modifications and improvements to comply with the warranties specified in this Agreement. The Developer shall be available either at the project or by telephone for the performance of warranty repairs on a seven (7) day a week, twenty-four (24) hours per day basis.

9.3 Final Waiver of Liens- The Developer warrants that all repairs, modifications, improvements and materials furnished in connection with the performance by the Developer under this Agreement shall be free and clear of all liens.

Section 10: WARRANTIES BY DEVELOPER

A bond, letter of credit, or cash escrow (to be determined by Municipality) will be required for each Designated Haul Route in an amount to be determined subsequent to the designation of Haul routes after execution of this agreement but prior to commencement of construction. The Bonded amounts shall be in accordance with the following schedule:

1. Class I Roads - \$150,000 per mile
2. Class II Roads - \$150,000 per mile
3. Class III Roads - \$140,000 per mile
4. Class IV Roads - \$70,000 per mile

These amounts are merely guidelines and the Municipality retains the right to change them as necessary.

The final release of all bonds/letter of credit/cash escrow will be provided once all damage has been repaired to the terms of this Agreement but in no event later than 6 months after construction of the Project is completed.

Section 11: FEES

A non-refundable processing fee of one-thousand dollars (\$1,000) payable to the Municipality must accompany each executed Appendix A.

APPENDIX A

ROAD PRESERVATION USE AND REPAIR WORKSHEET

Developer: _____
Address: _____
Phone: _____
Project Manager: _____
24-Hr Contact #: _____

Work Location: All Town Roads in the Town of Elba, New York
Estimated Project Start Date: _____
Estimated Project Completion Date: _____
Maximum Gross Vehicle Weight: _____
Maximum Truck Trips/Day: _____

Required Documentation:

a. **Construction Traffic Estimate**
- **Date Received:** _____
- **Approved By:** _____

b. **Pre-Construction Survey**
- **Date Received:** _____
- **Approved By:** _____

c. **Bond/Letter of Credit (Check one)**
 Bond Amount: _____
Date Paid: _____
 Letter of Credit: _____
Date Paid: _____

d. **Appendix B Attached;** In connection with the development, construction, operation and maintenance of the Project, the Municipality hereby acknowledges and agrees that _____, its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (collectively, the “Developer”) shall use the roads and highways located in the Municipality identified on Appendix B hereto (the “Designated Haul Routes”). The Designated Haul Routes may be used by Developer only in connection with the development, construction, operation, and maintenance of the Project, including the transportation of heavy equipment and materials to and from the Project.

e. This agreement must be renewed one year from the effective date of filing.

Agreement Approval and Effective Date: _____

Approved by: _____
Municipal Official

Approved by: _____
Authorized Project Representative

APPENDIX B

DESIGNATED HAUL ROUTES

(Attach map)

Approval Date: _____

Approved by: _____
Municipal Official

Approved by: _____
Authorized Project Representative

Note: All designated haul routes will be posted as such. All expenses associated with route posting will be paid by the Developer. The Unit Price for one sign is \$200 (includes labor, all materials, stakeout and call to Dig Safely NY).

APPENDIX C

PROJECT SITE PLAN

(Attached map): This plan is preliminary and it might be subject to change as construction progresses

APPENDIX D

Road Structural Class (Attached map)

APPENDIX E

**Electrical Equipment to be installed within Town Right-of-Ways
(To be inserted after Execution, prior to Installation)**

APPENDIX F

GENERAL TERMS AND CONDITIONS

The parties to the attached agreement, contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Developer” herein refers to any party other than the Municipality, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** This contract shall be deemed executor only to the extent of money available to the Municipality for the performance of the terms hereof. In accordance with Section 41 of the State Finance Law, the Municipality shall have no liability under this contract to the Developer or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNABILITY CLAUSE.** This contract may not be assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the Municipality.
3. **INSURANCE.** The Developer shall carry, at his expense, from insurers licensed in the State of New York, at least the insurance coverage and limits as set forth in Section 7.8.
4. **INDEMNITY.** The Developer shall at all times without limitation indemnify the Municipality from all claims, damages or judgments or for the defense or payment thereof, based on any claim, action or cause of

action whatsoever, including any action for libel, slander, or personal injury, or any affiliated claims, by reason of any act or failure to properly act on the part of the Developer and in particular, as may arise from the performance under this contract.

5. **COMPLIANCE WITH RULES, REGULATIONS AND LAWS.** It is mutually agreed that all rules, regulations and laws pertaining hereto shall be deemed to be part of this contract, and anything contained herein that may be in whole or in part inconsistent therewith shall be deemed to be hereby amended and modified to comply with such legislations, rules, regulations and laws, for and during such time the same shall be in effect, but at no other time. If any provision contained herein is found now or during the life of this Contract to be null and void, in whole or in part as a matter of law, then said clause or part hereof shall be deemed to be severed and deleted from this Contract leaving all other clauses or parts thereof in full force and effect. It is further agreed that there shall be no gap in the coverage or applicability of said remaining clauses or parts thereof. *Developer agrees to comply with the Federal Commercial Drivers License Drug and Alcohol Testing Program requirements set forth in CFR 49 parts 40 and 382. In acceptance of this Agreement, Developer covenants and certifies that it will comply in all respects with all Federal, State, County or other Municipal Law which pertains hereto regarding work on municipal contracts, matters of employment, length of hours, workers' compensation and human rights.*

6. **CONFLICT OF INTEREST.** Developer hereby stipulates and certifies that there is no member holding a municipal office or other municipal officer or employee forbidden by law to be interested in the contract directly or indirectly, who will benefit therefrom or who is a party thereto.

7. **INDEPENDENT CONTRACTOR STATUS.** Developer covenants and agrees that it will conduct itself consistent with its status, said status being that of an independent contractor and that itself, its employees or agents will neither hold themselves out as, nor claim to be an officer or employee of the Municipality, for such purposes as, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security or Retirement membership or credit.

8. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

9. **LICENSES.** Developer hereby agrees that it will obtain, at its own expense, all licenses or permits necessary for this work, if any are necessary prior to the commencement of said work.

10. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract documents forming this contract, the terms of this Appendix F shall control.

Second by: Supervisor Hynes

Ayes: Augello, Coughlin, Chamberlain, Hynes

APPROVED by unanimous vote (4-0)

ABSTRACT 10-2022

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

| | | |
|--------------|--------------|---------------------|
| General Fund | 232-266 | \$43,698.42 |
| Highway | 106-126 | \$104,195.90 |
| | Total | \$146,810.32 |

Ayes: Augello, Chamberlain, Coughlin, Hynes

MOTION CARRIED by unanimous vote (4-0)

COMMITTEE REPORTS

Building and Grounds

Mr. Yungfleisch reported a new electrical line was run from the gas pumps to the cemetery flag pole. They

are getting ready for winter and insulated the old shop.

Zoning Board

No report.

Planning Board

Councilman Coughlin discussed the Pflaumer/Schular land separation. Also, BW Solar is close to needing an extension.

GAM

Councilman Augello stated that Tim Hens discussed plowing and mowing.

Cemetery

No report.

DEPARTMENT REPORTS

Highway

Mr. Yungfleisch shared they are getting trucks ready for winter. The trees behind the salt should be removed next week. The ash trees along the road side will need to be taken care of soon. Most of them are off of Town property. A third MEO was hired and starting October 17, 2022.

Assessor

Supervisor Hynes make a **MOTION**, second by Councilman Chamberlain that along with the requirements provided by the State of New York for the Town Assessor position, it has been requested to add the following job description:

TOWN OF ELBA ASSESSOR

The Town of Elba Assessor is a part time position based in the Town office located at 7133 Oak Orchard Road Elba, NY. The town provides computer, internet and office equipment and a designated area.

Hours and Time of service is a mutual agreement between the Assessor, Supervisor and Town Board and posted on the Town website. Also performs clerical and administrative functions associated with the position and maintaining appropriate confidentiality.

The Elba Town Assessor collects and maintains the physical inventory of properties in the Town. The Assessor also:

- Maintains the ownership records of all property using the RPSV4 system. Records the deed information when property is sold or changes ownership.
- In order to make sure the value estimates are correct, each year the assessor analyzes all of the properties in the town to determine which assessments need to be changed.
- Approve or deny real property tax exemptions.
- Meet with property owners to discuss their assessments
- Attend Town Board Meetings minimum 2 times a year to give updates and data on things related to the property assessments and changes from the State or County. Meetings to be decided upon by the town board. Written reports provided in the other months. Has a direct responsibility to the Town Board.
- Updates data on all parcels currently on file, including sold, change of use, additional buildings added to parcel.
- Prepares the annual roll and files all reports in a timely manner, as required by state law.

- Reviews every transfer of real property for accuracy including the basic information on the buyer, seller and sale price. Assessment records are updated in a timely manner and any unusual conditions affecting the transfer are also verified. Sends out sales verification forms.
- Provides assessments on land separations as asked by attorney's, new parcel owners, and other essential parties.
- Able to use software (such as RPSV4) to administer the assessor's responsibilities as required.
- Assessor must receive basic certification by NYS within three years of taking office. In addition, appointed assessors are required to fulfill ongoing continuing education requirements.
- Certified Assessors are required to become re-certified within a year of re-election or re-appointed to office by completing approval ethics training.
- Must be present at all public hearings of the Board of Assessment Review (BAR).
- List is not all inclusive. Other related requests may be made by the Town Supervisor and Town Board.

Ayes: Augello, Chamberlain, Coughlin, Hynes

MOTION CARRIED by unanimous vote (4-0)

Supervisor Hynes made a **MOTION**, seconded by Councilman Coughlin to appoint Barry Flansburg as the Town Assessor effective October 13, 2022-September 30, 2025.

Ayes: Augello, Chamberlain, Coughlin, Hynes

MOTION CARRIED by unanimous vote (4-0)

Mr. Flansburg was in attendance and provided a report. It is now requested that the Assessor send out a Sales Verification Form. Mr. Flansburg passed out the State form/letter that will be sent to the property owner and returned to the office. He walked through the information that is requested on the form, most of this is already listed with the County before the closing. These are not typically returned but Mr. Flansburg will send them out. Everything else on the new Town job description are State mandates which are past practice.

Mr. Flansburg expects the State to come out with a sales trend of 12% or more. Discussion ensued. Councilman Augello asked if part of this stemmed from not having a lot of housing stock on the market and if a new subdivision might help the Town with this trend. Mr. Flansburg agreed and stated there is very few houses for sale and quite a few will sell privately without a real estate agent. Even with a private sale the deed is filed with the County/State and all the information on the Sales Verification Form is listed within the deed. These are shared with the Assessors every other Friday from the County Clerk's office.

ZEO/CEO

Mr. Morris' monthly report was emailed and is also available in the Town Clerk's office. Mr. Morris is waiting to hear back from Mr. Whiting regarding the Lockport Road property.

Town Clerk

Town Clerk Werth reported that she took in \$661.50 and remitted \$599.00 and \$40.00 to NYS Ag. & Markets for spay/neuter program and \$22.50 to NYSDOH for a marriage license.

Supervisor

Supervisor Hynes reported:

- No news on comprehensive plan.
- The tentative agreement with the union has been signed. The final agreement will take place in the next few weeks. The agreement is 4% wage increase the first year and 3% increase the three years following. All Town employees will be provided with insurance through the union. They have also

agreed to the insurance increases over the next four years

- Hecate Solar is inching forward. Meeting with Steve Hyde, GCEDC tomorrow to sign the Agreement to Key Aspects of the Term Sheet. Spoke with Dwight Kanyuck, Solar Attorney who said signing these could move the process forward. Supervisor Hynes will meet with Steve Hyde, Matt Marting (Oakfield Town Supervisor) and Dwight on October 20, 2022 to discuss the next steps as Hecate has agreed to our final terms within the term sheet. A public meeting will need to be organized for the Town of Elba soon after with Mr. Hyde and Mr. Kanyuck. Will look into booking the Elba Recreation Hall for this.

COUNCILPERSONS

Councilman Augello would like the Town to look into what it would take to develop a housing subdivision. Discussion ensued.

ADJOURNMENT

MOTION was offered from Councilman Chamberlain second by Councilman Coughlin to adjourn the meeting at 7:42 p.m.

Ayes: Augello, Chamberlain, Coughlin, Hynes

MOTION CARRIED by unanimous vote (4-0)

Respectfully Submitted,

Trisha Werth
Town Clerk