

## Official Minutes

A regular meeting of the Town Board of the Town of Lima, County of Livingston and the State of New York was held at the Town Hall, 7329 East Main Street, Lima, New York, on the 7th day of January 2020 at 6:00 P.M. Notice was printed in the Mendon-Honeoye Falls-Lima Sentinel.

**PRESENT:** Supervisor, Michael Falk  
Deputy Supervisor, Leta Button  
Councilperson, Bruce Mayer  
Councilperson, Bill Carey  
Councilperson, Jon Belec  
Highway Superintendent, Keith Arner  
Town Clerk, Jennifer Heim

**Excused:** Town Attorney, James Campbell

### **Guest(s):**

### **Call the Meeting to Order**

Supervisor Falk called the meeting to order at 6:00 P.M. followed by the Pledge of Allegiance.

### **Supervisor's Report**

Supervisor Falk mentioned receipt of said report. On a motion by Councilperson Carey to accept the Supervisor's report, seconded by Councilperson Mayer, the vote went as follows:

**CARRIED:** Ayes: 5 Falk, Mayer, Carey, Belec, Button  
Nays: 0

### **December 30<sup>th</sup> Year-End Town Board Minutes & January 2<sup>nd</sup> Organizational Minutes**

Minutes were approved upon motion by Councilperson Mayer, seconded by Councilperson Belec, the vote went as follows:

**CARRIED** Ayes: 5 Falk, Mayer, Carey, Belec, Button  
Nays: 0

**Audit of Claims/Abstracts**

Resolved that the bills contained on Abstract #1 have been reviewed by the Town Board and are authorized for payment in the following amounts:

General Funds:	No. 1 through 22	\$ 110,738.78
Water Funds 1, 2, &3:	No. 1 through 3	\$ 2,147.89
Highway Funds:	No. 1 through 5	\$ 16,908.13

On a motion by Councilperson Mayer, seconded by Councilperson Carey, the vote went as follows:

CARRIED           Ayes: 5       Falk, Mayer, Carey, Belec, Button  
                          Nays: 0

**Building Inspector/Code Enforcement Officer Report**

Charlie Floeser discussed his report.

**Town Water Report**

Highway Superintendent Arner explained the water report.

**Village Water Project – Right-Of-Way Access License and Indemnification Agreement**

The above agreement was distributed to all members for review. This Agreement, in its entirety is below, was discussed and upon motion by Councilperson Carey to approve said Agreement allowing Falk to sign same, seconded by Councilperson Belec, the vote went as follows:

CARRIED           Ayes: 5       Falk, Mayer, Carey, Belec, Button  
                          Nays: 0

*\*\* Note- this agreement was drafted in 2019 but signed in 2020. The date will be changed during signing. \*\**

***RIGHT-OF-WAY ACCESS LICENSE AND INDEMNIFICATION AGREEMENT***

This agreement made the \_\_\_\_\_ day of December, 2019, between the **Village of Lima**, a municipal corporation with offices located at 7329 East Main Street, in the Town of Lima, County of Livingston and State of New York (hereafter referred to as “Village”), and the **Town of Lima**, a municipal corporation, with offices located at 7329 East Main Street, in the Town of Lima, County of Livingston and State of New York, (hereafter referred to as “Town”).

**WHEREAS**, the Town is the owner of a public right-of-way known as Harold Avenue hereafter “Harold Avenue” or “Town’s Right-of-Way”), which is located wholly within the jurisdictional boundaries of the Town, and which is maintained by the Town; and

**WHEREAS**, the Village is undertaking a significant water improvement project, part of which includes infrastructure improvements in the Town, outside the Village, said improvements consisting of an emergency water transmission main that will run from the Village line, west to the Town of Avon; and

**WHEREAS**, the parties to this Agreement acknowledge that such water infrastructure improvements will benefit both the Village and the Town; and

**WHEREAS**, because of certain geographical and terrain challenges, the Village has requested that the Town permit the Village to install a portion of the above infrastructure within the Town’s right-of-way known as Harold Avenue; and

**WHEREAS**, the Town wishes to memorialize the terms under which such consent shall be granted.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained and for other good and valuable considerations the receipt of which is hereby acknowledged, the Parties do hereby agree to the following:

1. The Village shall be permitted, upon advanced notice, to install and construct a water transmission main under a portion of the Town road and public right-of-way known as Harold Avenue upon the following conditions:
  - a). Prior to the installation of any infrastructure within Harold Avenue, the Village through its project engineer, shall meet with the Town Highway Superintendent to review the proposed plans which shall include the details of the infrastructure installation and desired location; and
  - b). The parties further agree that the Town Highway Superintendent shall have the sole and exclusive authority to determine the location of any improvements to be installed by the Village within the Town’s Right-of-Way; and
  - c). The Town Highway Superintendent shall be consulted about the construction schedule for any improvements to be located within the Town’s Right-of-Way and shall be provided a written request to the Town Highway Superintendent at least 72 hours in advance of the Village and/or its contractors closing any portion of Harold Avenue and the Town Highway Superintendent shall have the sole authority to determine if the requested time is acceptable; and
  - d). The method of installation, with regard to any road-cut or boring under the road within the Town’s Right-of-Way shall be approved by the Town Highway Superintendent prior to construction and the surface of the roadway and any

ditching or drainage areas serving the Town's Right-of-Way shall be restored to their pre-construction condition by the contractor working for the Village; and

- e). The Town shall be named as an additional insured on the Villages general liability policy during the entire time that the Village's contractor (and/or any sub-contractor) will be working in or installing infrastructure improvements within the Town's Right-of-Way; and
- f). The Town shall be named as an additionally benefitted party with regard to any surety bond or performance bond required of the Village's contractor (and/or any sub-contractor) that will be working in or installing infrastructure improvements within the Town's Right-of-Way; and
- g). The Village agrees that it shall indemnify and hold the Town harmless from any and all physical damages to the Town's Right-of-Way, liabilities, damages, claims, suits, awards, costs (including attorney's fees) or other actions resulting from the Village and/or its contractors, sub-contractors or agents working within the Town's Right-of-Way, or resulting from the infrastructure improvements placed within the Town's Right-of-Way; and
- h). The granting of this right-of-way access license shall not be interpreted to impose any responsibility on the Town for repair or maintenance to any of the Village's infrastructure improvements placed within the Town's Right-of-Way. The Town shall undertake future work within the right-of-way of Harold Avenue with ordinary care not to disturb or damage the water infrastructure improvements to be placed therein, and the Town shall not be responsible for any damage to such improvements which are a consequence of the Town's future repair or maintenance of Harold Avenue in the absence of gross negligence; and
- i). The granting of this right-of-way access license by the Town does not constitute any type of warranty of fitness to use the area that is the subject of this Agreement for any particular purpose

2. The Village hereby acknowledges that this Right-Of-Way Access License and Indemnification Agreement does not constitute more than mere permission to allow the Village to access and use the premises identified above for the limited purpose for which such permission is granted.

3. The Village expressly disclaims any right or ability to claim any easement or greater legal entitlement or interest in the use or possession or title of any portion of Harold Avenue. However, the parties agree that the Village shall have the authority and permission under this Agreement to periodically maintain the infrastructure installed within the Town's Right-of-Way pursuant to this Agreement, with the understanding that such authority and permission is subject to review and approval by the Town Highway Superintendent; and

4. The parties expressly agree that all indemnification and insurance provisions as stated hereunder shall continue in full force and effect for the duration of the installation and completion of the water line infrastructure within the Town's Right-of-Way, and that the indemnification provisions shall continue in effect indefinitely unless the water line infrastructure is removed or wholly assigned to a third party, which such assignment will require any such third party to enter into an acceptable license and indemnification agreement with the Town; and

5. This agreement cannot be modified except by a writing signed and acknowledged by the parties.

6. The rights contained herein are personal to the parties and may be terminated upon written notice at any time by either party without cause or without consent of the other.

Town of Lima

Date: \_\_\_\_\_

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

**Michael Falk, Supervisor**

Village of Lima

Date: \_\_\_\_\_

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

**Carl Luft, Mayor**

STATE OF NEW YORK )  
COUNTY OF LIVINGSTON) SS:

On this \_\_\_\_ day of December, 2019, before me personally came **Michael Falk**, to me known to be the same individual described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
COUNTY OF LIVINGSTON) SS:

On this \_\_\_\_ day of December, 2019, before me personally came **Carl Luft**, to me known to be the same individual described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

### **Sidewalk Path to Honeoye Falls**

Supervisor Falk asked that his agenda item be renamed Sidewalk Path to Heath Markham. This will be the agenda item name on future agendas. Falk mentioned the County grant writer is still working on same. The grant is due in July 2020.

### **Red Willison Baseball Field**

The board discussed pesticides in the park, per John Wadach's concern. The board agreed to have Red Willison folks be responsible for pesticide applications on the ball field with proper notification using the HFL school standards. This would avoid the added administrative burden for Town and Village employees.

### **2020 Historical Society Contract**

Upon motion by Councilperson Mayer to allow Falk to sign the below Agreement for 1 year, seconded by Councilperson Carey, the vote went as follows:

CARRIED                      Ayes: 5              Falk, Mayer, Carey, Belec, Button  
   Nays: 0

### **LIMA HISTORICAL SOCIETY AGREEMENT**

This Agreement, dated as of January 7, 2020, by and between the **TOWN OF LIMA**, a municipal corporation with a principal office located at 7329 East Main Street, Lima, New York (hereinafter referred to as "First Party"), and the **LIMA HISTORICAL SOCIETY**, a not-for-profit corporation registered with the New York State Board of Regents, having an address of 1850 Rochester Street, Lima, New York (hereinafter referred to as "Second Party");

#### **WITNESSETH:**

**WHEREAS**, Second Party is a recognized not-for-profit organization registered as a Historical Society with the New York State Board of Regents, operating within the Town of Lima, that gathers, preserves, advances and disseminates knowledge about the past through research, collections, acquisition and management, preservation and/or interpretation and that carries on educational and public programs on a regular schedule and that such efforts are recognized as a public service and benefit to local residents of the Town of Lima as a whole; and

**WHEREAS**, Second Party contributes to the well-being of the Town through educational programs and exhibits of historically significant artifacts and documents, community benefits

and social activities, and provides a real and substantial service within the Town in a manner that could not be readily or feasibly provided by the municipal corporation; and

**WHEREAS**, Second Party is charged with the support of an historic edifice and for the maintenance of a museum of local history where significant historical artifacts, records and documents are housed and maintained; and

**WHEREAS**, the First Party, pursuant to §57.07 of the New York Arts and Cultural Affairs Law, wishes to contract with Second Party to maintain said historic edifice and said historically significant artifacts, records and documents for public use under such terms and conditions as are stated herein;

**NOW, THEREFORE**, the Town of Lima hereby agrees to allocate for the 2020 calendar year the sum of FIVE THOUSAND and NO/100ths Dollars (\$5,000.00) to the Lima Historical Society for the purpose of maintaining the edifice known as the “Tennie Burton Museum Building” (located at 1850 Rochester Street) operated and maintained by the Second Party, and for all purposes associated with the housing, maintenance and keeping of historically significant artifacts, records and documents within such edifice, all for the purpose of preserving the same and making them available to the public for educational and historical enrichment.

The term of this Agreement shall be from January 1, 2020 until December 31, 2020

It is understood that the funds granted hereby shall be distributed to the Lima Historical Society on or before April 10, 2020. It is further understood that the allocated funds shall be used for no other purpose other than those specified above.

The Second Party agrees to account for the proper use of such allocated funds by submitting a written accounting of the same by no later than January 2<sup>nd</sup> of the year following the term of this Agreement.

It is further noted and acknowledged that this allocation is intended to further and promote a legitimate municipal goal and purpose of the Town of Lima.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date above written.

Date: \_\_\_\_\_

TOWN OF LIMA  
By: \_\_\_\_\_

Date: \_\_\_\_\_

LIMA HISTORICAL SOCIETY  
By: \_\_\_\_\_

**1335 Rochester Street & Meisenzahl Properties & Water**

Falk mentioned there is a house on 1335 Rochester Street that never connected to the water service per the amendment of chapter 240, articles III & IV of the Lima Town Code being the Rules and Regulations of Town Water District #2. This code states they should have been connected to the water main and charged the quarterly fee for being part of the district. Building Inspector Floeser will check the home for residents. David Meisenzahl would like to opt out of water all together, however, Town Attorney Campbell was not in favor of allowing this for one resident when it does not follow protocol that all residents must have service and pay the meter size rate but does not

need to use water. Falk will meet with Town Attorney Campbell for recommendations to proceed and send a letter to these two residents.

**Asbestos Bid**

Falk mentioned receipt of a bid from Environmental Group, Inc., to have asbestos removed from front of Town Hall and that the bid was over \$35K. Town of Lima’s Procurement Policy states anything over \$35K must go out to bid. The Town will advertise and have bid openings on Thursday, January 30<sup>th</sup> at 10AM. A public hearing will be scheduled for February 4<sup>th</sup>.

**Sidewalk Easement**

Falk mentioned they are still working to obtain the easement needed to proceed with the sidewalk to connect with the Village.

**Budget Transfer**

Falk mentioned a budget transfer needed from A9950.9 to A7520.4 in the amount of \$1093.18 to pay the Lima Historical invoice, per discussion and agreement by the board at the December 30<sup>th</sup> meeting. Upon motion by Councilperson Carey approving said transfer, seconded by Councilperson Mayer, the vote went as follows:

CARRIED            Aye: 5        Falk, Mayer, Carey, Belec, Button  
                             Nays: 0

Upon motion by Councilperson Mayer to adjourn at 7:33 PM, seconded by Councilperson Carey, the vote was unanimous.

Respectfully Submitted by:

\_\_\_\_\_  
Jennifer Heim, CMC/RMC  
Town Clerk

All reports mentioned in the Town Board Minutes can be reviewed at the Town Hall.