

TOWN OF BETHANY

REGULAR TOWN BOARD MEETING

10 AUGUST 2020

Supervisor Hyde opened the August 10, 2020 Town Board Meeting at 7:01 p.m. with the Pledge of Allegiance followed by a prayer offered by Councilman Embt.

*****Please note that this meeting is being held outside of Executive Order 202.1. The Town of Bethany is not technologically equipped to hold virtual meetings and therefor, must meet in person to conduct essential business. The public is welcome to attend however, facial covering and social distancing regulations must be adhered to.**

Town Officials in Attendance were:

- | | |
|---|----------------------------|
| Carl Hyde, Jr., Supervisor | Jeffrey Fluker, Councilman |
| Timothy Embt, Councilman | Daniel Street, Councilman |
| Diane Fowler, Councilwoman | Debbie Douglas, Town Clerk |
| Deborah Conti, Assessor | William Shea, Town Justice |
| Barbara Czworka, Highway Superintendent | |

Attendees to the Meeting were:

- | | |
|------------------------------|--------------------------|
| John Savash, Town Consultant | Gregg Torrey, Legislator |
| Steve Breckenridge | Phil Sortore |
| Bill Elsasser | Dustin Beardsley |
| Maud Charpin | Don Frank |
| Glenn Dembowski | Joanne Moscicki |
| Tricia Fietz | |

FINANCES

Supervisor Hyde presented the finances for July 2020.

General Fund	\$1,079,669.32
Highway Fund	\$ 659,524.07
AP/PR Account	\$ 83,891.37
Trust & Agency Account	\$ 3,056.99
Highway Checking	\$ 2,433.44
Supervisor	\$ 446,481.61
Water District #2	\$ 51,724.37
Petty Cash	\$ 200.00
 Total	 \$ 2,326,981.17

Revenues Received	
Debbie Douglas, Town Clerk	\$ 1,269.86
Highway – Health Insurance Prem.	\$ 43.40
Co. of Genesee-due other Gvmts.	\$ 45,145.10
US Post Office	\$ 100.00
Thomas McBride, Justice	\$ 120.00
 Total Revenue	 \$ 46,678.36
Total Interest	\$ 217.35
Total Revenue	\$ 46,895.71

PUBLIC HEARINGS**Special Use Permit Application (SA20007) – Beardsley Pond**

- Supervisor Hyde opened the public hearing at 7:02 p.m. for the Special Use Application (SA20007) submitted by Dustin Beardsley for the expansion of a pond on his property located at 9708 Clipnock Road (TMP# 3.-1-24.2).
- Gregg Torrey noted that he owns the property adjacent to Mr. Beardsley and has sent a letter stating that he supports Mr. Beardsley's application. No one else spoke.
- Mr. Beardsley was required to get a variance for the pond which was approved by the Zoning Board of Appeals at their July 22, 2020 meeting with the condition that Mr. Beardsley obtain the necessary letters from Genesee County Soil & Water Conservation and the DEC pertaining to wetlands. These letters are on file with his application with no issues being found by either agency.
- A recommendation of approval was received from the Genesee County Planning Board and a recommendation of disapproval was received from the Town Planning Board.
- Supervisor Hyde closed the public hearing at 7:54 p.m.

Town Clerk Report – Debbie Douglas

- Presented the Minutes of the July 13, 2020 Regular Town Board meeting.

A **MOTION** was made by Councilwoman Fowler, duly seconded by Councilman Fluker, to approve the minutes of the July 13, 2020 Regular Town Board meeting as presented. Motion **PASSED** with All In Favor.

- Hunting licenses went on sale today however, the new DECALS system is having may issues. The Clerk's office is discouraging the purchase of hunting licenses until the system is working properly. Some of the issues involved missing tags and incomplete sales reports.
- The Clerk's Monthly Report and Bank Statements for July 2020 were reviewed by the Town Board.

Highway Superintendent Report – Barbara Czworka

- "Not very happy with the board discussing me after the last board meeting, over union telling me what I can and cannot do? Then to send me an email saying the union cannot tell me what to do. My thoughts are we are all adults maybe it should have been discussed during the meeting."
- Letters have been sent out for the highway employees to return to work. Mark Heale will return on August 24, 2020 and Adam Miller and Josh McClellan will return on September 8, 2020.
- 2100 ton of stone will need to be trucked to the storage area on Cacner Road for the Mill Road project. This is approximately 150 18-ton loads. 1500 ton (84 loads) will come from Dolomite in LeRoy and 600 ton (34 loads) will come from Clarendon. Noted that she does not think it is possible to get this much stone hauled with one driver. Asked to have Adam Miller and Josh McClellan back on August 31, 2020. The project is scheduled for September 9th and 10th, 2020. If weather interferes, the dates will be September 14th and 15th. The road will be topped two weeks later.
- Attendees noted that the intersections are becoming grown up and dangerous. The intersections of Linden/Mill, Silver/Mill, Silver/Rt. 20 were specifically mentioned. Superintendent will contact the State DOT about Silver/Rt. 20 intersection.
- Highway Superintendent cannot do any physical work until all of the employees return to work per the Union contract.

Board Committee Reports**Councilman Street**

- The Planning Board recommended approval for a variance application for a porch and gave preliminary approval for a land separation that requires a merge.
- Voted to send the solar regulations to the Town Board. Feels that the Planning Board has done a good job.

Councilman Fluker

- As always, the Fire Department needs volunteers. Please come to the Fire Hall on any Monday evening if interested in volunteering.
- The new sign on Bethany Center Road has been installed and has to be fine-tuned. The sign for the truck garage should be installed this week.

Councilwoman Fowler

- The Inter-Municipal Agreement for \$4.5 million for Water District #5 passed the Genesee County Legislature.

OLD BUSINESS**Water District #4 – Update**

- Construction is beginning.
- A meeting for the residents of this district has been held.
- There are extra blue maker flags at the Town Hall for anyone who may still need one to mark where they would like their connection placed at the road.

Water District #5 – Update

- The Inter-Municipal Agreement for \$4.5 million with Genesee County has passed the Legislature.
- Monroe County Water Authority and CPL are working on the hydraulics and Map Plan and Report.
- Planning the location for the water tower that is to be located near the Town Hall.

Proposed Water District #6

- Supervisor Hyde has received several inquiries concerning a water district reaching into Linden.
- A tentative district has been sent to CPL for investigation. It would most likely include a water tower and a pump station.
- The proposed district could include West Bethany Road to Route 20, Route 20 to Francis Road, Silver Road, Mill Road, Linden Road, Smith Road, East Road to the Canon residence, Bethany Center Road, Marsh Road and Raymond Road.

2021 Budget & Revenue Sharing (Please see earlier minutes regarding this issue for more detailed information which may also be noted as Sales Tax Revenue Sharing.)

- The Board understands the resident's frustration with the lack of work being performed by the Highway Department (mowing, pothole patching, etc.). However, the Town is on an austerity budget in order to get to winter with the funds to pay for snow plowing. Until the County decides what they are doing with revenue sharing at a level that is consistent and known, the Board feels that they must prepare for the worst which is to plan for no further revenue sharing from the County. If the sharing of revenue remains sporadic there is

no way to formulate a budget using that money. Legislator Torrey feels that there will be a clearer picture by the time the Town has to pass their budget in November. By that time, stimulus funding should be available along with a clearer picture of sales tax revenue.

- The Town did receive approximately \$45,000 from the County. Distribution was determined by looking at where sales tax revenues were trending. This includes internet sales tax revenue which is lumped in with all other sales tax. Those funds are sitting in limbo because the County has not responded to the Supervisor as to where the funds came from so that they can be properly coded. Legislator Torrey said that he will help to get that information. The County Manager told Supervisor Hyde that he should code it as Miscellaneous however, a state auditor would find fault with that.
- Legislator Torrey noted that this revenue sharing is no longer called "Sales Tax Revenue Sharing". Since the 2018 agreement was instituted it has been called "Revenue Distribution".
- Mr. Torrey also stated that the Ways & Means Committee will be looking at another distribution during their meeting next week.
- In order to return to revenue sharing that is consistent, a new agreement would have to be drafted and agreed upon by the municipalities.
- One resident who spoke with Legislative Chair Stein was told that there would be distributions in August, September and October.
- The State Comptroller's Office says that Genesee County sales tax revenue is down by 3.8%. The Genesee County Treasurer says that it is down by 4.1%. The County is sharing far less than the decrease being realized.
- The first distribution of the year was from sales tax revenues.

RESOLUTION #36-2020 SA20007 - SPECIAL USE - BEARDSLEY POND - NEGATIVE DECLARATION

WHEREAS, the Bethany Town Board, as lead agency, is required to perform SEQR for any Special Use Permit, and

WHEREAS, the Bethany Town Board did perform SEQR and found no negative impacts were present, now

On **MOTION** of Councilman Fluker duly seconded by Councilwoman Fowler, be it

RESOLVED that the Town Board issues a Negative Declaration for SEQR for the Special Use Application (SA20007) submitted by Dustin Beardsley for the construction of a pond on the property located at 9708 Clipnock Road, East Bethany, NY (TMP#3.-1-24.2).

Motion **PASSED** with the following Roll Call Vote:

- | | |
|---------------------------|-------------------------|
| Supervisor Hyde – Yes | Councilman Fluker – Yes |
| Councilman Embt – Yes | Councilman Street – Yes |
| Councilwoman Fowler - Yes | |

RESOLUTION #37-2020 - SUP - BEARDSLEY POND - APPROVAL OF

WHEREAS, Dustin Beardsley has submitted a Special Use Application to the Town of Bethany for a pond, and

WHEREAS, such application was submitted in its entirety to the Genesee County Planning Board and the Town of Bethany Planning Board, and

WHEREAS, the Genesee County Planning Board recommended approval and the Town Planning Board has recommended disapproval of the Special Use Application, and

WHEREAS, in accordance with Town of Bethany Zoning Law Article 210, Section C the Bethany Town Board did hold a public hearing where any interested parties for or against were heard, and

WHEREAS, the Bethany Town Board did perform SEQR review issuing a Negative Declaration, now

On **MOTION** of Councilman Street, duly seconded by councilman Embt, be it

RESOLVED that the Special Use Permit Application (SA20007) submitted by Dustin Beardsley for the construction of a pond on the property located at 9708 Clipnock Road in the Town of Bethany (TMP #3.-1-24.2) is hereby approved/denied.

Motion **PASSED** with the following Roll Call Vote:

- | | |
|---------------------------|-------------------------|
| Supervisor Hyde – Yes | Councilman Fluker – Yes |
| Councilman Embt - Yes | Councilman Street – Yes |
| Councilwoman Fowler - Yes | |

RESCIND THE SNOW & ICE REMOVE AND MOWING CONTRACT WITH GENESEE COUNTY

- The following resolution was presented.

RESOLUTION TO RESCIND THE SNOW & ICE REMOVAL AND MOWING CONTRACT WITH GENESEE COUNTY

WHEREAS, all Board Members, having due notice of said meeting, and that pursuant to Article 7, §104 of the Public Officers Law, said meeting was open to the general public and due and proper notice of the time and place whereof was given as required by law; and

WHEREAS, pursuant to Governor Andrew Cuomo’s Executive Orders put into place in consideration of the COVID-19 pandemic and the guidelines put in place during Phase IV of New York Forward, said meeting was held in accordance with social distancing protocol and face coverings were worn by all Board Members and public attendees; and

WHEREAS, the Town Board of the Town of Bethany passed Resolution #67-2018 “Authorizing the Highway Superintendent to Sign the 2019 Snow & Ice Removal and Mowing Contract with Genesee County” on December 10, 2018; and

WHEREAS, the term of said agreement began January 1, 2019 and is set to commence for two years, and therefore will expire on January 1, 2021; and

WHEREAS, the Genesee County Legislature passed Resolution No. 402 entitled, “Authorization for Distribution Payment to Genesee County Towns and Villages-Approval of” dated November 15, 2018, which resolved that on or prior to September 1, 2019, Genesee County would advise the Towns and Villages in the County of the amounts from the distribution payments they can expect to receive in the calendar year of 2020; and

WHEREAS, the Genesee County Legislature passed Resolution No. 316 entitled, “Authorization for Distribution Payment to Genesee County Towns and Villages-Approval of” dated August 29, 2019, which resolved that the Towns and Villages of Genesee County would be notified by Genesee County on or before September 1, 2020

of the amounts they can expect to receive for the calendar year of 2021 as a result of the distribution payments; and

WHEREAS, on May 14, 2020, the Genesee County Legislature made the decision to discontinue all voluntary revenue payments to the Towns and Villages of Genesee County, without any consultation of the Towns and Villages, by passing Resolution No. 196 entitled, "Rescind Resolution 402-2018 and 316-2019- Authorization for Distribution Payments to Enumerated"; and

WHEREAS, Pursuant to Town Law §106, each municipality is to meet during the fall to discuss the financial obligations that the Town will be facing for the upcoming years, and with the passing of Resolution No. 196 by the Legislature on May 14, 2020, the Town of Bethany needs to make severe financial changes as a result of the actions of Genesee County and need to take cautious action to meet the pre-determined financial obligations; and

WHEREAS, due to such financial changes and the dire economic peril the Town of Bethany is experiencing, the Town Board is without the Resources to complete the Snow & Ice Removal and Mowing Agreement with Genesee County for the remainder of 2020 (October, November & December); and

WHEREAS, in accordance with the Snow & Ice Removal Contract with Genesee County, the amount received by the Town of Bethany is \$140,501.92, which covers seven months: January, February, March, April, October, November and December; and

WHEREAS, the amount per month is \$20,071.70, and the Town Board of the Town of Bethany has calculated that the amount to refund to the County is \$60,215.10, which will cover October, November and December; and

WHEREAS, the Town of Bethany does not owe the County a refund in regard to mowing services in 2019-2020, and will not be cutting brush. Per the Agreement, which was effective January 1, 2019, the total cost of mowing at a rate of \$456.00 for 21.79 miles brought the total 2019 mowing cost to \$9,936.24; and

WHEREAS, based on the aforementioned, the Town Board believes it is in the best interest of the Town of Bethany to rescind the Snow & Ice Removal and Mowing Contract with Genesee County, and issue a credit to Genesee County in the amount of \$60,215.10 to compensate for the months of October, November and December of 2020; and

NOW ON MOTION OF _____ which has been duly seconded by _____, be it

RESOLVED, the Town Board of the Town of Bethany hereby rescinds the 2019-2020 Snow & Ice Removal Agreement for the months of October, November and December and the Mowing Contract with Genesee County; and be it further

RESOLVED, the Town Board of the Town of Bethany will notify the County of the now rescinded contract and will issue a credit in the amount of \$60,215.10 towards the total amount Genesee County owes the Town of Bethany in consideration of Resolution No. 196, dated May 14, 2020.

- Supervisor Hyde offered the following cost analysis for 2018 and 2019. Both years show a loss and do not include the cost of insurance associated with maintaining county roads.

Analysis of 2019 Snow and Ice Contract and Mowing Contract

Total Miles -Town of Bethany	56 miles
Total Miles -County Miles	22 miles
Percentage Used	0.392857143

Assumptions

- Use 40% Reduction For Snow Removal-Contractual
- Use \$2,000 Reduction For Machinery -Contractual
- Reduction in One Full Time Employee (33%) In Highway Department

Revenues

Snow and Ice	\$	118,363	
Mowing	\$	9,936	
Total Revenue		\$	128,299

Expenditures Reduced-2019

Snow Removal- Contractual	\$	44,878	
Machinery-Contractual	\$	2,000	
Reduction In Wages	\$	55,231	
Reduction In Employer Social Security	\$	4,155	
Reduction in NYS Retirement	\$	7,665	
Reduction in Health Insurance	\$	16,372	
Total Expenditures Reduced		\$	130,301
Loss on S&I/Mowing Contract		\$	(2,002)

Analysis of 2018 Snow and Ice Contract and Mowing Contract

Total Miles -Town of Bethany	56 miles
Total Miles -County Miles	22 miles
Percentage Used	0.392857143

Assumptions

- Use 40% Reduction For Snow Removal-Contractual
- Use \$2,000 Reduction For Machinery -Contractual
- Reduction in One Full Time Employee (33%) In Highway Department

Revenues

Snow and Ice	\$	109,930	
Mowing	\$	9,740	
Total Revenue		\$	119,670

Expenditures Reduced-2018

Snow Removal- Contractual	\$	34,638	
Machinery-Contractual	\$	2,000	
Reduction in Wages	\$	58,027	
Reduction In Employer Social Security	\$	4,421	
Reduction in NYS Retirement	\$	7,955	
Reduction in Health Insurance	\$	18,007	
Total Expenditures Reduced		\$	125,048
Loss on S&I/Mowing Contract		\$	(5,378)

- Supervisor Hyde noted that in order to maintain the county roads the town would need to have three MEO's. One MEO including benefits costs the town \$80,000. The town may not be able to afford to have three MEO's. There is no guarantee of revenue. (See revenue sharing earlier in this document and previous meetings.) If a position is eliminated, part-time employees could be hired to plow and mow, without violating the Union contract, saving money

in benefits.

- A resident asked if the Highway Superintendent could plow since she is already being paid. No, she cannot as she does not have a CDL license. Same resident asked if she could be made to get a CDL license. Supervisor Hyde replied that no she couldn't be made to get one. It would be up to her. The resident suggested that the Highway Superintendent should pursue her CDL license.
- If someone is out sick or on vacation, the Highway Superintendent would not be able to fill in without a license. A part-time employee would have to be used. This would not be in violation of the Union contract because all full-time employees are employed and no work is being taken away from them.

On **MOTION** of Supervisor Hyde, duly seconded by Councilwoman Fowler, the Resolution to Rescind the Snow & Ice Removal and Mowing Contract with Genesee County is hereby tabled until the September 14, 2020 Town Board meeting.

Motion **PASSED** with the following Roll Call Vote:

Supervisor Hyde – Yes	Councilman Fluker – Yes
Councilman Embt - Yes	Councilman Street – Yes
Councilwoman Fowler - Yes	

SNOW & ICE REMOVAL AND MOWING CONTRACT WITH GENESEE COUNTY

INTERMUNICIPAL AGREEMENT BETWEEN

GENESEE COUNTY

AND

TOWN OF BETHANY

**FOR THE PROVISION OF
SNOW REMOVAL AND ICE CONTROL SERVICES &
ROADSIDE MOWING**

Intermunicipal Agreement for
Snow Removal and Ice Control Services and
Roadside Mowing

THE AGREEMENT, dated _____, 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 BETHANY, a municipal corporation within the County of GENESEE, having its office and place of business at 10510 Bethany Center Road, East Bethany, New York, 14054 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. _____, adopted _____, 2020.

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 one (1) year beginning January 1, 2021 and expiring on December 31, 2021.

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 2021, the County shall pay to the Town a lump sum payment of \$6,515 per centerline mile for 21.79 miles of County Roads for a total annual payment of \$141,961.85 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 2021, the County shall pay to the Town a lump sum payment of \$474 per centerline mile for 21.79 miles of County Roads for a total annual payment of \$10,328.46 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:

Barbara Czworka
Town of Bethany Highway Superintendent
10510 Bethany Center Rd
East Bethany, NY 14054
Phone: (585) 343-2908

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

COUNTY OF GENESEE

TOWN OF BETHANY

By: _____

By: _____

Chairperson of the Legislature

Supervisor

STATE OF NEW YORK)
COUNTY OF GENESEE) SS:

On this ____ day of _____, 2020, 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 _____, 2020, 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

- The following resolution was presented.

WHEREAS, Genesee County has presented a contract for snow removal, ice control and mowing of roadsides, and

WHEREAS, the Supervisor along with the Town Board have weighed the proposed payment from the County against the actual cost and risk to the Town, now, on

MOTION of _____, duly seconded by _____, be it

RESOLVED that Supervisor Hyde is/is not authorized to sign the Intermunicipal Agreement with Genesee County for Snow Removal, Ice Control and Roadside Mowing.

On **MOTION** of Councilwoman Fowler, duly seconded by Councilman Fluker, that after discussing the previous resolution to rescind the remainder of the 2020 Snow & Ice Removal and Mowing Contract with Genesee County and the subsequent tabling of the same, Councilwoman Fowler moves that the resolution concerning the 2021 Contract should also be tabled until the September 14, 2020 Town Board Meeting in

order to gain a clearer picture of future funding.

Motion **PASSED** with the following Roll Call Vote:

Supervisor Hyde – Yes	Councilman Fluker – Yes
Councilman Embt - Yes	Councilman Street – Yes
Councilwoman Fowler - Yes	

Sale of the Old Town Hall – Update

- Tricia Fietz spoke concerning her interest in purchasing the Old Town Hall.
- Ms. Fietz is researching her financial options and informed the Board that she expects to be able to make a decision in 2 – 3 months.

NEW BUSINESS

RESOLUTION #38-2020 PROCUREMENT POLICY

This resolution sets forth the policy and procedures of the Town of Bethany to meet the requirements of General Municipal Law § 104-b, which requires each political subdivision to adopt procurement policies and procedures.

I. STATEMENT OF POLICY AND PURPOSE

Goods and services that are not required by law to be procured pursuant to the competitive bidding requirements of General Municipal Law § 103 must be procured in a manner that assures use of public moneys in a prudent and economical manner and in the best interest of the taxpayers, facilitates the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and guards against favoritism, improvidence, extravagance, fraud, and corruption.

To further these objectives, the governing board is adopting an internal policy and procedures to govern the procurement of all goods and services that are not subject to the competitive bidding requirements of General Municipal Law § 103 or any other general, special, or local law.

II. APPLICABILITY OF THIS POLICY

The policies and procedures outlined herein apply to the procurement of every good or service procured by the municipality that are not required to be made pursuant to the competitive bidding requirements General Municipal Law § 103 or of any other general, special or local law.

- A. Purchase or Public Works Contract Determination.** Every proposed purchase must initially be reviewed to determine whether it constitutes a purchase contract or a public works contract. In general, purchase contracts involve the acquisition of commodities, materials, supplies, or equipment, while contracts for public work involve labor or construction. For the purposes of this policy, routine service contracts (e.g. grounds maintenance, vehicle maintenance and repair, janitorial services) will be considered purchase contracts for the applicable methods of procurement and adequate documentation.
- B. Aggregate Amount Determination.** Once the determination is made regarding whether the procurement constitutes a purchase contract or a public works contract, a good-faith effort will be made to determine whether it is known, or can reasonably be expected, that the aggregate amount to be spent on the goods or services falls below the monetary threshold for state competitive bidding laws set forth under General Municipal Law § 103. This determination must take into account past purchases and the aggregate amount to be spent in a year.
- C. Procurements Subject to State Competitive Bidding.** The following items are subject to competitive bidding pursuant to General Municipal Law § 103 and must be procured through the procedure outlined therein:
 - purchase contracts over \$20,000; and
 - public works contracts over \$35,000.

D. (i) Procurements Not Subject to State Competitive Bidding Requirements. The following items are either not subject to or are exceptions to General Municipal Law § 103 competitive bidding requirements:

- purchase contracts under \$20,000 and public works contracts under \$35,000;
- emergency purchases;
- certain municipal hospital purchases;
- goods purchased from agencies for the blind or severely handicapped;
- goods purchased from correctional institutions;
- purchases under state and county contracts; and
- surplus and secondhand purchases from another governmental entity.

(ii) Documentation Required. The determination that a purchase is not subject to competitive bidding requirements under General Municipal Law § 103 must be documented in writing by the purchasing agent. This documentation may include:

- written or verbal quotes from vendors; or
- a memo from the purchasing agent indicating how the decision was arrived at; or
- a copy of the contract indicating the source that makes the item or service exempt; or a memo from the purchasing agent detailing the circumstances that led to an emergency purchase; or
- any other written documentation that is appropriate.

E. Statutory Exceptions to Quotations/Proposals Requirements of This Policy and Procedures. All goods and services will be secured in accordance with this policy except in the following circumstances:

- purchase contracts over \$20,000 and public works contracts over \$35,000 competitive bidding procedures General Municipal Law § 103;
- goods purchased from agencies for the blind or severely handicapped pursuant to State Finance Law § 175-b;
- goods purchased from correctional institutions pursuant to Correction Law § 186;
- purchases under state contracts pursuant to General Municipal Law § 104;
- purchases under county contracts pursuant to General Municipal Law § 103(3);
- purchases let by other governmental entities pursuant to General Municipal Law § 103(16); or
- other items excepted from this policy (see section, “Items Excepted from this Policy and Procedures by the Board”); or where other exceptions provided by law apply.

III. ADOPTION OF PROCEDURES

The following procedures identify the methods of competition and the means of adequate documentation to be used for the procurement of goods and services subject to this policy.

A. Methods of Procurement

The methods of procurement to be used are as follows:

1. Discretion of purchasing agent
2. Verbal estimates
3. Written quotations
4. Requests for proposals

B. Adequate Documentation

Documentation of actions taken in connection with each method of procurement is required as follows:

Estimated Amount of Purchase or Service Contract Method Less than \$500 Discretion of purchasing agent \$500 - \$4,999 two (2) verbal quotes \$5,000 - \$35,999 three (3) written quotes/RFPs, and \$36,000 and over are to receive a formal bid.

Estimated Amount of Public Work Contract Method Less than \$500 Discretion of purchasing agent \$500 - \$2,999 two (2) verbal quotes, \$3,000 - \$9,999 two (2) written quotes, \$10,000 - \$35,999 three (3) written quotes/RFPs, \$36,000 and over are to receive a formal bid.

A good-faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or quotations, the purchaser will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement. C. Required Statements for Submissions Made Pursuant to Competitive Bidding. If the goods or services to be procured must be acquired by competitive bidding pursuant to General Municipal Law § 103 or any other general, special or local law, the following statement must accompany such bid:

- i. The Iran Divestment Act. Every written offer made to the Town of Bethany must contain the following statement subscribed and affirmed by the offeror as true under the penalties of perjury: By submission of this offer, each offeror and each person signing on behalf of any offeror certifies, and in the case of a joint offer each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each offeror is not on the list created pursuant to State Finance Law § 165-a (3)(b). The Town of Bethany may award an offer to an offeror who cannot make the statement of non-investment on a case-by-case basis if: The investment activities in Iran were made before the effective date of this section, the investment activities in Iran have not been expanded or renewed after the effective date of this section, and the person has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or The Town of Bethany makes a determination that the goods or services are necessary for the Town of Bethany to perform its functions and that, absent such an exemption, the Town of Bethany would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document. No contract may be awarded to any persons determined to be engaged in investment activities in Iran as indicated by New York State Office of General Services.
- ii. Statement of Non-Collusion. Every written offer made to the Town of Bethany must contain the following statement subscribed and affirmed by the offeror as true under the penalties of perjury: By submission of this offer, each offeror and each person signing on behalf of any offeror certifies, and in the case of joint offer each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief: The prices in this offer have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; Unless otherwise required by law, the prices quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening, directly or indirectly, to any other offeror or to any competitor; and No attempt has been made or will be made by the offeror to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- iii. Statements for Non-Bid Procurements. Offers submitted in a manner other than competitive bidding shall also contain the above statements; however, the failure to include them shall not result in their automatic rejection.

IV. AWARDS TO OTHER THAN THE LOWEST RESPONSIBLE DOLLAR OFFEROR

Whenever a contract is awarded to someone other than the lowest responsible dollar offeror, the reasons why the award furthers the purposes of General Municipal Law § 104-b shall be documented as follows:

A. Best Value. Notwithstanding anything else contained in this policy, the Town of Bethany may award purchase contracts and service contracts that have been procured pursuant to competitive bidding under

General Municipal Law § 103(1) or otherwise under this policy by either the lowest responsible bidder standard or the best value standard.

i. Definition. “Best value” is defined in State Finance Law § 163 as, “the basis for awarding contracts for services to the offeror which optimizes quality, cost and efficiency, among responsive and responsible offerors.” For the purposes of this section, the Town of Bethany adopts the above definition of “best value” as may be modified from time to time by the State Legislature.

ii. Applicability. The best value standard may only be used for purchase contracts, which includes contracts for service work, but excludes any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law. When awarding contracts under the best value standard, the Town of Bethany must consider the overall combination of quality, price, and other elements of the required commodity or service that in total are optimal relative to the needs of the Town of Bethany. Use of the best value standard must rely, wherever possible, on objective and quantifiable analysis. The best value standard may identify as a quantitative factor whether offerors are small businesses or certified minority- or women-owned business enterprises as defined in New York Executive Law § 310.

iii. Approval. Use of the best value standard for the procurement of goods and services requires approval from the Town of Bethany. The board must also approve the factors to be considered when awarding contracts under this standard.

V. ITEMS EXCEPTED FROM THIS POLICY AND PROCEDURES BY THE BOARD Pursuant to General Municipal Law § 104-b(2)(g), this policy may contain circumstances or types of procurements for which, in the sole discretion of the governing body, the solicitation of alternative proposals or quotations will not be in the best interest of the municipality. In the following circumstances it may not be in the best interests of the Town of Bethany to solicit quotations or document the basis for not accepting the lowest bid:

A. Professional services or services requiring special or technical skill, training or expertise. The individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity and moral worth. These qualifications are not necessarily found in the individual or company that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

In determining whether a service fits into this category the individual or body making the purchase shall take into consideration the following guidelines:

- (i) whether the services are subject to state licensing or testing requirements;
- (ii) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and
- (iii) whether the services require a personal relationship between the individual and municipal officials. “Professional or technical services” shall include but not be limited to the following services of: an attorney; services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing, editing or art work; management of municipally owned property; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of prepackaged software. To the extent practicable, professional services are to be obtained through requests for proposals issued by the Town of Bethany’s purchasing agent. All RFPs are to be reviewed by the purchasing agent, who will make a recommendation to the Town board for final approval. The determination of the RFP will be based on clearly described and documented criteria, and will include the evaluation of the service provider’s accountability, reliability, responsibility, skill, education and training, judgment, integrity and moral worth. In the event an RFP is not used to procure a professional service, no contract shall be awarded without written documentation of the procurement process and evaluation methods used.

B. Emergency purchases. For purpose of this section, an emergency refers to an occurrence that presents an immediate threat to public property, the life, safety, health, welfare or property of residents

or the public, or threatens to curtail or terminate an essential service to residents or the public. Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety, property or welfare of the residents of the Town of Bethany. This section does not preclude alternate proposals if time permits. Emergency purchases will be made at the discretion of the appropriate department head with documentation as to the nature of the emergency.

C. Sole Source. Under State Finance Law § 163, “sole source” is defined as “a procurement in which only one offeror is capable of supplying the required commodities or services,” and no substantial equivalent exists. To qualify under the sole source exception, the Town of Bethany must demonstrate that the acquisition of the good or service sought is in the public interest and is available from only one source, for which there is no equivalent. A good or service serves the public interest if there are unique benefits arising from the particular good or service as compared to a different good or service, no other good or service would provide substantially similar benefits, and the cost is reasonable when considering the benefit conferred upon the municipality.

D. Purchases of surplus and secondhand goods from any source or goods purchased at auction. If alternate proposals are required, the Town of Bethany would be precluded from purchasing surplus and secondhand goods at auctions or through specific advertised sources where the best prices are usually obtained. It is also difficult to try to compare prices of used goods and a lower price may indicate an older product.

E. Goods or services under \$500. The time and documentation required to purchase through this policy may be more costly than the item itself and would therefore not be in the best interests of the taxpayer. In addition, it is not likely that such de minimis contractors would be awarded based on favoritism.

F. Cooperative or Piggyback Contracts. General Municipal Law § 103(16) allows for the procurement of certain goods (including apparatus, materials, equipment and supplies) and services through contracts let by the United States or any agency thereof, any state or any other political subdivision or district therein, if such contract was let in a manner consistent with competitive bidding, and has been made available for use by other governmental entities. The stated purpose is to reduce administrative and product cost, and increase efficiencies. Through cooperative purchasing, or piggybacking, a governmental subdivision has already investigated and secured the lowest possible price for the municipality. It is the responsibility of the Town board to review each proposed procurement to determine, on advice of the Town of Bethany’s attorney as appropriate, whether the procurement falls within this exception. Three items must be considered:

- i. The contract must have been let by the United States or any agency thereof, any state or any other political subdivision or district therein; and
- ii. The contract must have been made available for use by other governmental entities; and
- iii. The contract must have been let in a manner that constitutes competitive bidding consistent with state law. If it is determined that all three items to consider have been met, the Town board shall allow this exception to the requirements of competitive bidding and this policy.

G. Shared Services or Efficiencies. When participation or procurement will constitute a shared service or efficiency it shall be exempt from this policy. Municipalities are encouraged and authorized to share services and work together when possible.

VI. INDIVIDUAL(S) RESPONSIBLE FOR PURCHASING

Carl Hyde, Jr., Supervisor	Jeffrey Fluker, Deputy Supervisor
Barbara Czworka, Highway Superintendent	Debbie Douglas, Town Clerk
William Shea, Town Justice	Thomas McBride, Town Justice

VII. INPUT FROM OFFICERS Comments have been solicited from officers of the political subdivision or district therein involved in the procurement process prior to the enactment of this policy and procedures, and will be solicited from time to time hereafter.

VIII. ANNUAL REVIEW The governing board of the Town of Bethany shall annually review and, when necessary, update this policy and its procedures. The (Insert name or position of designated

person) shall be responsible for conducting an annual evaluation of the effectiveness of the procurement policy and procedures and an evaluation of the control procedures established to ensure compliance with the procurement policy, and shall be responsible for reporting back to the board.

IX. UNINTENTIONAL FAILURE TO COMPLY The unintentional failure to comply fully with the provisions of General Municipal Law, § 104-b shall not be grounds to void action taken or give rise to a cause of action against the Town of Bethany or any officer or employee thereof.

X. RESOLUTION Adopted on August 10, 2020 by unanimous vote of the governing board of the Town of Bethany.

Warrant

- The Board approved payment of the bills as follows:

	<u>Prepaid</u>	<u>Total</u>
General Fund	\$ 4,437.33	\$ 6,829.88
Highway Fund	\$ 0.00	\$ 605.78
Trust & Agency	\$ 0.00	\$ 1,628.73
Highway Capital Funds Project	\$ 0.00	\$ 0.00
Fire Protection Fund	\$ 0.00	\$ 0.00
Water Fund	\$ 0.00	\$ 0.00
Justice Fund	\$ 0.00	\$ 0.00

Adjournment

A **MOTION** was made by Councilman Fluker, duly seconded by Councilman Street, to adjourn the meeting at 8:50 p.m. The motion **PASSED** with All In Favor.

BY ORDER OF THE
BETHANY TOWN BOARD
DATED: August 13, 2020

Respectfully Submitted,

Debbie L. Douglas, RMC
Bethany Town Clerk