

The second regular meeting of the Kingsbury Town Board was conducted on November 18, 2019 at the Kingsbury Town Hall at 6 Michigan Street, Hudson Falls.

MEMBERS PRESENT: Dana Hogan, Supervisor  
Richard Doyle, Councilman  
Henry Freebern  
William Haessly, Councilman  
Dan Washburn, Councilman

OTHERS PRESENT: Michael Graham, Highway Superintendent  
Todd Humiston, Dog Control Officer  
Jeffrey Meyer, Town Attorney  
Jerry Caruso, Town Resident  
Jane Havens, Councilwoman Elect

The meeting was called to order at 7 p.m. by Supervisor Hogan and opened for the order of business with the Flag Salute led by Councilman Washburn.

A **motion** by Councilman Haessly seconded by Councilman Doyle and carried by a vote of 5 ayes to accept the minutes of the November 4, 2019 Board Meeting as submitted by the Town Clerk.

Highway Superintendent Michael Graham reported the Town of Fort Edward Highway Garage was damaged by a fire in the spring. Superintendent Graham would like to house two of their trucks for the winter months. A **motion** by Councilman Freebern seconded by Councilman Washburn and carried by a vote of 5 ayes for the following agreement:

### **MEMORANDUM OF AGREEMENT**

This Agreement dated this 18th day of November, 2019 (the “Effective Date”), made by and between the Town of Kingsbury, a municipal corporation with offices at 6 Michigan Street, Hudson Falls, New York 12839 (hereinafter the “Kingsbury”) and the Town of Fort Edward, a municipal corporation with offices at 118 Broadway, Fort Edward, New York 12828 (hereinafter the “Fort Edward”) evidences the following:

### **RECITALS**

**WHEREAS**, the Town of Kingsbury is the owner of certain real property located in the Town of Kingsbury, identified as 437 Vaughn Road, Kingsbury, New York, tax map parcel 137.-1-24.13, and upon which is located the Town of Kingsbury’s highway department facilities (hereinafter the “Facility”); and

**WHEREAS**, the Town of Fort Edward sustained a total loss to their existing highway department facilities and is desirous of sharing space for truck storage and general maintenance while their facility is being rebuilt; and

**WHEREAS**, Kingsbury is willing to share space with Fort Edward at the Facility, subject to the terms and conditions of this Agreement.

NOW THEREFORE, the parties hereto agree as follows:

Section 1. FACILITY

- 1.01 The Town of Fort Edward shall have the right to use two (2) bays at the Facility for the storage trucks and/or equipment owned by Fort Edward. Fort Edward shall have the ability to perform routine maintenance inside the Facility. Fort Edward shall be solely responsible for their own tools, equipment, and waste disposal at the Facility. Fort Edward shall not perform any maintenance on the property outside of the Facility.
- 1.02 At all times during the term of this Agreement, Fort Edward shall, at its sole cost and expense, for the mutual benefit of Kingsbury and Fort Edward, maintain personal injury and property damage liability insurance naming Kingsbury and Fort Edward as insureds against claims for personal injury, death or property damage occurring on, in or about the Facility during the term of this Agreement with appropriate coverage amounts as determined by the Parties with respect to personal injury, death or property damage and including contractual indemnity coverage and supply evidence of such coverage to Kingsbury. Fort Edward shall not occupy the Facility prior to delivery of a policy or certificate evidencing such insurance coverage.
- 1.03 Fort Edward does hereby indemnify and defend Kingsbury and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Facility, from or out of the occupancy or use by Fort Edward of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission or a breach of this Agreement by Fort Edward, its agents, contractors or employees. In case Kingsbury (and such other persons as are in privity of estate with Kingsbury) shall be made a

party to any litigation commenced by or against Fort Edward, then Fort Edward agrees to protect and hold Kingsbury harmless and to pay or reimburse Kingsbury for all costs, expenses and reasonable attorney's fees as they are incurred or paid by Kingsbury in connection with such litigation. Fort Edward agrees to pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by the Kingsbury in enforcing or defending the covenants and agreements of this Agreement.

- 1.04 Kingsbury shall oversee the proper maintenance of the Facility in accordance with applicable State or Federal laws, rules and regulations. Both parties shall be responsible for the proper storage of their equipment at the Facility.

## Section 2. TERM

- 2.01 This Agreement shall continue in effect from the date hereof until terminated as per Section 3.

## Section 3. DISPUTES AND TERMINATION

- 3.01 In the event of any dispute arising from the use, maintenance, repair or operation of the Facility, such dispute shall first attempt to be resolved by the Supervisors. If the Supervisors are unable to resolve same, the parties agree to submit such dispute to mediation prior to taking any action under section 3.02 below. The parties agree to participate in good faith in any such mediation.
- 3.02 Notwithstanding any other provision of this Agreement, but subject to any controlling law, order or regulation of any State or Federal agency or authority with jurisdiction over the Facility now or in the future, if any of the following events occur, either party may terminate this Agreement upon giving at least one hundred eighty (180) days prior written notice to the other party:
- (a) If any State or Federal agency or authority with jurisdiction over the Facility now or in the future demands, orders or compels either party to close the Facility, provided that if such closure is due to the negligence or willful conduct of either party, nothing shall relieve said party of any liability arising therefrom; or
  - (b) If a Court orders termination of this Agreement; or
  - (c) For cause, by either the Town Board adopting a resolution terminating same with the reasons therefore; or

(d) Without cause, only by mutual agreement of the parties.

Section 4. FORCE MAJEURE

4.01 Each of the parties hereto shall be excused from performance hereunder to the extent prevented by any cause beyond its reasonable control, including but not limited to strikes, fire, floods, and other acts of God. Any party so excused shall use due diligence to correct or remove the cause giving rise to any such condition and to resume full performance herewith as soon as possible.

Section 5. TRANSFER

5.01 Neither party may assign or transfer, either temporarily or permanently, any part of its interest in this Agreement or the Facility without the approval of the other, which may be withheld in the sole discretion of the approving party.

Section 6. NOTICES

6.01 All notice and communication hereunder shall be deemed to have been duly delivered if deposited in a United State Postal Service designated depository and directed to the respective address for each party stated below:

If to the Kingsbury:

Supervisor

Town of Kingsbury

6 Michigan Street

Hudson Falls, New York 12839

If to the Fort Edward:

Supervisor

Town of Fort Edward

118 Broadway

Fort Edward, New York 12828

Section 7. ENTIRE UNDERSTANDING

7.01 This Agreement represents the entire understanding of the parties hereto with respect to the subject matter hereof. This Agreement may be modified only by written agreement signed by the parties hereto.

Section 8. WAIVER AND SEVERABILITY

8.01 No waiver by either party of any term or condition of this Agreement shall be effective unless in writing and signed by the party to be changed, nor shall such waiver be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or another provision of this Agreement.

8.02 Should any one or more of the provisions of this Agreement for any reason be held illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement; and this Agreement shall in all circumstances be construed and enforced as if such illegal or invalid provision had not been contained herein.

#### Section 9. COSTS OF ENFORCEMENT

9.01 Any party in defaults shall pay all expenses of the other including legal, accounting, administrative and other professional fees.

#### Section 10. BINDING EFFECT

10.01 This Agreement shall be binding upon and shall inure to the benefit of the respective permitted successors and assigns of the parties hereto.

#### Section 11. GOVERNING LAW

11.01 This Agreement shall be construed and enforced under the laws of the State of New York. In the event of any dispute concerning this Agreement, such dispute shall be brought in a court of competent jurisdiction located in Washington County, New York.

#### Section 12. SECTION HEADINGS INDEX

12.01 The section headings and index have been inserted herein for convenience only and shall not be deemed to be a part of this Agreement.

#### Section 13. COUNTERPARTS

13.01 This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one agreement.

IN WITNESS WHEREOF, each of the parties has duly executed this Agreement as of the Effective Date.

TOWN OF KINGSBURY

By: \_\_\_\_\_

Dana Hogan, Supervisor

TOWN OF FORT EDWARD

By: \_\_\_\_\_

Terry Middleton, Supervisor

A **motion** by Councilman Washburn seconded by Councilman Haessly and carried by a vote of 5 ayes giving permission for Superintendent Graham to have the following notice published:

**NOTICE TO KINGSBURY RESIDENTS**

There is no parking on the public highways or within eight (8) feet from the shoulder of the road from 6 p.m. to 6 a.m. commencing November 19, 2019 through March 31, 2020. By Order of the Kingsbury Highway, Michael A. Graham

**Published November 20, 2019**

Superintendent Graham reported they have someone in mind to train for the Water Superintendent position upon James Chase retirement. Once someone is hired, they must attend school and take a test. Then they must work under Water Superintendent Chase for one year to officially receive their license.

Councilman Doyle asked about the status of installing the new water meters. Superintendent Graham stated the installation should be complete by the end of the year.

Supervisor Hogan opened a Public Hearing for the approval of a Cable Television Agreement between Spectrum Northeast, LLC and the Town of Kingsbury at 7:08 pm. Councilman Doyle asked Attorney Meyer if the 15 year term agreement could be shortened, if the 5% annual franchise fee could be increased and if there could be a semi-annual payment to the Town. Attorney Meyer stated the Board could negotiate for a shorter-term agreement, but the 5% annual franchise fee is usually not negotiable. Attorney Meyer will review the previous agreement and advise the Board. A discussion followed, the public hearing will resume on December 16, 2019.

Town Clerk provided copies of documents received from the New York State Department of Environmental Conservation for renewal of the Air Title V permit for Wheelabrator. The Board will review the documents and discuss at the next Board Meeting.

TOWN CLERK REPORT:

Town Clerk has hired a Deputy Clerk to replace retiring Deputy Clerk, she will be invited to the Organizational Meeting to be conducted in January 2020.

Town Clerk submitted the following report for the 2019-20 Hudson Falls Central School Tax Collection:

TO: Supervisor Hogan  
Councilman: Doyle, Freebern, Haessly & Washburn

FROM: Tax Collector: Cynthia A. Bardin

SUBJECT: 2019-20 Hudson Falls School Tax Collection

DATE: November 6, 2019

Payments to Town:

October 10, 2019 - \$928.58 - \$868.58 – Penalties & \$60.00 Return Check Fee  
October 21, 2019 - \$747.62 - Penalties  
November 6, 2019 - \$5,369.22 – Penalties \$5,309.22 - \$60.00 Return Check Fee

Total Penalties Collected: \$6,925.42

Return Check Fees Collected: \$120.00

Total to Supervisor: \$7,045.42

Total Paid to Deputies: 329 hours \$4,642.42

A **motion** by Councilman Doyle seconded by Councilman Freebern and carried by a vote of 5 ayes giving permission to the Town Clerk to attend a New York State Town Clerk Association Regional Meeting in Saratoga Springs at the cost of \$35.00. The money is in the Town Clerk Budget.

ENFORCEMENT REPORT:

Todd Humiston reported there will be training for members of the Planning and Zoning Board of Appeals on December 9, 2019 from 3pm to 8 pm. Each member is required to complete four hours of training each year.

DOG CONTROL OFFICER:

Todd Humiston is working on the 2020 agreement with Countryside Veterinary. There will be an increase in the boarding fees from \$16.00 to \$18.00 each day.

COUNCILMAN REPORT:

Councilman Haessly is waiting for a report from Chazen for services associated with the Town's sanitary sewer infrastructure.

SUPERVISOR REPORT:

Rebecca Pomainville is trained to conduct a sexual harassment training for Town employees.

<http://www.kingsburyny.gov>

There is no update on the Village of Hudson Falls court fines. Judge Keenan and Court Clerk Laura Barody sent documentation to the NYS Comptroller's Office but have not received a response.

W.L. Plastics is moving to the site of the former dewatering facility. There will be a \$15 million dollar construction and 50 jobs will be created.

The 2020 Washington County Budget has passed. A discussion followed.

A **motion** by Councilman Haessly seconded by Councilman Freebern and carried by a vote of 5 ayes to adopt the following agreement:

#### Adoption of The State of New York Deferred Compensation Plan

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

WHEREAS, the (Town of Kingsbury) 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 Kingsbury) 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;

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\* 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:

<http://www.kingsburyny.gov>



RESOLVED, that the (Town of Kingsbury) 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 Kingsbury) 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 18<sup>th</sup> day of November , 2019 \_\_\_\_\_ , at a meeting of the  
Kingsbury Town Board \_\_\_\_\_

I hereby certify that the (Town of Kingsbury) 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 Kingsbury

By:

\_\_\_\_\_

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

By: \_\_\_\_\_

**WRITTEN REPORTS:**

A **motion** by Councilman Doyle seconded by Councilman Freebern and carried by a vote of 5ayes to accept the reports of certain officers for the month of October as follows:

Town Comptroller:Receipts: \$211,437.92; Disbursements \$215,875.42  
Town Assessor: Sales Reports

There being no further business before the Board **motion** by Councilman Doyle seconded by Councilman Freebern and carried by a vote of 5 ayes to adjourn the meeting at 7:55 pm.

Respectfully submitted,

Cynthia A. Bardin, Town Clerk