

**TOWN OF HORSEHEADS
TOWN BOARD
APRIL 14, 2021
7:00 P.M.**

The regular monthly meeting of the Town Board of the Town of Horseheads was held remotely on the above date at 7:00 P.M. at the Town Hall, 150 Wygant Road, Horseheads, New York.

Members Present: Donald J. Fischer, Supervisor; Gary H. Riopko, Carl R. Lewis, Sr., Stephen E. Wilber and Donald W. Zeigler, Councilmen.

Others Present: John P. Mustico, Town Attorney; Nancy Rohde, Town Clerk, Peggy Woodard, 8th District Legislator via Zoom, Joseph Atkinson, Ray & Lori Cass, and Thomas Nagle.

Supervisor Fischer called the meeting to order at 7:00 p.m. and the Pledge of Allegiance was recited.

On a motion by Mr. Lewis, and seconded by Mr. Wilber, it was moved that the reading of the minutes of the March 10 & 24, 2021 meeting of the Town Board of the Town of Horseheads be dispensed with and the same stand approved as entered by the Clerk.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

Resolution #68 of 2021

RESOLUTION AUTHORIZING PAYMENT OF CLAIMS

Resolution by Mr. Riopko, seconded by Mr. Riopko,

BE IT RESOLVED, that the Supervisor is hereby directed to pay the audited bills from all funds in the amount of \$665,530.45.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

Resolution #69 of 2021

REPORTS OF TOWN OFFICERS

On a motion by Mr. Lewis, and seconded by Mr. Riopko, it was moved that the March, 2021 reports of the Supervisor in the General and Highway Funds, reports of the Town Justices, reports of the Code Enforcement Office, Highway Superintendent, Town Clerk, and Assessor be received and placed on file.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

04/14/2021 T.B.

Correspondence:

- Charter Communications – Upcoming Changes – March 2021
- Chemung Valley Senior Center – Thank you for financial support (3/11/2021).

On a motion by Mr. Lewis and seconded by Mr. Wilber, it was moved that the correspondence be received and placed on file.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

During the audience participation portion of the meeting, Peg Woodard asked to be recognized as attending via ZOOM.

PUBLIC HEARING – SPECTRUM CABLE FRANCHISE AGREEMENT

At this portion of the meeting, Supervisor Fischer turned the meeting over to Attorney Mustico who asked for a motion to dispense with the reading of the public hearing.

A motion was made by Mr. Wilber and seconded by Mr. Lewis to dispense with the reading of the public hearing.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

Attorney Mustico then asked if anyone wished to speak with regard to the public hearing. As no one spoke, a motion was made by Mr. Lewis, and seconded by Mr. Wilber to close the public hearing.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

Resolution #70 of 2021

RESOLUTION AUTHORIZING SPECTRUM CABLE FRANCHISE AGREEMENT

Resolution by Mr. Wilber, seconded by Mr. Riopko

WHEREAS, an application has been duly made to the Board of the Town of Horseheads, County of Chemung, New York by Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc. (“Charter”), a limited liability company organized and existing in good standing under the laws of State of Delaware doing business at 2604 Seneca Avenue, Niagara Falls, NY 14305, for the approval of a renewal agreement for Charter’s cable television franchise for fifteen (15) years commencing with the date of approval by the Public Service Commission.

The franchise renewal agreement would bring the franchise into conformity with certain provisions of the Federal Cable Communications Policy Act of 1984, as amended and certain court rulings.

04/14/2021 T. B.

A public hearing was held in the Town of Horseheads, New York on April 14, 2020 at 7:00 P.M. and notice of the hearing was published in the Star-Gazette on March 22, 2021.

NOW, THEREFORE, the Board of the Town of Horseheads finds that:

1. Spectrum Northeast, LLC has substantially complied with the material terms and conditions of its existing franchise and with applicable law; and
2. Spectrum Northeast, LLC has the financial, legal and technical ability to provide these services, facilities and equipment as set forth in its proposal attached; and
3. Spectrum Northeast, LLC can reasonable meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

BE IT FURTHER RESOLVED that the Board of the Town of Horseheads hereby grants the cable television franchise of Spectrum Northeast, LLC and the Town of Horseheads for fifteen (15) Years commencing with the date of approval by the Public Service Commission and expiring fifteen (15) years hence and, be it further

RESOLVED, that the Board of the Town of Horseheads hereby confirms acceptance of this franchise renewal agreement.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

Resolution #71 of 2021

RESOLUTION AUTHORIZING MEMORIAL DAY DONATIONS

Resolution by Mr. Riopko, seconded by Mr. Lewis

BE IT RESOLVED, that the Horseheads American Legion and Elmira Heights American Legion receive a donation for their Memorial Day Observances of \$400.00 each.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

The Resolution approving contracts with National Grid was tabled to the April 28, 2021 8:00 A.M. meeting.

The Resolution appointing Samantha Jochem as full-time Justice Court Clerk was tabled to the April 28, 2021 8:00 A.M. meeting.

Resolution #72 of 2021

RESOLUTION APPROVING GIS AGREEMENT WITH CHEMUNG COUNTY

Resolution by Mr. Wilber, seconded by Mr. Riopko

AGREEMENT, made this 14th day of April, 2021 by and between the County of Chemung, hereinafter referred to as "County," with address of 203 Lake Street Elmira, NY 14902, and among the following:

- Chemung County Soil and Water/ Storm Water, 851 Chemung Street, Horseheads, NY 14845
- City of Elmira, 317 East Church Street, Elmira, NY 14901
- Elmira Water Board, 261 West Water Street, Elmira, NY 14901
- Town of Ashland, 3663 Sixth Street, Wellsburg, NY 14894
- Town of Baldwin, 622 Breesport N Chemung Rd, Lowman, NY 14861
- Town of Big Flats, 476 Maple Street, Big Flats, NY 14814
- Town of Catlin, 1448 Chambers Road, Beaver Dams, NY 14812
- Town of Chemung, 48 Rotary Rd Ext, Chemung, NY 14825
- Town of Elmira, 1255 West Water Street, Elmira, NY 14905
- Town of Horseheads, 150 Wygant Road, Horseheads, NY 14845
- Town of Southport, 1139 Pennsylvania Avenue, Elmira, NY 14904
- Town of Van Etten, PO Box 177. Van Etten, NY 14889
- Village of Horseheads, 202 South Main Street, Horseheads, NY 14845

WHEREAS, the County has formed a GIS Consortium (Chemung County Geographical Information Systems (GIS) Consortium hereinafter known as the CCGC) to efficiently facilitate GIS coordination and data sharing within the County and with neighboring counties and

WHEREAS, the County has entered into a three-year agreement with Environmental Systems Research Institute Inc. (ESRI) to provide all necessary GIS server software and server licensing and

WHEREAS, the County will house the servers and storage necessary for the CCGC and

WHEREAS, a major cost associated with the development of a geographic information system ("GIS") program is related to the development and maintenance of its spatial data; and

WHEREAS, the parties on this agreement have invested significant money and effort in the development and maintenance of GIS data; and

WHEREAS, the reuse and distribution of GIS data created by government agencies provides significant cost savings opportunities to other government programs/entities with limited technical and financial resources; and

WHEREAS, the CCGC is serious about obtaining the efficiencies and savings associated with the sharing of their respective GIS data and collaborating on the development of systems and applications pursuant to the terms described below.

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements herein set forth, the parties, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows;

FIRST: The parties hereto agree to share digital GIS data with each other and other participating municipalities at no charge to the other party.

SECOND: The parties agree to membership in the CCGC and to abide by the bylaws set forth.

THIRD: The parties hereto agree that all digital GIS data will be shared except where restricted by security guidelines or data agreements with other agencies or private sector companies.

FOURTH: None of the parties hereto or other participating party will provide data to non-participating parties without entering into a Third-Party Agreement restricting the redistribution and/or resale of said data.

FIFTH: None of the parties hereto nor any other participating party will provide data owned by other parties to this agreement to any third party agency or private sector company without written authorization from the CCGC.

Pursuant to the 1994 "Inter-local" agreement, the component municipalities contracted for the original digital tax map development, which was then copyright protected by the County. The County has provided ongoing digital tax map maintenance. Ownership of the tax maps for each municipality rests with both the County and each respective municipality. Neither the participating municipality or the County needs to get permission from the other in order to provide digital tax map files to third party; however any provision of said tax map files to a third party will require the Third-Party Agreement mentioned in the Third covenant.

SIXTH: None of the parties hereto warrants the accuracy of any shared data and states that the data is provided on an "as is" basis.

SEVENTH: The term of this Agreement will commence on the date first entered above and will terminate on December 31, 2022, unless terminated earlier as provided herein.

EIGHTH: Any party may cancel this Agreement on ninety (90) days written notice to the other party. Any party canceling this agreement shall not be entitled to a full or partial refund of the current year commitment that has already been received by the CCGC.

NINTH: This Agreement shall not be enforceable unless signed by the parties and approved by the Office of the County Attorney.

TENTH: All notices given pursuant to this agreement shall be in writing and will be hand delivered, sent via US Postal Service or emailed and shall be effective on delivery to the CCGC.

ELEVENTH: This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, comments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

TWELFTH: Each party has agreed to provide financial support to the County (Appendix A) to help offset the cost of the ESRI software; and an hourly rate of \$82.90 for any IT support services provided by STC GIS Analyst to any party, which would be billed quarterly. A 30-day prior notice will be provided for any IT support services GIS Analyst hourly rate to each party.

THIRTEENTH: Counterparts, Separate Signature Pages. This Agreement may be executed in any number of counterparts, or using separate signature pages. Each such executed counterpart and each counterpart to which such signature pages are attached shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

Appendix A

GIS Commitments

Organization	Address	Annual 3 Year Commitment
Chemung County Storm Water/Soil and Water	851 Chemung Street, Horseheads, NY 14845	2,500.00
City of Elmira	317 East Church Street, Elmira, NY 14901	4,000.00
Elmira -Chemung Transportation Council	400 East Church Street, Elmira, NY 14901	2,500.00
Elmira Water Board	261 West Water Street, Elmira, NY 14901	1,000.00
Town of Ashland	3663 Sixth Street, Wellsburg, NY 14894	500.00
Town of Baldwin	622 Breesport N Chemung Rd, Lowman NY 14861	500.00
Town of Big Flats	476 Maple Street, Big Flats, NY 14814	1000.00
Town of Catlin	1448 Chambers Rd, Beaver Dams, NY 14812	500.00
Town of Chemung	48 Rotary Road Ext, Chemung, NY 14825	500.00
Town of Elmira	1255 West Water St, Elmira, NY 14905	1,000.00
Town of Horseheads	150 Wygant Rd, Horseheads, NY 14845	1,000.00
Town of Southport	1139 Pennsylvania Avenue, Elmira, NY 14904	1,000.00
Town of Van Etten	PO Box 177, Van Etten, NY 14889	500.00
Village of Horseheads	202 South Main St, Horseheads, NY 14845	1,000.00

IN WITNESS WHEREOF, All parties have executed this Agreement.

Date: May _____, 2021

COUNTY OF CHEMUNG

Christopher Moss
County Executive
Resolution Number: _____

Date: May _____, 2021

TOWN OF HORSEHEADS

Donald Fischer
Town Supervisor
Resolution Number: _____

4/14/2021 T.B.

At this portion of the meeting, a motion was made by Mr. Wilber and seconded by Mr. Riopko to go into executive session at 7:10 P.M. to discuss a certain employee.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

At this portion of the meeting, a motion was made by Mr. Lewis and seconded by Mr. Zeigler to add a health insurance with Town employee Patricia Wheeler.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

Resolution #73 of 2021

RESOLUTION SETTLING POSSIBLE GRIEVANCE REGARDING PATRICIA WHEELER AND CONTINUED HEALTH INSURANCE

Resolution by Mr. Wilber, seconded by Mr. Riopko

WHEREAS, Patricia Wheeler has decided to retire from the Town of Horseheads based upon her and others interpretation that her 10 years of part time and full time employment entitled her to health insurance from the town until age 65 and,

WHEREAS, the Town Attorney gave an opinion to the Board that part-time individuals were not entitled to the post retirement benefit and,

WHEREAS, the Town Board has duly considered the same

NOW, THEREFORE, BE IT RESOLVED, that the Town Board in the review of the employee handbook sees where the language with regard to retiree entitlement could be interpreted that part-time employment would count toward entitlement to health insurance after retirement and, be it further

RESOLVED, in full settlement of all issues between the parties, the Town Board hereby agrees to the following agreement:

SEPARATION AGREEMENT AND GENERAL RELEASE

THIS AGREEMENT AND RELEASE (the “Agreement”) made this day of April, 2021 by and between **THE TOWN OF HORSEHEADS** (the “TOWN”), with office at 150 Wygant Rd., Horseheads, NY 14845 and **PATRICIA M. WHEELER**, (the “EMPLOYEE”) & **MICHAEL L. WHEELER** (the “SPOUSE”) of 607 Langdon Hill Rd., Erin, NY 14838 and , is effective on the date set forth below:

WHEREAS, EMPLOYEE has been employed by the **TOWN** for a period in excess of 10 years on a part time and fulltime basis; and

WHEREAS, the parties have negotiated this settlement due to the parties disagreement over interpretation of language in the Town of Horseheads Employee Manual relating to provision of health insurance to retirees; and

WHEREAS, the employment relationship between the **TOWN** and the **EMPLOYEE** will be severed in accordance with the terms of this Agreement; and

WHEREAS, to avoid present and future conflict, the parties mutually desire to set forth their understanding in writing

NOW, THEREFORE, for good and valuable consideration as hereafter stated, the parties agree as follows:

1. **EMPLOYEE** hereby resigns from her employment with the **TOWN**, as of April 29, 2021.

2. **EMPLOYEE** will receive any unpaid wages, all accrued and unused vacation as of the end of business day April 28, 2021, less normal and appropriate deductions, on or about May 12, 2021.

3 Commencing May 1, 2021, the **TOWN** shall continue to pay its share of the **EMPLOYEE**'s and **SPOUSE**'s health insurance premium, as follows:

Patricia M. Wheeler until March 26, 2023;

Michael E. Wheeler until February 9, 2026.

4. The obligation of the **TOWN** to continue payment of its share of health insurance premiums for **EMPLOYEE** or **SPOUSE** shall terminate upon death, upon reaching the age of sixty five (65), upon earlier qualification of either **EMPLOYEE** or **SPOUSE** for Medicare, or **SPOUSE** accepts new employment after the date hereof, where health insurance is offered.

5.(a) In consideration of the above plan of separation from the **TOWN** set forth in paragraphs "1" through "4" of this Agreement, the **EMPLOYEE** and **SPOUSE** for themselves and all others, hereby releases and forever discharges the **TOWN** from all liability causes of action, suits, debts, agreements, promises, damages, back and front pay, damages, and remedies of any type whatsoever, known or unknown, fixed or contingent, in law or in equity, which **EMPLOYEE** and **SPOUSE** had, now has or may have against the **TOWN** from the beginning of her employment to and including the date of this Agreement, on accounts of, or arising out of any matter related to her employment, with the **TOWN** or the termination thereof. **EMPLOYEE** and **SPOUSE** acknowledge she would not otherwise be entitled to the medical payment set forth in paragraph 3.

This release is including particularly, but not limited to, any claims, demands, or liability under Federal, State, or local laws or the common law of any jurisdiction specifically, but without limitation, thereby releasing and discharging the **TOWN** from any and all claims for breach of contract, personal injury, defamation of character, tortious conduct, wrongful or abusive discharge, illegal discrimination (including violations of the Age Discrimination in Employment Act, as amended to the extent, if any, that the same may be waived under applicable law), Title VII of the Civil Rights Act of 1964, as amended (to the extent, if any, that the same may be waived under applicable law), the Americans with Disabilities Act, as amended, the Rehabilitation Act of 1973, as amended, the Employment Retirement Income Security Act of 1974, as amended, the Fair Labor Standards Act, as amended, the New York Municipal Law, New York Civil Service Law, the New York Human Rights Law, violation of public policy, violation of pension or stock rights, conspiracy, third party interference with contract, retaliation, violation of the Racketeer Influenced and Corrupt Organizations Act and the common law of any jurisdiction or statutes of any municipality, state or United States of America, excepting, however, any claims to enforce **EMPLOYEE**'s rights under this Agreement.

(b) In consideration of the **EMPLOYEE**'s and **SPOUSE**'s execution and delivery of this Agreement, the **TOWN** for itself, its successors and assigns, hereby releases and discharges **EMPLOYEE**, **EMPLOYEE**'s heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, contracts, controversies, agreements, promises, damages, judgments, claims, and demands whatsoever, in law, or equity, which against the **EMPLOYEE**, the **TOWN**, the **TOWN**'s successors and assigns had or now have except for indemnification in actions brought by third parties against the **TOWN**, fraud, misappropriation of funds, or illegal activity, and any claims to enforce the **TOWN**'s rights under this Agreement.

6. It is further acknowledged and agreed that unless required by law, the facts of this Agreement are confidential and that neither the **TOWN** nor **EMPLOYEE** nor **SPOUSE** or their representatives will divulge any information or make any public disclosure or contact or make any disclosure to the media or any other person or entity concerning this Agreement. If any media, media representative, or any third party contacts **TOWN** or **EMPLOYEE** or **SPOUSE** or their representatives, they shall comment no further than to state "no comment" or use other similar phrases or refusal to communicate the details of this Agreement.

7. Nothing contained in this Agreement shall take away, limit, or restrict any vested rights **EMPLOYEE** may have under the Consolidated Omnibus Budget Reconciliation Act ("COBRA").

8. **EMPLOYEE** and **SPOUSE** represent and acknowledge that they have carefully read and fully understand all of the provisions of this Agreement which sets forth the entire agreement between the **TOWN**, the **EMPLOYEE** and **SPOUSE** and that they have not relied upon any representation or statement, written or oral, not set forth in this Agreement.

9. **EMPLOYEE** and **SPOUSE** represent and acknowledge that they have had such time as necessary to review and consider the terms of the Agreement. They further acknowledge they were advised to consult an attorney prior to executing this Agreement, and that the **EMPLOYEE** and **SPOUSE** were under no duress at the time of the Execution of the Agreement.

10. The **EMPLOYEE** and **SPOUSE** agree that this Agreement is the full and complete understanding between them and the **TOWN** and that no other terms, conditions, representations, agreements, understandings or promises have been made that are not contained herein.

11. This Agreement shall be governed by the laws of the State of New York, without reference to such State's choice of law rules. The parties consent to personal jurisdiction of the state and federal courts located within Chemung County in the State of New York. If any action is commenced by either party in any other jurisdiction, then upon application of either party, the parties shall consent to a transfer of dismissal of the action so as to permit its maintenance in Chemung County, State of New York. **THE TOWN THE EMPLOYEE AND SPOUSE HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREE THAT ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

12. The **TOWN, EMPLOYEE** and **SPOUSE** agree that this Agreement may not be modified except in writing and signed by both parties.

13. If any provision of this Agreement or the Releases contained herein is determined to be invalid or unenforceable, the remainder of this Agreement or Releases other than such provision shall not be affected and will remain in full force and effect.

14. This agreement shall be effective as of date first written above.

15. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to each of their heirs, executors, administrators, trustees, representatives, successors, or assigns.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

As there was no more business during executive session, a motion was made by Mr. Lewis, and seconded by Mr. Riopko to reconvene at 8:29 P.M.

As there was no further business to come before the Board, on a motion by Mr. Lewis, and seconded by Mr. Wilber, it was moved that the meeting be adjourned at 8:30 P.M.

Ayes: Riopko, Lewis, Wilber, Zeigler and Fischer. Nays: None.

Respectfully Submitted,

Nancy C. Rohde, Town Clerk